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PROCEEDINGS AND DEBATES

OF THE

CONSTITUTIONAL CONVENTION

OF IDAHO

1889

Edited and Annotated by
I. W. HART
Clerk of the
Supreme Court of Idaho

VOLUME I.

CALDWELL, IDAHO
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PREFACE.

The publication of the Proceedings of the Constitutional Convention of 1889 is made under authority of the Act of March 10, 1911, (Sess. Laws 1911, p. 686) which contained an appropriation of $5,000 to complete the transcription of the stenographic notes of the proceedings, to properly annotate, index and prepare the same for publication, and for the publication itself.

All the proceedings of the convention were reported stenographically at the time by a very competent reporter, whose notes by order of the convention were filed with the secretary of the territory, but no provision had ever been made for transcribing and publishing them before the passage of the act referred to.

It has seemed fitting to insert as prefatory matter the calls or proclamations of the territorial governors for the election of delegates to the convention and the convening thereof, as these calls constituted the only official warrant for the holding of the convention, which met and performed its labors without either an enabling act of congress or any authorization from the territorial legislature. The call of Gov. E. A. Stevenson was dated April 2, 1889. Almost immediately thereafter Gov. Stevenson went out of office and was succeeded by Gov. Geo. L. Shoup, whose more elaborate proclamation, dated May 11, 1889, appears to have been in the nature of a confirmation of the act of his predecessor, as well as being designed to stimulate popular interest in the movement for statehood.

The absence of an enabling act placed the constitution makers of Idaho, as well as those of Wyoming, in a peculiar position, and one much more uncertain than those of other western territories which were engaged in framing constitutions about the some time. The Dakotas, Montana and Washington were proceeding in

orderly fashion under the specific authority of a congressional enabling act. It is true that an enabling act for Idaho had been introduced by Senator Mitchell in December, 1888, and this was favorably reported to the senate in February, 1889, by Senator Platt. The contents of this bill were well known to the members of the convention, were frequently referred to and quoted in debate, and there even seems to have been an impression among some of the delegates that the bill had a certain legal force and effect at that time. On account of these numerous references and the historical interest attaching to the subject, it has seemed proper to include a copy of the Mitchell or Platt bill among the appendices.

There was one unfortunate omission in the matter of preserving the records of the convention which it has been impossible wholly to supply. In accordance with the usual practice in such bodies, the work of the convention was blocked out in its opening days, and the different subjects which were afterwards embraced in articles of the constitution were allotted to standing committees, each of which in due course reported to the convention an article with numbered sections for its consideration. There reports were ordered printed, and when the article came up for consideration in the committee of the Whole a printed copy was laid on each member's desk, with the lines numbered, as in the case of legislative bills. Amendments were offered by reference to the numbered lines. These printed copies were not preserved, nor does it appear that the originals were filed among the records of the convention. Extensive inquiry has been made among the living members of the convention, and it seems probable that there is not now a set of them in existence. The reporter did not ordinarily include them in his notes of the proceedings. In some instances it has been possible to supply parts of these original committee reports from other sources. A few of them were incorporated in the convention Journal, and a few scattered sections are to be found in

the files of the *Idaho Daily Statesman.* The references to numbered lines which appear in the proceedings do not therefore always afford a clue to the exact places where amendments are offered, though the reference is usually aided by the mention of specific words before or after which the change is sought to be made.

I have also included in the appendices as relevant to the matter of this publication, the Address to the People, prepared by a committee of ten in the closing days of the convention, and the text of the constitution as finally adopted and engrossed. In accordance with the provisions of the act authorizing the publication of the proceedings, an endeavor has been made to trace every reference to other constitutions, statutes or court decisions. These citations appear in foot-notes, and are collected in an index at the close of Vol. II. In addition to this and the general subject index I have prepared an index of sections and articles, for more convenient reference when it is desired to ascertain all that was said and done in regard to any particular section.

As entire sections were sometimes stricken from or added to the committee reports during the proceedings in committee of the Whole or convention, the section numbering in the articles as reported to the convention and as indicated in the reporters' notes, does not always correspond with the section numbering as adopted. Where this is the case, the original numbering is followed by figures in parenthesis which indicate the number of the section as it now stands.

I. W. HART,
Editor and Annotator.

Boise, June 10, 1912.

CALL FOR CONSTITUTIONAL CONVENTION.

Proclamation of Governor E. A. Stevenson.

EXECUTIVE DEPARTMENT,
Boise City, Idaho, April 2, 1889.

Whereas it is desirable that the Territory of Idaho be admitted into the Union as a State, and it has been clearly indicated by leading men of congress of both political parties that so soon as a suitable constitution is presented to Congress such admission will be granted:

Now, therefore, I, E. A. Stevenson, governor of Idaho Territory, fully recognizing the great advantages which statehood will confer, and in accordance with the fully expressed wishes of the citizens of the Territory, do issue this, my proclamation, to the people thereof, and recommend to them that they take the necessary steps for such admission; that for this purpose they hold throughout this Territory, on the first Monday in June, A. D. 1889, an election for delegates to a constitutional convention to convene at Boise City, in said Territory, at 12 o'clock noon, of the 4th day of July, A. D. 1889, for the purpose of framing a constitution for the State of Idaho; that such constitution, when so framed, be submitted for its adoption or rejection to a vote of the people at an election to be held throughout this Territory at a time hereafter to be provided for; and if adopted by the people at such election, to be then submitted to Congress for ratification, and the admission of this Territory as a State of the Union; that the qualifications of delegates to such convention shall be such as are now required by the laws of said Territory for members of the legislative assembly of said Territory, and said delegates must take the same oath of office required of such members; that the election provided for shall be conducted, the returns made, the results ascertained, certificates to persons elected be issued, and the qualifications for voters thereof shall be the same as now provided by the laws of said territory for general elections therein; that said constitutional convention shall be composed of seventy-two members, apportioned as follows, to-wit:

Ada County, 9; Alturas, 6; Bear Lake, 1; Bingham, 7; Boise, 3; Cassia, 2; Custer, 4; Lemhi, 3; Idaho, 3; Latah, 6; Kootenai, 3; Nez Perce, 3; Oneida, 2; Owyhee, 3; Shoshone, 8; Washington, 3; Logan, 3; Elmore, 3.

Done at Boise City, the capital of the Territory of Idaho, this 2d day of April, A. D. 1889.

E. A. STEVENSON,
Governor.

Attest: E. J. CURTIS,
[SEAL]. *Secretary.*

ADVANTAGES OF STATEHOOD FOR IDAHO—CONSTITUTIONAL CONVENTION.

Proclamation of Governor George L. Shoup.

Whereas the people of Idaho are now living under a form of territorial government little better than a colonial system under foreign rule, whereby they are debarred from participating in any election for President and Vice-President of the United States, have no vote in either house of Congress, and have no voice in the selection of the most important officers of the Territory, executive or judicial, and

Whereas the people of Idaho are desirous of exercising the rights and privileges guaranteed to a free and loyal people under the Constitution of the United States, and to organize a State government preparatory to admission to the Federal Union, believing that they have sufficient population and wealth to justify such an undertaking, and

Whereas Governor E. A. Stevenson did, on April 2, 1889, issue a proclamation calling for an election of delegates to a constitutional convention to be held in Boise City, Idaho, on July 4, 1889, to make a constitution for the State of Idaho, to be submitted to the people for adoption or rejection:

Now, therefore, I, George L. Shoup, governor of Idaho, fully recognizing the advantages that statehood possesses over our present system of territorial government, do issue this, my proclamation, recommending that delegates be elected to said constitutional convention on the first Monday in June, as proclaimed in said call issued by Governor Stevenson. If for any reason the citizens of any county prefer to elect their delegates by some other equitable method, I am satisfied the delegates so chosen will be recognized and admitted to seats in the convention. The manner of choosing delegates is of less importance than that they should be representative men, of character and ability, whose work will be satisfactory to Congress and the people.

Objection to statehood has been made by a few of our citizens on the ground that the cost of government will be greatly increased. There is this much of truth in the objection, that a State government sufficient in all its departments for the needs of a growing commonwealth, affording means for the prompt administration of justice in the courts, providing a teacher for every child of school age, and an asylum for every helpless, blind, dumb, or idiotic dependent, will cost more money than a government which delays justice, turns out the feeble to the charities of the world, and rears the young in ignorance. But every good thing is worth its cost, and no people ever bore just burdens with greater patience than the people of Idaho.

A brief statement of facts in connection with this question

will be useful for reference. The general Government now pays for the salaries of the governor and secretary and certain other contingent expenses, including rent, $6,000 per year; for salaries of judges, $9,000; and for biennial expenses of the general assembly, including printing the laws and journals, $26,000. Reducing the latter item to an annual expense, we find the general Government paying for the support of Idaho the sum of $28,000 per year. The other Territorial expenses, met by our own tax-payers, average annually the sum of $75,000.

The Territory now pays in full the salaries of the following officers, to-wit:

Attorney-general, comptroller, treasurer, superintendent of public instruction, employes of capitol building, directors and attaches of insane asylum, prison commissioners, librarian, a portion of the attaches of the legislative assembly, incidental expenses attendant on the same; and to each county attorney in the Territory $300 per annum.

I note these facts, as it is supposed by many that some of the above-named officers are now paid by the general Government.

As moderate as our tax rate now is, it is gradually reducing our territorial indebtedness. This is made apparent by the fact that the balance in the territorial treasury on February 9, 1888, paid all outstanding warrants up to October 10, 1887, while the money in the treasury February 9, 1889, paid all outstanding warrants up to December 31, 1888. In other words, the collections for the year ending February 9, 1889, paid the expenses of one year, two months and twenty days.

The insignificance of the amount contributed by the general Government becomes more apparent if we include the amount paid by our citizens for county expenses. The amount stands:

Annual county expenses	$450,000
Annual territorial expenses	103,000
Total	$553,000
This sum is paid as follows:	
By the people of Idaho	$525,000
By the United States Government	28,000
Total	$553,000

Referring again to the increased cost of the State government and admitting that there will be a moderate necessary increase of expenditure, attention is called to the generosity with which a great nation comes to the help of a young commonwealth. The magnificent dowry promised by Congress far outweighs all the direct loss of revenue from the Federal Treasury and all the

reasonable increase of cost of state government. Under the bills unanimously reported by the committees of both houses of Congress gifts to the proposed State of Idaho were provided as follows:

Grants:	Acres
School Sections 16 and 36	2,840,000
University grant	46,080
Penitentiary lands	160
Agricultural college lands	90,000
Scientific School lands	100,000
Normal School lands	100,000
Charitable institutions	300,000
Public buildings	32,000
Total	3,508,240

Deducting from this the lava beds and mountain lands which would naturally fall to our share, there would still remain 3,000,000 acres of timber, plain and meadow lands, to the credit of statehood. If it were wise public policy to sell these lands at once in open market at their present value, we should enter upon statehood with the richest treasury west of the Mississippi.

Look at this grant in detail. When these school lands shall have been sold in accordance with existing laws, our school taxes will be reduced to an inconsiderable rate. We have incorporated a territorial university and levied a special tax for its support; when the university grant is placed upon the market it is probable that this tax can be entirely remitted. Three other excellent educational institutions can be based upon the grants for agricultural, scientific, and normal schools. We are paying $20,000 annually for the support of an insane asylum; ultimately the Congressional grant may take this entirely off our hands. We are confronted with a debt on our capitol building of $80,000; the Congressional grant ought to pay every dollar of it. We are paying $20,000 per year for the support of territorial prisoners—a sum which not only provides for our own prisoners, but for those of the United States as well. Congress proposes to spend $25,000 more on this prison, give us the entire property, and then pay us for boarding federal convicts.

Out of a similar grant the State of Nevada has already realized $1,500,000, and yet has most of its lands unsold. The annual receipts now by the State of Nevada from the current sales of these lands is an amount equal to nearly double the present cost of supporting our entire territorial government.

The lands included in the various grants to the State of Idaho are now worth not less than $3,750,000. Only 6 per

cent annual interest on this sum is $225,000—three times our present territorial income.

In addition to the foregoing grants of lands the State of Idaho will receive for school purposes 5 per cent of net proceeds of all public lands sold within the State by the general Government—a magnificent sum of itself.

The assessment of real and personal property in the Territory has increased since 1878 at the rate of about $1,600,000 per annum. The increase of assessable property would be much more rapid under State government. I refer to this as an evidence that taxation need not be increased above the present levy to meet all the requirements of State government.

One of the most serious hindrances to the progress of our Territory is what is known as the alien act of Congress, which is an effectual prohibition of the investment of foreign capital. An ineffectual attempt was made during the last Congress to repeal or modify this law, so that our people might be in some measure benefited by the large amount of money held by this class of capitalists, who are ready and anxious to invest large sums in the purchase and development of our mines. If Idaho shall become a State, this hindrance to our prosperity is at once removed, as this law only applies to Territories over which Congress has exclusive control.

Whether statehood will bring even a temporary increase of taxation depends largely upon the judicious action of the constitutional convention. Into the details of their great work I cannot enter. It is for you to instruct your representatives in the principles of economy.

The convention will undoubtedly fix its own per diem and mileage and that of its employes. Their certificates of service and expenditure will be filed with the territorial secretary, and Congress will doubtless follow its own precedents in providing for the payment thereof.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the Territory. Done at Boise City, the capital of Idaho, this eleventh day of May, in the year of our Lord one thousand eight hundred and eighty-nine, and of the independence of the United States of America the one hundred and thirteenth.

[SEAL]. GEORGE L. SHOUP.

By the Governor:

EDWARD J. CURTIS,

Secretary of Idaho.

PROCEEDINGS

OF THE

CONSTITUTIONAL CONVENTION

BOISE CITY, IDAHO, *July 4, 1889, 12 A. M.*

FIRST DAY.

GOVERNOR SHOUP in the Chair.—The convention will please come to order. Gentlemen, the hour has arrived under the call of Governor Stevenson for the formation of a constitution for the State of Idaho. What is your pleasure?

TEMPORARY ORGANIZATION.

A MEMBER. A short time ago the members of the convention were assembled in a caucus for the purpose of recommending officers for the temporary organization of the convention, and in pursuance of the expressed wish of that caucus, I now present the name of the Honorable John T. Morgan as temporary chairman of the convention.

(Seconded).

CHAIRMAN. Gentlemen, the Honorable John T. Morgan of Bingham, has been nominated as temporary president of this convention. Are there any further nominations? In the absence of rules, I will call the ayes and nays. As many of you as are of the opinion that John T. Morgan should be temporary president of this convention will say aye; those contrary, no. (Vote).

The ayes have it. John T. Morgan is duly elected.

Gentlemen of the convention, I have the pleasure of introducing to you the Honorable John T. Morgan of

Bingham, who has been duly elected temporary president of this convention. (Applause).

Mr. MORGAN. Gentlemen of the convention, I gratefully appreciate the great honor that you have conferred upon me in selecting me as temporary chairman of this convention, a body of men so distinguished as those who have been elected to form this constitution. I am not going to make a speech to this convention on its temporary organization. I have only this to say, that Governor Stevenson has issued a proclamation, calling upon this territory to select delegates to form a constitution for the future state of Idaho. These delegates have been selected and are now here. This proclamation of Governor Stevenson has been supplemented by the proclamation of our present Governor, His Excellency, George L. Shoup. For the performance of the duties that devolve upon you, it becomes necessary now for us to make arrangements for the permanent organization. Gentlemen, I await the pleasure of this convention.

A MEMBER. In order to complete the temporary organization, I now move that Mr. Reid of Nez Perce, be appointed temporary secretary of this convention. (Seconded).

CHAIRMAN. It is moved and seconded that Mr. Reid of Nez Perce be elected as temporary secretary of this convention. Are you ready for the question? (Vote).

The ayes have it. Mr. Reid is elected.

Mr. HEYBURN. Mr. Chairman, in the temporary absence of Mr. Reid, I move that Mr. Standrod be selected as assistant secretary of this convention. (Seconded).

CHAIRMAN. Gentlemen, it is moved and seconded that Mr. Standrod of Oneida County be elected as assistant secretary of the temporary organization. (Vote).

The ayes have it, and Mr. Standrod is elected.

Gentleman from CUSTER. I move that the convention be called by counties and that the delegates come forward and present their credentials at the secretary's table. (Seconded).

Gentleman from CASSIA. I think there are some delegates who have not their credentials with them. I move that there be a committee appointed on credentials, to receive the credentials—that the chair appoint the committee.

Gentleman from CUSTER. I have no objection; my object in making such a motion was this, that the committee on Credentials should go to the secretary's table to more readily read the credentials. (Vote).

The CHAIR. The ayes have it. The gentlemen will present their credentials.

Gentleman from CASSIA. I move a recess for ten minutes to give time to get the credentials together. (Seconded).

CHAIRMAN. The motion was that the convention be called by counties. As the counties are called, the delegates will proceed to hand in their credentials. The secretary will proceed to call the gentlemen by counties.

(The names of the counties called and credentials presented).

Mr. HEYBURN. I move that a committee of nine be appointed on credentials. (Seconded).

CHAIRMAN. It is moved and seconded that a committee of nine be appointed on credentials. Are you ready for the question? (Vote). The ayes have it.

A DELEGATE. How will you have the committee appointed?

Mr. HEYBURN. By the chair.

The CHAIR. Gentlemen, the chair appoints the following members of the convention as the committee on Credentials: W. B. Heyburn of Shoshone; W. H. Savidge of Bingham; J. H. Shoup of Custer; J. I. Crutcher of Owyhee; J. W. Poe of Nez Perce, Frank P. Cavanah of Lemhi; D. W. Standrod of Oneida; W. C. B. Allen of Logan; Albert Hagan of Kootenai.

Mr. CLAGGETT.—I am informed that there are a number of contests coming before us. Some between members of the same party, and I would like to suggest the following method of procedure, and that is, that as

to contests between republicans, that the republican members by the consent of the committee shall settle such contests; and that as to democratic contests, the democrats shall settle the same. In other words, only republicans should mix up with the contests of republicans, and only democrats, in contests among the democrats. I offer the resolution: First, that in all contests for seats in the convention as between republicans and democrats, the whole committee on Credentials shall act upon the contests; Second, that all contests between republicans shall be settled by the republican members of the committee; Third, that all contests between democrats shall be settled by the democratic members of the committee, and when settled in this way, they can make their report out and the entire committee can report. (Seconded).

CHAIRMAN. Gentlemen, you have heard the resolution.

DELEGATE. I move the adoption of the resolution. (Seconded).

Question put and the resolution is adopted.

RECEPTION COMMITTEE.

Mr. SWEET. Mr. Chairman, I understand that the committee on Indian Affairs—or at least a portion of that committee—of the United States Senate will pass through Idaho tomorrow, and I desire to move that the chairman appoint a committee from this convention to go out and meet this committee from the Senate and endeavor to pursuade them to spend one day with us as guests of this convention. I therefore move, Mr. Chairman, the appointment of four of the delegates of this convention, and I suggest that the Governor act as the fifth member of that committee and act as chairman of the committee. (Seconded). Question put and motion carried.

The CHAIR. The following members are appointed as this committee: Willis Sweet, William H. Claggett, Frank W. Beane, George Ainslie.

Mr. SWEET. I suppose it is understood that Governor Shoup will act as chairman; he is here.

The CHAIR. The chair so understood the resolution. (After a pause). The Governor accepts.

Gentleman from CASSIA. I move that the committee on Credentials make a report.

Gentleman from ALTURAS. I wish to make a motion, in order that you may have time to perform the duties devolving upon the committee, that the convention adjourn until tomorrow morning at ten o'clock. (Seconded).

It is suggested to make it read that the hour be five o'clock this afternoon instead of tomorrow morning. I will make the motion in that form.

TEMPORARY ATTACHES.

CHAIRMAN. Gentlemen, it has been suggested that it would be necessary to have a doorkeeper before we adjourn. Of course, the motion to adjourn is in order.

Gentleman from ALTURAS. I withdraw the motion.

A MEMBER. It is very necessary that we have a page also, and that the chair appoint one temporarily.

A MEMBER. I move that Bill Spiegel act as temporary page of this convention. (Seconded).

The CHAIR. Gentlemen, you have heard the question. Are you ready for the question? (Question).

A MEMBER. I offer the nomination of Alexander Smith of Ada County.

A MEMBER. When I made the motion, I suggested only a temporary appointment.

The CHAIR. What is the name of the gentleman suggested from Ada?

Alexander Smith.

A MEMBER. Mr. President, I understand these nominations are simply for temporary officers.

CHAIRMAN. I so understand it.

Mr. CLAGGETT. I rise to a point of order. It is not proper for this convention to do anything except per-

fect its organization, and then it can elect its officers. At the present time, we do not know who are members of this convention. I now rise to a point of order that there is nothing before the convention.

The CHAIR. I think the point is well taken.

A MEMBER. I would suggest that the janitor of the school building is here and that the chair appoint him temporary doorkeeper. (Seconded). Motion put and carried.

The CHAIR. The gentleman is appointed.

Gentleman from ALTURAS. There being no motion before the house, I now renew my motion to take a recess until 5 o'clock this afternoon. (Seconded). Motion put and carried.

A MEMBER. There is another motion in connection with this committee business that should be taken up.

The CHAIR. The convention is adjourned.

5 O'CLOCK P. M.

COMMITTEE ON CREDENTIALS.

The CHAIR. The convention will please come to order. Is the committee on Credentials ready to report?

Mr. HEYBURN. Your committee on Credentials is not ready to make its final report. They have finished their labors as to everything except any contest as to the democratic members from Alturas county, which is now under consideration with them. They will hardly be able to report before tomorrow morning. We therefore ask leave to postpone the report of the committee until tomorrow.

The CHAIR. Does the convention grant further time until tomorrow morning? I await a motion.

A MEMBER. I move that the committee be allowed until tomorrow morning at ten o'clock, until which time I move that the convention now adjourn. (Seconded). Motion put and carried. Adjourned.

SECOND DAY.

July 5, 1889, 10:00 o'Clock A. M.

REPORT OF COMMITTEE ON CREDENTIALS.

The CHAIR. The convention will please come to order. I believe the first thing in order this morning is the report of the committee on Credentials. As I understand it, the committee is in the hall. We will await their coming in for a moment.

(Enter committee on Credentials).

The CHAIR. Gentlemen, the first business in order is the report of the committee on Credentials. Are you ready to report?

Mr. HEYBURN. Your committee on Credentials beg to report that they find the following persons entitled to seats in this convention as delegates from the several counties of this Territory:

Ada County,
W. C. Maxey,
John S. Gray,
Edgar Wilson,
John Lemp,
A. B. Moss,
Chas. A. Clark, Isaac N. Coston.
P. J. Pefley,
Frank Steunenberg.

Alturas County,
O. B. Batten,
L. Vineyard,
Patrick McMahon,
Jas. H. Beatty,
A. J. Pinkham,
J. W. Ballentine.

Boise County,
J. H. Myer,
Fred Campbell,
Geo. Ainslie.

Bear Lake,
J. L. Underwood.

Bingham,
W. H. Savidge.
F. W. Beane,
H. B. Kinport,
J. T. Morgan,
H. O. Harkness.
Logan County,
J. S. Whitton,
Henry Armstrong,
W. C. B. Allen.
Owyhee County,
Samuel J. Pritchard,
Chas. M. Hays,
J. I. Crutcher.
Shoshone County,
W. B. Heyburn,
W. H. Claggett,
W. M. Hammell,
S. S. Glidden,
W. W. Woods,
A. D. Bevan,
Alex E. Mayhew,
G. W. King.
Kootenai County,
Henry Melder,
Albert Hagan,
W. A. Hendryx.
Washington County,
Sol. Hasbrouck,
E. S. Jewell,
Frank Harris.
Custer County,
O. J. Salisbury,
A. J. Pierce,
A. J. Crook,
James M. Shoup.
Cassia County,
H. S. Hampton,
J. W. Lamoreaux.

Elmore County,
Frank P. Cavanah,
A. M. Sinnott,
Homer Stull.
Lemhi County,
N. I. Andrews,
Thos. Pyeatt,
John Hogan.
Nez Perce County,
J. M. Howe,
J. W. Reid,
J. W. Poe.
Latah County,
Willis Sweet,
W. J. McConnell,
J. W. Brigham,
W. D. Robbins,
H. B. Blake,
A. S. Chaney.
Oneida County,
D. W. Standrod,
John Lewis.

Respectfully submitted,
W. B. HEYBURN,
Chairman.

Your committee further begs to recommend to this convention that the Honorable E. A. Stevenson be admitted as a delegate at large and as such be entitled to a seat in this convention.

The CHAIR. Gentlemen, what will you do with the report?

Mr. PINKHAM. I move that the report be received and adopted as read. (Seconded).

The CHAIR. Gentlemen, you have heard the motion. Are you ready for the question?

Mr. BEATTY. I move an amendment to that motion, to strike out the latter part of the motion, so that the report be simply received. I have a motion to make supplementary to that. I will state here my object in mak-

ing that amendment. I have been informed by a number of gentlemen in this place, in whom I have confidence, that if the committee in the case of the contest in Ada County will settle the number of members to be represented from each party, that the delegations among themselves could then very soon select the gentlemen of those delegations, and it is clear, as represented to me, that it will give more satisfaction to the members of the different parties here. I will state, however, that they were republicans who so stated to me that it will give more satisfaction to the members of the republican party if the interested members who are selected as delegates be allowed to settle among themselves who shall represent them. If the committee on Credentials should fix the number five, they then could select the five. I move that this committee be allowed an hour in which to settle this matter, and in the meantime, the report of the committee be simply received. (Seconded).

The CHAIR. It is moved and seconded that the part of the motion relating to adopting the report be stricken out. You have heard the motion. Are you ready for the question?

Mr. CAVANAH. I would like to have that part read.

The CHAIR. Will you read us the motion including your amendment, Mr. Beatty?

Mr. BEATTY. The motion of my colleague here was simply that the report of the committee be received and adopted. My amendment is simply that the report of the committee be received and not adopted. That is all there is of it. The adoption may be acted upon later. It is not to set aside the report of the committee at all. If my colleague will accept the amendment, then the motion is simply this, that the report of the committee be received. It is then before the body for action.

Mr. PINKHAM. With the consent of the chair, I have no objection to accepting the motion as amended by my colleague, but will stand upon that and let the motion go before the house in the way he presented it.

The CHAIR. As there is no objection to the amendment as adopted, gentlemen, are you ready for the question? The motion now is that the report of the committee on Credentials be received. (Vote, and motion carried).

A MEMBER. I will move you, Sir, that the members selected from Ada County be allowed one hour in which to agree upon the names that shall be reported to this convention as the delegation. I understand the report of the committee presents the name of five republicans out of nine, and four democrats out of the nine to be selected from Ada county. I move now that the republican members be allowed one hour in which to select the five that shall represent them, and the democratic members of the delegation be allowed the same time, if desired, for the same purpose. If at the end of that hour they have not agreed upon the names of the parties who shall act as delegates here, then the convention will summarily adopt the report of the committee. (Seconded).

The CHAIR. Gentlemen, you have heard the motion. Are you ready for the question? (Question). Vote, and carried.

The CHAIR. The motion is adopted.

A MEMBER. As the gentlemen are permitted to have one hour in which to settle this matter, I now move this convention adjourn until 2 o'clock this afternoon. My object is this: That both parties, I think, have a desire to confer as to the officers that will proceed as permanent officers of this body, and I do not know whether the republicans have determined upon the selection of their officers or not; the democrats have not got together and have made no selection as yet and they desire until two o'clock in which to agree among themselves as to whom they will place in nomination as officers of this body. That is the object of my motion. (Seconded).

The CHAIR. It has been moved and seconded that we now adjourn until 2 o'clock this afternoon. (Vote).

A division is called for. On rising vote, the motion is lost.

Mr. McCONNELL. I move you, sir, that this convention adopt the report of the committee on Credentials with the exception of that in regard to the contest from Ada County. (Seconded).

The CHAIR. It is moved and seconded that the report of the committee on Credentials be adopted with the exception of that referring to Ada County. Is that correct, Mr. McConnell?

Mr. McCONNELL. Correct.

The CHAIR. As many as are in favor of this motion, signify by saying aye; Mr. Heyburn, I beg pardon. I believe you rose before the question was put. With the permission of the house, we will hear from the chairman of the committee.

Mr. HEYBURN. I move to amend the motion of the gentleman from Latah, including in the exception the resolution contained at the end of the report of the committee, so that it will read that the report of the committee be adopted except as to the delegates from Ada county. (The amendment is accepted).

CHAIRMAN. Gentlemen, you have heard the motion. As many as are in favor of the motion, signify it by—

Mr. POE. Pardon me; that is a matter we have no opportunity to offer remarks upon. The gentleman has moved an amendment that all shall be adopted except that which refers to the delegation of Ada County and the resolution that is pending.

The CHAIR. Yes, sir.

Mr. POE. The reason of that amendment I believe is that they confused the delegation of Ada County. The committee on Credentials do not so consider it. The committee on Credentials recommended the adoption of the resolution to the effect that Governor Stevenson be allowed to sit as delegate at large in this convention, not as a delegate from Ada County. The delegation from Ada County by the committee on Credentials has been settled, of course, subject to this body. They have made their selections as to the parties entitled to represent

Ada County in this convention. Now they recommend another party, irrespective of his count at the polls, as being a proper person for this convention to admit as a delegate at large, and I cannot conceive of the propriety of not adopting the report of the committee as to that resolution, simply as the report of the committee has raised the question, because there is no dispute—no contest. This is a matter of Governor Stevenson—has nothing to do with the matter of the delegation of Ada County.

The CHAIR. Are you ready for the question? Gentlemen, the question is upon the adoption of the report of the committee on Credentials with the exception of the Ada County delegation matter and the matter of the admission of Governor Stevenson.

Mr. CLAGGETT. I offer as amendment to that resolution that the report of the committee on Credentials be read and passed upon by the convention, section by section. (Seconded). Put to vote and carried.

The CHAIR. The amendment is adopted. The report will be read by sections. (Secretary reads the report as to Ada County).

The CHAIR. Is that considered as one section of the report?

Mr. Heyburn. That is one section.

The CHAIR. Gentlemen, what will you do with this section of the report?

A MEMBER. I move that it be accepted.

Mr. BEATTY. That would be out of order. The convention has already acted on that, and the only way to get at that matter is a motion to reconsider.

The CHAIR. I did not so understand it, Mr. Beatty.

Mr. BEATTY. I understand that the convention referred that matter, the Ada County delegation, to the delegation themselves, and gave them an hour to agree upon the five republicans and four democrats, and if they are not able to agree, the convention should act upon the matter at once. And that has been acted upon by the convention. Now, then, I say that the convention

cannot take that matter up by a new motion except by a motion to reconsider. The motion of Judge Claggett I do not understand goes to that point. If it does, it is out of order. I submit that to the chair.

The CHAIR. The chair understands that differently from the gentleman.

Mr. BEATTY. I understood the Judge to refer to the report of the committee of Ada County. That report of the committee has been referred to the members from Ada County. I think the reading of the names from Ada County is out of order and that report should come before the convention with the exception of that from Ada County.

The CHAIR. Gentlemen, the chair understands the matter in this way. The motion was made by Mr. McConnell that the report of the committee be adopted with the exception of the Ada County matter. That was amended by the gentleman from Shoshone (HEYBURN), which amendment was accepted by the member; that this motion included the resolution in reference to Governor Stevenson. While that was under discussion, the amendment was moved by Mr. Claggett as a substitute that the report be read by sections and passed upon in that way, and we have commenced the reading of the report of the committee by sections—have read the part in reference to Ada County, and that is now properly before the house.

A MEMBER. Mr. Chairman, what has been done to the amendment passed upon by this convention?

The CHAIR. The amendment was adopted.

Mr. POE. I think our minutes will show that the motion in regard to Ada County was referred back to the committee on Credentials, and that you will call to mind that after that was done, a motion to adjourn until 2 o'clock was lost. The object to adjourn was to enable the committee to act upon Ada County. Now our minutes ought to show that and will, I think. (A call for the reading of the minutes).

(Secretary refers to the minutes).

Mr. POE. Mr. Chairman, I move that this whole business in reference to the adoption of this report be tabled and that this convention adjourn one hour. (Seconded). Put to vote and carried.

The CHAIR. The motion is carried. The house stands adjourned for one hour. (10:38 A. M.).

AFTER RECESS.

The CHAIR. The convention will please come to order. The chair has received a communication from the republican delegates of Ada county which will be placed before the convention. The secretary will read the communication.

SECRETARY reads:

To the Hon. John T. Morgan,
President Constitutional Convention.

SIR:—At a meeting of the delegates elected by the county of Ada to represent said county in the constitutional convention for Idaho Territory, held in Boise City on this 5th day of July, they agreed that the following named persons shall be seated in your convention: John S. Gray, John Lemp, Edgar Wilson, A. B. Moss, W. C. Maxey.

Respectfully,

CHAS. H. REID,
JONAS BROWN,
D. P. B. PRIDE,
EDGAR WILSON,
JOHN S. GRAY,
JOHN LEMP,
A. B. MOSS.

Mr. CLAGGETT. I move that the names of the gentlemen which have been read by the secretary be accepted as the Republican members of the Ada County delegation and that they be allowed seats upon the floor at once and entitled to all privileges. (Seconded). Put to vote and carried.

The CHAIR. The ayes have it. The gentlemen are admitted. What is the further pleasure of the convention?

Mr. GRAY. I suppose it is in order to take up the permanent organization. Now I will make a motion that there be a committee appointed on Permanent Organization.

REPORT OF COMMITTEE ON CREDENTIALS.

Mr. BEATTY. I think the first business before the convention is taking action on the report of the committee on Credentials which has not yet been adopted, as I understand it.

Mr. CLAGGETT. As I understand it, Mr. Chairman, that is the unfinished business of the convention which was only temporarily organized. It now stands on the motion made by myself that the convention act upon that report section by section.

The CHAIR. Yes, sir. The secretary will please proceed with the reading of the report of the committee on Credentials. I believe that the action upon the Ada County delegation has not been had in full, and we will request the secretary to read the report of the committee as amended by accepting the names of the Republican members.

Mr. BEATTY. I will ask if the Democratic delegates of Ada County have agreed.

Mr. CAVANAH. I did not know that the Democratic delegates were dissatisfied with the names presented in the report.

Mr. BEATTY. I move then the adoption of the report of the committee as to the Democratic members presented in the report. (Seconded). Put to vote and carried and the report is adopted.

SECRETARY. In the original report, the name of Mr. Maxey does not appear. In whose place was he selected?

A MEMBER. T. C. Catlin.

(The remaining portions of the report of the committee relative to delegates entitled to seats from the several counties are read in order and adopted without amendment).

SECRETARY. Shall I read the resolution of the committee at the end of the report?

The CHAIR. Yes, sir.

SECRETARY. (Reading). Your committee recommend that Ex-Governor E. A. Stevenson be admitted as a delegate at large and as such entitled to a seat and vote in this convention.

Mr. CLAGGETT. I offer as a substitute for the last clause of this report the following: *Resolved,* That the freedom of the floor of the convention be and the same hereby is tendered to Governor Shoup and Ex-Governor Stevenson as honorary members of the convention, in recognition of their eminent services in behalf of state government for Idaho; and that like compliment be and hereby is extended to the honorable Justices of the Supreme Court. (Seconded).

The CHAIR. The question is upon the adoption of the substitute.

Put to vote and carried.

The CHAIR. The substitute is adopted. What is the further pleasure of the convention?

PERMANENT ORGANIZATION.

Mr. HAMMELL. I now move the appointing of a committee of nine delegates to have charge of permanent organization. (Seconded).

The CHAIR. Gentlemen, you have heard the motion; are you ready for the question?

Mr. SWEET. I do not know that I fully understand the meaning of this motion, but if I do, I hardly think it is in accordance with the order agreed upon or commonly understood by members of the convention on both sides of the house. My understanding was that after the question of who is entitled to seats on this floor as members of the convention should be finally settled, that the respective parties were to go into caucus and appoint committees on the question of permanent organization. Now, if this is intended for the same thing, well and good, but if it is not, I am opposed to it, because

these names should be agreed upon in caucus; and besides, in that way you can leave each party to the selection of its officers and that will be settled.

Mr. BEANE. For the purpose of following out the program mentioned by Mr. Sweet, I move we adjourn until 3 o'clock for the purpose to enable the several committees or caucuses both to get together and make these selections. (Seconded).

The CHAIR. The motion to adjourn is in order.

Put to vote and carried. Recess.

3 o'Clock P. M., July 5, 1889.

The CHAIR. The convention will please come to order. Gentlemen, as we have no order of business at present, I presume the first business before the convention will be the election of permanent officers. I await a motion.

GRAY. I nominate W. H. Claggett to be permanent president of this convention.

The CHAIR. The motion should be to proceed to the election of permanent officers.

Mr. BEVAN. I make that motion in order to proceed to elect a permanent president of this convention. (Seconded).

Put to vote and carried.

The CHAIR. Mr. Judge Beatty, will you take the chair, please.

Mr. MORGAN. I have the distinguished honor, Mr. Chairman and gentlemen of the convention, to place in nomination for president of this convention, a gentleman distinguished in the councils of the nation as well as distinguished in the councils of a sister territory, and latterly in our own territory. I am happy to say, Mr. Chairman, that he is a gentleman eminently qualified for the position for which I place him in nomination. I have the pleasure now to nominate the Honorable W. H. Claggett of northern Idaho as the permanent chairman of this convention. (Seconded).

The CHAIR. The name of W. H. Claggett of Northern Idaho is placed before this convention as president. Nominations are still in order.

Mr. HEYBURN. I desire to especially second the nomination of Mr. Claggett as chairman of this convention. I have the pleasure to live in the same jurisdiction and come from the same county and I can vouch for his ability to administer the duties pertaining to that office, and for the impartiality, wisdom and courtesy with which we may expect to be governed.

The CHAIR. Gentlemen of the convention, are there any other nominations? The chair awaits the motions of the convention as to further proceeding. If there are no more nominations, the chair will announce that nominations are now closed for president. What is the pleasure of the convention?

Mr. BALLENTINE. There being no opposition, I move that Mr. Claggett be elected president by acclamation. (Seconded).

The CHAIR. Gentlemen, the motion now is that Honorable Wm. H. Claggett be elected as the permanent chairman of this convention by acclamation. (Vote). The motion prevails. The chair will appoint a committee to escort the Hon. W. H. Claggett to the chair, if there is no motion to that effect.

Mr. MORGAN. Mr. Chairman, I move you that a committee of three be appointed to escort the Hon. W. H. Claggett to the chair. (Seconded).

The motion is that a committee of three be appointed to escort the president, Wm. H. Claggett, to the chair. (Carried). The chair will appoint the Hon. John T. Morgan of Bingham county, Mr. Cavanah of Elmore county and Mr. Batten of Alturas county, to conduct the president-elect to the chair.

Gentlemen, I have great pleasure in introducing to you your permanent president, the Honorable William H. Claggett of Northern Idaho.

Mr. CLAGGETT. Gentlemen of the convention, to say that I thank you most cordially and sincerely for the

distinguished honor which you have seen fit to confer upon me, would express in but feeble terms the sense of honor and of responsibility which I feel on this occasion. We have been convened here by the proclamation of the then governor of the territory, Ex-Governor Stevenson, for the purpose of drafting a constitution which will serve as the organic law for the future state of Idaho. We have been delegated by our fellow citizens in various forms of procedure to appear here and perform that responsible and important duty. Both parties of the territory are nearly equally represented upon this floor. It is a matter of congratulation to the people of Idaho that the general sense of all the people of all portions of the territory has been that this should not be made a partisan but rather a patriotic organization of delegates. We will have, in the course of our discussions and of our proceedings, many questions, perhaps, upon which there will be radical differences of opinion. I trust for my own part that every member upon the floor of this convention will bear in mind at every stage in these proceedings the fundamental theory upon which we have been convened.

We are here for the purpose of forming a state government, drafting a constitution which shall be its organic law. And at every stage of our proceedings, we should be controlled by three considerations. The first one is to adopt such an instrument as will meet with the approval of the people of the territory; secondly, such an instrument as will meet with the approval of the congress of the nation, and, thirdly, and more important than the other two combined, such an instrument as shall secure a proper distribution of the powers of state, and such an instrument as will secure in the future the utmost welfare and prosperity of the people whom we are called upon to represent here. I believe, gentlemen of the convention, that the spirit that will infuse the proceedings of this convention from its beginning to the close, will be the spirit of harmony

and of endeavor to do the best that in our power lies, for the promotion of the ends which we have in view.

For myself, I can make but few pledges to the convention. It is so long since I have been a member of a deliberative body that for some days, at least, you must not be surprised if I am rusty in the methods of procedure. That, at this time, is my misfortune. If it continues, it will be my fault. I can only promise you one thing—that in these proceedings there will be no distinction made between the members of this convention, but everything that shall be done will be done with perfect and absolute impartiality as far as in my power to bestow. I will again thank you for the honor conferred upon me, and announce that as the convention is organized by the election of a chairman, the next thing in order will be the election of a secretary.

Mr. HAYS. I desire to place in nomination the name of a gentleman well qualified by experience to be permanent secretary of this convention, namely, Chas. H. Reed.

The CHAIR. If the gentleman will allow me to recall my announcement, I will announce that the next thing in order is the election of a vice-president.

Mr. POE. I have the honor to present to this convention for the office of vice-president, a gentleman whom I have known for something over a year, with whom I have been intimately associated, and who, though comparatively a newcomer into this territory, is pretty well known throughout the broad extent of this territory by reputation; a gentleman who has occupied the honorable position of representative in congress; a gentleman who is well known for his honesty and integrity and his executive ability. I now place before this convention the name of Honorable James W. Reid of Nez Perce county as the nominee for vice-president of this convention.

The CHAIR. The name of Hon. James W. Reid of Nez Perce has been placed in nomination for the position of vice-president of this convention. Are there any

other nominations? If there are no further nominations, gentlemen, the chair will announce that the nominations are closed. What is the further pleasure of the convention in regard to the nomination?

A MEMBER. Mr. Chairman, I move you that the election of Mr. Reid be made by acclamation. (Seconded). Carried.

The chair recognizes the gentleman from Owyhee.

Gentleman from OWYHEE. If in order, I desire to place in nomination for permanent secretary of this convention, a gentleman with whom a large number of the members of this convention are acquainted; a gentleman well qualified for the position by reason of his similar experience, namely, Mr. Chas. H. Reed, of this county. (Seconded).

The CHAIR. Any further nominations, gentlemen, for the office of secretary?

Mr. POE. I have the honor of presenting the name of that pioneer of this county who has acted in the capacity of secretary of many of the legislative bodies that have met in this territory in days gone by, who is well known to be a gentleman in every respect and a gentleman that has no peers. He may have a peer, but no superiors for the position and office. His name is James H. Wickersham of Owyhee County.

The CHAIR. James H. Wickersham is placed in nomination. Are there any further nominations, gentlemen? If there are no further nominations, the chair will declare the nominations closed.

Mr. WILSON. Mr. President, I move that we elect by ballot. (Seconded). Carried.

Election of secretary proceeds by ballot.

The CHAIR. Total number of votes cast, gentlemen, 59, of which Mr. Hasbrouck received 2, Mr. Wickersham 22, and Mr. Reed 35. Mr. Reed having received a majority of the votes of the convention is permanent secretary of the convention. What is your further pleasure, gentlemen?

Mr. HEYBURN. Mr. President, I desire to place in nomination as Sergeant-at-Arms for this convention, the name of Howard French.

The CHAIR. The name of Mr. Howard French is placed in nomination for the office of sergeant at arms. Are there any further nominations?

Mr. POE. I place in nomination for Sergeant-at-Arms John Bartlow. He is quite an able man—he is fully able to fill the position, I think, with honor to himself and to this convention. I have known him in positions of that kind in legislative bodies and know that he is a faithful man and that he performs his duty well.

The CHAIR. The name of Mr. John Bartlow is placed in nomination. Are there any further nominations? If there are no further nominations, the chair will declare that nominations are closed. Gentlemen, you will please prepare your ballots. (Election proceeds by ballot).

Gentlemen, the total number of votes cast is 59, of which Mr. Bartlow receives 25, and Mr. Howard French 34. Mr. French having received a majority of the votes of the convention is duly elected to the office of Sergeant-at-Arms.

Gentleman from LATAH. The time has arrived to charge this committee which was to wait on the Senate committee on Indian Affairs, and I would suggest that the committee be excused. The chair is a member of that committee.

Mr. SWEET. Mr. Chairman, I move that the convention adjourn until tomorrow morning at 10 o'clock. (Seconded).

The CHAIR. It is moved and seconded, gentlemen. If you will allow me one moment.

SECRETARY, Mr. REED. Certainly.

The CHAIR. I will state in response to what was stated by the delegate from Latah, Mr. Sweet, that it would be impossible for me to go with that committee and with the consent of the gentlemen of the convention, I will appoint in my place Mr. W. G. McConnell. If

there is no objection, gentlemen, it will be so ordered. There is no objection. It is moved and seconded that this convention do now adjourn until tomorrow morning at 10 o'clock. (Vote). The noes seem to have it.

(A division is called for; rising vote shows ayes 30, nays 28).

The CHAIR. The motion to adjourn, gentlemen, is carried. This convention is now adjourned until tomorrow morning at 10 o'clock.

THIRD DAY.

July 6, 10: 00 o'Clock A. M.

The CHAIR. The convention will come to order. The secretary will call the roll of members and members answer to their names.

SECRETARY. 19 members.

The CHAIR. The convention consists of 72 members and therefore no quorum appears. We are unable to proceed except by unanimous consent. If no one raises the objection of there not being a quorum, to-wit, 37 members, we will proceed to the business of the convention. I would suggest, however, that inasmuch as the organization is not complete that we should therefore take a recess until a quorum appears, but take steps to secure their attendance.

Mr. HEYBURN. I suggest that the sergeant-at-arms might call the attention of the members not present that the convention is in session. Possibly they are not aware of that fact.

The CHAIR. The sergeant-at-arms will notify the members not present that the convention is in session.

The CHAIR. Gentlemen of the convention, the chair is informed by the secretary that the minutes of yesterday's proceedings have not yet been completely written up. We will, therefore, be compelled to delay the reading of the minutes until a later date.

When the convention adjourned upon yesterday, it was engaged in the labor of perfecting its organization by the election of the various officers to attend upon the labors of the convention. That remains this morning as the unfinished order of business. It will now be in order to proceed to the perfection of the organization of the convention. What is your further pleasure in the premises, gentlemen?

Mr. HARRIS. Mr. President, what is the next officer on the list for election? There has been no list prepared by the action of the convention at all, and we are proceeding entirely in the dark. It is not as yet known as to whom the officers of the convention will be except the customary number, and it is assumed that there will be the customary attaches. There should be really some action taken by the convention designating what officers shall be selected by the convention, if it hasn't yet been done.

Mr. BEATTY. Mr. President, I move that the convention proceed to elect the first and second assistant secretary and that the first thing be the election of the first assistant. (Seconded). Carried.

The CHAIR. Nominations for the position of the first assistant secretary are now in order.

Mr. SAVIDGE. Mr. Chairman, I desire to nominate for the position of first assistant secretary of this convention, Mr. R. T. Morgan. I have a personal acquaintance with Mr. Morgan, and I believe him to be exceptionally qualified to perform the duties of that office. (Seconded).

The CHAIR. The name of Mr. R. T. Morgan is before the convention for the position of first assistant secretary. Are there any further nominations?

A MEMBER. I move the nominations be closed.

The CHAIR. Is there any second? There being no second, nominations are still in order.

Mr. BEATTY. Seconded.

The CHAIR. It is moved and seconded, gentlemen, that the nominations now close. (Vote). The ayes have it. Are you ready to proceed with this election, gentlemen?

Mr. BALLENTINE. Mr. Chairman, there being no opposition to Mr. Morgan, I move that he be elected by acclamation. (Seconded).

The CHAIR. It is moved and seconded that Mr. R. T. Morgan be elected by acclamation as first assistant secretary of this convention. (Vote). The ayes have it. Nominations are now in order for the position of second assistant secretary.

GOV. SHOUP. I move you that the nomination be passed for the present. (Seconded). Carried.

The CHAIR. What is the further pleasure of the convention?

Mr. ALLEN. Mr. Chairman, I desire to place in nomination for the position of chaplain of this convention, the Rev. T. M. Smith of Logan, who, I believe, will fill the position acceptably. (Seconded).

Mr. STEUNENBERG. Mr. Chairman, I desire to place in nomination a gentleman for the office of doorkeeper.

The CHAIR. The chair will have to rule that only one proposition can be entertained at a time.

Are there any further nominations for the position of chaplain for the convention? No further nominations, gentlemen; the chair will declare the nominations closed for this position. As there is no objection, it is so declared.

Mr. McMAHON. Mr. Chairman, I move that the candidate be elected by acclamation. (Seconded).

The CHAIR. It is moved and seconded that the Rev. T. M. Smith be elected to the position of chaplain of this convention. Carried.

Mr. McCONNELL. I desire to place in nomination a candidate for doorkeeper, a gentleman whom you all know—a gentleman distinguished in letters and on the rostrum, who will be distinguished in the state of Idaho

as long as the high stars shall shine. I name for the position Honorable J. D. Flenner. (Applause). (Seconded).

The CHAIR. Are there any further nominations, gentlemen?

Mr. McMAHON. Mr. Chairman, I submit the name of P. D. Canavan, of Logan County.

The CHAIR. Are there any further nominations, gentlemen? No further nominations; the chair will declare the nominations for the position of door-keeper closed. There is no objection; it is so ordered. Prepare your ballots, gentlemen. (Election by ballot).

The total number of votes cast, gentlemen, is 34, of which number Mr. Flenner received 16 and Mr. Canavan received 18. Mr. Canavan having received a majority of the votes of the convention is duly elected door-keeper. What is the further pleasure of the convention?

Mr. HEYBURN. Mr. Chairman, inasmuch as it would be necessary that this hall be kept open at all hours in order for members to have free access to their desks, without being excluded on holidays and other days, it seems to me that it will be necessary to have an assistant door-keeper and it will also be necessary to have a postmaster to bring the mail to the desks and take the mail away. I name as door-keeper, W. R. Cartwright. (Seconded).

The CHAIR. The name of W. R. Cartwright is placed in nomination for the position of assistant door-keeper and postmaster. Are there any further nominations?

Mr. MAYHEW. I just arrived last night and had no opportunity to ascertain anything except that the officers of this convention were to be elected. Further than that I have had no opportunity to ascertain the facts or what officers it was necessary for this convention to have. I would like to inquire, Mr. President, therefore, if there has been any rule or anything adopted by way of resolution or otherwise as to what the of-

ficers should be of this convention. Has there been no report of committee made?

The CHAIR. The chair will inform the gentleman from Shoshone that there has been no action taken specifying any definite officers the convention should have.

Mr. MAYHEW. Then a proposition, Mr. President, that we go right along and elect as many officers for this convention as we please is in order.

The CHAIR. I don't think there is any doubt about that, Mr. Mayhew.

Mr. MAYHEW. I did not know but what there might be some report made by some committee recommending the election of officers for this convention and made the suggestion in order to be informed. As to the postmaster and doorkeeper, heretofore in the bodies I have unfortunately been a member of, the doorkeeper acted as postmaster, etc. I only wanted to know for information's sake so as to know how to vote upon this matter. Always heretofore it has been reported by some committee who named the officers.

The CHAIR. The customary method of procedure has been as stated by the member from Shoshone. The whole matter has been in the hands of the convention. The convention has not seen fit to take that course.

Are there any further nominations for doorkeeper and postmaster? If there are none, the chair will announce the nominations closed. Gentlemen, how shall we proceed to the election of doorkeeper and postmaster?

Mr. HEYBURN. I move that we proceed to elect Mr. Cartwright by acclamation. (Seconded). Carried.

Mr. Ballentine. I desire to present the name of Master Edward Hawley as one of the pages of this convention. (Seconded).

The CHAIR. Master Edward Hawley has been nominated as one of the pages of this convention. Are there any further nominations?

A MEMBER. I desire to nominate for page Master Joseph Speigel of Boise. (Seconded).

The CHAIR. The name of Master Joseph Speigel has been presented as one of the pages of this convention. Are there any further nominations?

Mr. GRAY. Mr. President, I will inquire how many are to be elected. This is a matter entirely before the convention to decide. I will suggest, in the first place, we adopt some resolution offered limiting the number of pages and have the convention take some action in regard to it.

Mr. BALLENTINE. If in order, I move that the number of pages be limited to four.

The CHAIR. Is there any second for the motion? (Seconded). Carried.

The CHAIR. Nominations for the position of page are still open.

Mr. McMAHON. I desire to place in nomination for page, Master Alexander Smith of Ada County.

The CHAIR. Is there any second for the nomination? (Seconded).

The CHAIR. Are there any further nominations, gentlemen? If there are no further nominations and there is no objection thereto, the chair will declare the nominations for pages closed. Is there objection?

A MEMBER. I believe, Mr. President, you labor under a misunderstanding. There should be four nominations; there are but three.

Mr. CAVANAH. I presume, Mr. President, with the magnanimity of the other side, they have left that nomination to us. But as one republican has nominated a brother democrat who has never voted for a republican yet. I think we ought to be satisfied. (Applause).

A MEMBER. Mr. President, I put in nomination Master Woodie Maxey. (Seconded).

The CHAIR. Are there any further nominations? If there are none and there is no objection, the chair will declare the nominations closed. Edward Hawley, Joseph Speigel, Master Smith and Master Maxey have

been put in nomination for the position of pages. How shall we proceed with the election?

Mr. SHOUP. I move that they be elected collectively by acclamation. (Seconded).

The CHAIR. It is moved and seconded, gentlemen, that the four names placed in nomination shall be elected by acclamation. (Carried). It is so ordered.

I believe this completes, so far as the chair has any information, the organization of the convention. The further business of the convention is in the hands of the convention itself.

COMMITTEE ON RULES.

Mr. SHOUP. I move you that a committee of three members be appointed to report rules for the government of the convention and that the president shall be ex-officio a member of that committee. (Seconded).

The CHAIR. It has been moved and seconded, gentlemen, that a committee of three be appointed to report rules to the convention and that the President, ex-officio, shall be a member of that commrttee. Are there any remarks?

Mr. MAYHEW. Of course, I am in favor of a committee to be appointed or elected, as the case may be, for reporting the rules of this convention, but I think that the committee should be increased if it meets with the approbation of the gentleman who made the motion for three. I think that the committee should consist of five. You will find out, gentlemen, when that committee comes together to report a set of rules to this convention, it will be considerable labor, and by having a large committee, a committee of five, I am satisfied, Mr. President, when the rules are reported back, they will not be apt to meet with the disapprobation of the members. Now, a committee to report rules for this convention has got a great deal of information to obtain and has got to secure some rules, perhaps in the the codes of rules from rules generally adopted by a legislative body, and a great many rules that govern

legislative bodies will be met with in a convention of this kind. Therefore, I suggest, Mr. President, and will move that the committee consist of five members instead of three.

Mr. MORGAN. Second the motion.

The CHAIR. Any further remarks, gentlemen?

It has been moved and seconded that a committee of three on rules be appointed, to which an amendment is offered that the number be increased to five. (Vote and carried.) The motion prevails.

COMMITTEE ON COMMITTEES.

Mr. HEYBURN. Mr. Speaker, I move that a committee of five be appointed on committees, to determine what committees shall exist in this body. (Seconded.)

Mr. MAYHEW. Since the motion has been seconded, Mr. President, I understand that the committee on Rules is the committee that is to determine that fact. The committee on Rules always determines how many committees there shall be, although a new committee for the purpose of determining how many committees there shall be and on what subjects those committees shall be appointed, may be proper. If it should be understood, Mr. President, that the committee on rules should simply draft a series of rules to govern the action of this convention, that is all right. Then that committee would be relieved of reporting back to this convention the committees of this convention. I suppose that is the idea of the gentleman from Shoshone (HEYBURN) to have this committee relieve the committee on Rules in that respect.

The CHAIR. I presume that is the object of the motion; to divide the labor of the committee on Rules. Gentlemen, it has been moved and seconded that a committee on Committees, consisting of five members, shall be appointed, which shall have to report to this convention the number and character of the standing committees of the convention. I believe that is the motion. (Vote.)

The motion prevails.

SEATING OF MEMBERS.

Mr. WILSON. I move that the Sergeant-at-Arms be instructed to number the seats of this hall and that the numbers corresponding thereto be placed on slips of paper and put into a box, and that at the coming in of the members this afternoon, each member shall draw one of the slips therefrom, and the number of the seat corresponding thereto shall be designated as such member's seat during the term of this convention. (Seconded.)

Mr. BEATTY. I move an amendment to that resolution, that the members be allowed to retain the seats they now occupy with the privilege of changing, if they so desire. If I hear a second, I will give my reasons. (Seconded.)

Now, Mr. President, the members undoubtedly will prefer arranging themselves in groups to suit, and if we go into a drawing of that kind, delegates of different counties will scatter all over the house and it will take a day or two to get arranged. We are now all satisfied and pleased, and perhaps the members have selected seats to suit themselves, and by each member being allowed to retain the seat occupied by him, with the privilege of exchanging if desirable, the delegations can get together easily.

Mr. MAYHEW. Mr. President, I am opposed to the amendment if he desires the members to retain their seats. Now I say that we are terribly scattered and I am a long ways from the members of this county that I represent, and I do not know how I am to get anywhere nearer. Now I say the fairest rule to do it is to draw for your seats and afterwards you can accept them if you please. I understand that Alturas has selected three or four seats by themselves and the balance is scattered, and so long as the balance is scattered, I am in favor of scattering every one of them. Take the chances with Alturas.

The CHAIR. Any more remarks, gentlemen?

Mr. WILSON. I hope the amendment of Judge Beatty will not prevail, for the reason that some delegates are back here in these inconvenient seats and others have selected very good seats this morning, and so far, the seats have been selected by those who got in here first. If my motion prevails, we can readily make the selection which Judge Beatty suggests—more readily than if this amendment prevails. Some members of each delegation will get favorable seats; others may possibly not. Then we can make this exchange and every one will have the same opportunity.

A MEMBER. I hope this motion will not prevail, for the reason that there are some members from some delegations who have no seats at all.

The CHAIR. It has been moved and seconded that a drawing for seats shall take place under a numbering and supervision of the Sergeant-at-Arms, on the convening of this convention this afternoon, and an amendment is made by the member from Alturas that the members may arrange the seats to suit themselves. (Vote.) The noes have it.

(Division called for; rising vote.)

It is not necessary to count, gentlemen, the resolution is lost.

All those in favor of the adoption of the resolution as originally made, signify it by saying aye; contrary, no. (Vote.) The resolution prevails.

COMMITTEES APPOINTED.

The CHAIR. If the convention will have patience, I desire to arrange these special committees which have been ordered. The chair will announce as the committee on Rules, under the resolution adopted by this convention, Shoup of Custer, Beatty of Alturas, Morgan of Bingham, Reid of Nez Perce, and Mayhew of Shoshone. For the committee on Committees, Heyburn of Shoshone, Mr. Allen of Logan, Hays of Owyhee, Standrod of Oneida and Mr. Batten of Alturas.

Mr. SHOUP. Mr. President, I would suggest that Mr. Standrod has gone home and will not be back before tomorrow night.

The CHAIR. The chair will substitute, then, in place of Mr. Standrod, Mr. AINSLIE. What is the further pleasure of the convention, gentlemen?

GRANTING FREEDOM OF THE FLOOR.

Mr. HEYBURN. Mr. President, during the session of the convention yesterday, a resolution was adopted tendering to certain of the executive and judicial officers of the territory the freedom of the floor as a compliment to those gentlemen. We omitted some of the executive officers of the territory. I think we should correct the error today and therefore offer the following resolution: *Resolved,* That the freedom of the floor of the convention be allowed to the Hon. Fred T. Dubois, our delegate in Congress, to the Hon. Richard Z. Johnson, Attorney General, and to each of the executive officers of this territory. (Seconded.) Carried.

The CHAIR. What is the further pleasure of the convention?

Mr. KINPORT. I move you, Sir, that the Sergeant-at-Arms be instructed to secure a clock for the use of the convention.

The CHAIR. Any second to the motion. (Seconded.)

The CHAIR. I don't think it would be well to wait until we get a committee on ways and means. (Put to vote and carried.)

Mr. MAYHEW. As the committee on Rules has been appointed and the committee on Committees appointed, and I do not see that the convention now can do anything until the reports of these committees have been received. I don't know anything that it can do unless it be some minor matters—don't know anything to be done at all. I think the convention now should adjourn to allow these committees time to make their reports, and I say, Mr. President, that it will take them some time for

that. I now move that the convention adjourn until 3:00 o'clock this afternoon.

A MEMBER—Mr. Chairman, before that motion is passed—Is the gentleman through with the motion?

The CHAIR. Yes, Sir; that is all.

A MEMBER. A committee was yesterday appointed to wait on the Senate Committee on Indian Affairs and extend to them the courtesies of the convention.

The CHAIR. The motion hasn't been seconded, has it?

No, sir.

REPORT OF RECEPTION COMMITTEE.

The CHAIR. If the special committee appointed on yesterday is in convention and is ready to report, it will now make its report.

Gentleman from ADA. I think that Governor Shoup is the chairman of the committee. In the absence of the Governor, perhaps it would be about as well for some other member to make the report, inasmuch as we have no control of the actions of the Governor and cannot require him to make a report, if he does not see fit to do it.

Mr. SWEET. Mr. Chairman, on behalf of the Committee, I will say that we met the committee at Clifton on the west-bound train last night. They informed us at once that it would be impossible for them to stop over at Boise, owing to the fact that they were obliged to connect with the boat at Tacoma on their way to Alaska. They invited, however, the committee from this convention to make any suggestions they might see fit, and acting upon that, Senator Dawes called the committee to order and Governor Shoup introduced the members of this committee from the various parts of the territory. Mr. McConnell and myself presented the resources and possibilities of North Idaho as best we might. Mr. Ainslie spoke in behalf of his section of the country and its mining industries. Mr. Allen spoke of irrigation in his section and of its possibilities. Mr. Beane spoke for

Bingham county and Governor Shoup made quite an address on the resources and possibilities of Lemhi and Custer counties. This occupied nearly all the time of the committee. I will say that Mr. Dawes, the chairman of the committee on Indian Affairs, and each member of the committee stated and declared that this convention might rely upon their personal efforts for the admission of Idaho under the constitution we shall adopt. I will say that Mr. Dawes asked Mr. Ainslie if there was any opposition to the admission of Idaho on the part of any of its people, and Mr. Ainslie replied that there was none, that practically the people of Idaho were unanimous upon that proposition, and stated, furthermore, that this was a strictly non-partisan convention. At the same time I think he winked at the Senator from Arkansas, Mr. JONES, and that the Senator from Arkansas understood the wink and winked at Ainslie. And when the train pulled out from Nampa, the chairman with Senator Stockbridge from Michigan, Senator Manderson from Nebraska, with two goblets that looked to me as if they contained something very much like soda water, stood upon the rear platform, waved their hats and proposed a toast to the state of Idaho, which the gentlemen gave.

The CHAIR. What is the further pleasure of the convention? (Motion to adjourn; seconded.) It has been moved and seconded that this convention do now adjourn until 3:00 o'clock this afternoon. (Carried.) The convention is adjourned.

SATURDAY, *July 6th, 3: 00 P. M.*

The CHAIR. The convention will come to order. The first thing before the convention this afternoon, gentlemen, will be the report of the committee on Rules.

Mr. SHOUP. Mr. President, the committee have agreed upon a code of rules, but they are not yet ready to report and ask for further time—probably be ready to report Monday morning.

The CHAIR. The committee on rules reports progress and asks further time until Monday morning.

Shall leave be granted? If there is no objection, it shall be ordered.

The CHAIR. The next matter in the way of business committee appointed to report a list of standing committees for the convention. I understand the committee is ready to report, but the chairman is not present. Perhaps we might proceed to draw the seats. It was stated that the drawing should take place at 3 o'clock.

DRAWING OF SEATS.

The CHAIR. The chair would like to inquire how this drawing is to be had. The customary manner of drawing?

A MEMBER. I think, Mr. President, the proper way would be to call the roll and as the name is called, let each member come up and draw his seat.

The CHAIR. That would be just as well.

Mr. WILSON. Mr. President, the tickets should be folded so that a man cannot see the letters on them; otherwise that would not be fair.

The CHAIR. The chair is informed by the Sergeant-at-Arms, having the matter in charge, that the tickets which are prepared are small and cannot very well be folded, therefore I would suggest that one of our pages be blindfolded and let him draw as the roll-call proceeds. If there is no objection, that course will obtain. Gentlemen, as your names are called by the secretary, the page will draw from the list the number which will be credited to the names. Secretary, please call the roll.

(Secretary calls the roll and numbered seats are assigned to members.)

Gentlemen, please take an informal recess for ten minutes so that the members can take their seats.

REPORT OF COMMITTEE ON COMMITTEES.

The CHAIR. The convention will come to order. The chairman of the committee on Committees is now present. The next thing in order will be the reception of the report of that committee.

Mr. HEYBURN. Your committee on Committees beg leave to report and recommend that the following committees constitute the standing committees of this convention, and that their duties shall be as follows:

A committee of five to be known as the *Committee on Ways and Means.* This committee to consider and pass upon all matters of expenditure connected with this convention; to audit and report all bills of such expenditure, and report the per diem and mileage of members and attaches of this convention.

A committee of seven to be known as the *Committee on Executive Department.* This committee to consider and report all matters that pertain to the formation of the Executive Department of the government of the state.

A committee of seven to be known as the *Legislative Committee.* This committee to consider and report all matters that pertain to the formation of the Legislative Department of the state.

A committee of nine to be known as the *Committee on Judiciary.* This committee to consider and report all matters that pertain to the formation of the Judicial Department of the state, and to provide for the matter of future amendments of the Constitution, and to consider and report upon all legal questions referred to them by request of other committees, or by order of the convention.

A committee of seven to be known as the *Committee on Bill of Rights.* This committee to consider, draft, and report a preamble and Bill of Rights, to be embodied into the Constitution of the state.

A committee of five to be known as the *Committee on Names, Boundaries and Organization.* This committee to consider and report the name and boundaries of the state of Idaho, and the names and organizations of the counties.

A committee of seven to be known as the *Committee on Seat of Government, Public Institutions, Buildings and Grounds.* This committee to consider and report all

matters pertaining to the location of the seat of government, character and location of public buildings and grounds, and the control and government of the same.

A committee of nine to be known as the *Committee on Education, Schools, School and University Lands.* This committee to consider and report all matters pertaining to public education, public schools, school and university lands.

A committee of seven to be known as the *Committee on Election and Rights of Suffrage.* This committee to consider and report all matters pertaining to elections, tenure of office and the elective franchise.

A committee of nine to be known as the *Committee on Revenue and Finance.* This committee to consider and report all matters pertaining to the levying and collecting of taxes, and the disbursement of public money.

A committee of ..... to be known as the *Committee on Legislative Apportionment.* This committee to consider and report the apportionment of members of the legislative bodies of the state, to the several counties or districts.

(Mr. Chairman, we have left this number blank to be filled in by the convention.)

A committee of seven to be known as the *Committee on Militia and Military Affairs.* This committee to consider and report all matters pertaining to the public defense.

A committee of nine to be known as the *Committee on Public and Private Corporations.* This committee to consider and report all matters pertaining to the formation and control of public and private corporations, and the fixing of rates of fares.

A committee of nine to be known as the *Committee on Municipal Corporations.* This committee to consider and report upon all matters pertaining to the formation and government of municipal corporations.

A committee of five to be known as the *Committee on Federal Relations.* This committee to consider and re-

port all memorials addressed to the general government and its several departments, and to provide for the transmission of the Constitution to the Executive and Legislative Departments of the general government.

A committee of nine to be known as the *Committee on Labor.* This committee to consider and report upon matters pertaining to the interests and protection of labor.

A committee of nine to be known as the *Committee on Schedule.* This committee to consider and report the manner and time of submission of the Constitution to the people for adoption, and to consider and report the preservation of existing rights and existing laws in the transition of the territorial to a state government, and to consider and report the application of the institutions and agencies described in the Constitution.

A committee of nine to be known as the *Committee on Manufacturies, Agriculture and Irrigation.* This committee to consider and report all matters pertaining to the interests and promotion of manufactories, agriculture and irrigation.

A committee of nine to be known as the *Committee on Mines and Mining.* This committee to consider and report upon all subjects pertaining to the interests and promotion of mines and mining and the use of water in connection therewith.

A committee of five to be known as the *Committee on Live Stock.* This committee to consider and report upon all matters pertaining to the raising of live stock and the protection of stock against infectious diseases.

A committee of seven to be known as the *Committee on Printing and Binding.* This committee to consider and report all matters pertaining to the printing and binding incident to this convention.

A committee of nine to be known as the *Committee on Revision and Enrollment.* This committee to consider and report the revision and enrollment of the constitution and all memorials adopted by this convention; to correct all grammatical or other errors, to arrange the

different subjects under their appropriate heads and attend to the enrollment of the same as revised.

A committee of seven to be known as the *Committee on Salaries of Public Officers.* This committee to consider and report the salaries of all public officers provided for by this constitution.

A committee of five to be known as the *Committee on Public Indebtedness and Subsidies.* This committee to consider and report upon the creation and control of public indebtedness, state, county, and municipal, and the subject of subsidies.

A committee of five to be known as the *Committee on Revision of Rules.* Said committee to consider and report all matters pertaining to the revision of the rules of this convention.

Respectfully submitted,

W. B. HEYBURN,

Chairman of Committee on Committees.

The CHAIR. The report of the committee is before you, gentlemen; what is your pleasure with reference to that report?

Mr. REID. Mr. Chairman, I would like to hear the duties of the Ways and Means committee read again please.

(Mr. Heyburn reads.)

Mr. REID. Do I understand—I make the inquiry of the chair, do they fix the mileage or is that left to the convention, and then passed upon by the convention?

Mr. HEYBURN. They simply report to the convention.

Mr. PINKHAM. I move that the report of the committee on Committees as read by the gentleman be received, and then it will be open to discussion after that time. (Seconded.)

The CHAIR. It is moved and seconded, gentlemen, that the report of the committee on Committees be now received. (Carried.)

Mr. GRAY. Mr. President, my understanding was that the committee will report upon the mileage—the

distance that has been traveled. Am I correct in that?

Mr. HEYBURN. Simply to report.

Mr. GRAY. That is, simply to report.

Mr. MORGAN. Mr. President, I move that the report of the committee be adopted.

Mr. GRAY. Second the motion.

The CHAIR. The chair will call attention of the convention to one thing before that motion should be put. In my recollection, there is a blank as to the number of members of one of those committees. I do not now remember which one.

Mr. HEYBURN. If the chair will put the question, I will state the idea of the committee on that question.

Mr. MAYHEW. I think that blank is filled out.

The CHAIR. That is what the chair calls the attention of the convention to. If the report is adopted as it is now, there will be one of the committees, the number of which will have to be filled in, and if the gentleman from Bingham will withdraw his motion—

Mr. MORGAN. My motion was that the report be adopted. This motion could be amended, if necessary, so as to fill the blank. However, I withdraw the motion.

Mr. POE. I move that the blank be filled by inserting the name of a member from each county of the territory. (Seconded.)

The CHAIR. It is moved and seconded, gentlemen, that this blank as to the number of members who compose the committee on Apportionment be filled by placing a number in which will represent a total number of counties of this territory. (Carried.)

Mr. MORGAN. I would like to inquire of the chairman if that is the only blank to be filled.

The CHAIR. That is the only blank to be filled.

Mr. HEYBURN. I move, then, that the report of the committee be adopted. (Seconded.)

The CHAIR. It is moved and seconded, gentlemen, that the report of the committee on Committees be adopted. (Carried.)

Mr. SWEET. Mr. President, I am informed by the secretary of the territory that he has wired to Denver, Colo., for the purpose of ascertaining if we could have stenographers and have been notified that two experts can be obtained. It would be, of course, the duty of the committee on Ways and Means to provide for the payment of these stenographers, providing the convention desires. He said it would be necessary, however, if we obtained these stenographers at once, to notify them at Denver this afternoon by wire, and they could then leave there tomorrow morning, and it would delay the matter if we should wait for the committee on Ways and Means. I therefore move you, Mr. President, that the secretary of the territory be instructed to wire those stenographers to come at once. I will say, further, that the secretary told me, or informed me, that he had some conversation with various men of Boise here, and there would be no trouble to raise the money to pay them if the convention wanted to have them.

Mr. GRAY. Mr. President, we have one stenographer. I don't know why we should require two. We have one here, the court stenographer, and I do not know why it would be a necessity to go to the expense of having two. One might be necessary, but I don't know that two would.

Mr. SWEET. I am sure, Mr. Chairman, I know nothing about it. I do not know why they cannot obtain them here, and why it is necessary to go to any other place to get them. I stated what I know about it.

Mr. MORGAN. I had understood that the gentleman that is now present could only stay two weeks. I would say, Mr. President, in my opinion it would be necessary to have at least two first-class stenographers, and I believe it would take three a good deal of the time. The gentlemen of the convention must recollect that in this convention everything is reported—even all speeches of the members are reported and afterwards published. It will take two first-class stenographers and I think that

two would be able to do it. I know that in the hurry of business in a convention of this character, a stenographer will be put to his utmost skill if he takes down the proceedings of the convention two hours at a time. In my judgment, Mr. President, we will find plenty of work here for three men, if we can get them.

The CHAIR. Are there any further remarks?

Mr. GRAY. I will just ask the opinion of the stenographer here—if he thinks he and another man will be able to do it. If he don't, I will certainly yield.

STENOGRAPHER. (Mr. GILBERT) It would be better to have three or four.

Mr. GRAY. Then I am willing.

The CHAIR. It has been moved and seconded that the secretary of the territory, Mr. Curtis, be requested to obtain the services of two stenographers to report the proceedings of this convention. (Vote, and carried).

Mr. MORGAN. If there is nothing further to be done this afternoon, in order to give the president an opportunity to form these committees, I move that the convention do now adjourn until 10 o'clock on Monday morning.

Mr. HEYBURN. I hope the gentleman will hold that a moment. I desire to ask to be excused. Mr. President, I desire the consent of the convention to be excused until next Saturday morning. It is necessary for me to leave the territory to attend to professional business and I shall have to be away until that time.

The CHAIR. Is there any objection to the leave of absence being granted to the gentleman from Shoshone? If there is no objection, it will be so allowed. Did you say until next Saturday morning, Mr. Heyburn?

Mr. HEYBURN. Until next Saturday morning.

APPOINTMENT OF STANDING COMMITTEES.

The CHAIR. Before the motion to adjourn is put, just now pending before the house or convention, I wish to say that the chair will use its utmost endeavors to make up the standing committees reported by the com-

mittee on Committees in order that they may be announced at 10 o'clock on Monday.

The chair appreciates the responsibility and difficulties attending upon this labor. It is barely possible that it may require some longer time than until 10 o'clock Monday morning. I think that it is proper that I at this time announce one fact, and that is I have obtained a list of these delegates and have concluded as to the number of committees which will be awarded to the members of the democratic party on each committee and propose to make a list of the committees and of such number, so that I request that our democratic friends who are in the convention will themselves in caucus select their own members of those committees, which will relieve the chair from considerable responsibility and it will insure in the selection of those members the strongest men to form the permanent committees. In other words, I wish to say to the convention, we have met here for the purpose of laying the foundation of the new state. There will come before the convention subjects which in their ultimate results may reach for a long number of years to come. Our labors are at the bottom of the future welfare and prosperity of this territory or of the state, and for that reason every question which is a matter of public importance should be ably presented; should be as ably represented in the convention as possible in order that the convention itself may come to a conclusion; and with that in view, the chair will request the gentleman who may have charge of the selection of the committees whom I have referred to, to select their strongest members. In other words, the chair proposes to divide the responsibility of these appointments.

Gentlemen, it is now moved that we adjourn until Monday morning at 10:00 o'clock. (Vote and carried.) The house is now adjourned until Monday morning at 10:00 o'clock.

FOURTH DAY.

MONDAY, *July 8, 10:00 A. M.*

The CHAIR. Gentlemen of the convention, you will please come to order. The secretary will call the roll.

(Secretary calls the roll.)

Absent: Messrs. Beane, Blake, Gray, Harkness, Hendryx, Jewell, Standrod, Woods, Hagan, Vineyard. Excused, Mr. Heyburn.

Prayer by chaplain.

Secretary reads minutes of Saturday's session.

The CHAIR. Any corrections to suggest as to the minutes? If not, they will be considered approved.

REPORT OF COMMITTEE ON RULES.

The CHAIR. Gentlemen of the convention, the unfinished order of the day is the report of the committee on Rules. I ask that that committee make a report.

Mr. SHOUP. Mr. President, I am directed by the committee on Rules to report to this convention rules for its government. If it is the desire of the convention that these rules should be read and considered at the present time, that will be very satisfactory to the committee. A copy of said rules are herewith sent to the secretary's desk.

Respectfully submitted,

J. M. SHOUP,

Chairman.

The CHAIR. If there is no objection, gentlemen, the secretary will read the rules, rule by rule, for action by the convention.

SECRETARY reads: RULE 1. The President shall take the chair every day precisely at the hour to which the convention shall have adjourned on the preceding day, and shall immediately call the members to order.

The CHAIR. If there is no objection, gentlemen, the first rule in the report will be considered as adopted. There is no objection.

SECRETARY reads: RULE 2. The President shall have general direction of the hall, and shall have the right to name any member to perform the duties of the chair, but such substitution shall not extend beyond an adjournment.

The CHAIR. Is there any objection to Rule 2? If not, it will be considered as adopted. Secretary will proceed.

SECRETARY reads: RULE 3. He shall preserve order and decorum in the proceedings of the convention, and in case of any disturbance or disorderly conduct in the galleries or lobby, the president or chairman of the committee of the Whole Convention shall have power to cause the same to be cleared.

The CHAIR. If there is no objection to Rule 3, it will be considered as adopted.

SECRETARY reads: RULE 4. There shall be elected a Vice-President who, in the absence of the president, shall have all the powers and perform all the duties of the president.

The CHAIR. Mr. Secretary, to save time, just make a pause between each rule, and if any members have objections, they can make them as you go along.

SECRETARY reads: RULE 5. Reporters for newspapers, or stenographers wishing to take down debates, may be admitted within the bar of the convention by the president who shall assign such places to them as shall not interfere with the convenience of the convention.

(No objection).

Mr. REID. Mr. Chairman, I ask the unanimous consent that the reading of Rule 6 be omitted as we have heard that read this morning.

The CHAIR. If there is no objection, the reading of Rule 6 will be omitted.

(Rule 6 simply gives the titles and number of members for committees as found in the report of the committee on Committees at page 42 *et seq.*)

SECRETARY reads: RULE 7. All committees shall be appointed by the President, unless it shall be otherwise directed by the convention, in which case they shall be appointed by vote of the convention.

(No objection).

OF THE RIGHTS AND DUTIES OF THE MEMBERS.

RULE 8. Members and officers of the convention are required to be constantly in attendance upon the duties of their positions, and leaves of absences to such will only be granted by vote of the convention.

RULE 9. Whenever a member is about to speak, he shall rise from his seat and respectfully address himself to "Mr. President," and the President shall announce the gentleman from the

county he represents and if there be more than one member from such county, then by adding the name of the member. The member may then speak, either from his seat, or from the seat of any other member tendered him for the purpose, or from the Secretary's stand.

Mr. MORGAN. Mr. President, it occurs to me that the rule read just previous to this, Rule 8, which requires a vote should be taken every time a member desires a leave of absence, might be amended by adding "or unanimous consent." This would not require a vote to be taken each time. I move that it be so amended. (Seconded).

The CHAIR. It is moved and seconded, gentlemen, that Rule 8 be so amended as to allow leave of absence to be granted by vote of the convention or by unanimous consent. (Vote). The amendment is carried.

(The reading of the rules proceeds without objection, as follows:)

RULE 10. In all cases the member who shall first rise and address the chair shall speak first, but when two or more members shall rise at once, the president shall name the member who is to speak first.

RULE 11. No member shall speak more than twice on the same question, unless by leave of the convention, and he shall confine himself to the questions under debate, and avoid personality.

RULE 12. Any member while discussing a question, may read from books, papers or documents, any matter pertinent to the subject under consideration, without asking leave.

RULE 13. Any member may call for a statement of the question, which the president may give sitting.

RULE 14. Any member may call for a division of the question, and the decision of the president as to its divisibility shall be subject to appeal as in questions of order.

RULE 15. Every member present, when the question is put, shall vote unless the convention excuse him. Any member requesting to be excused from voting, or desiring to explain his vote, may make a brief verbal statement of his reasons for making such request, and the question shall then be taken without further debate.

RULE 16. While the president or chairman is putting any question or addressing the convention, no one shall walk across the hall; and while a member is speaking, no one shall pass between him and the chair. No person or member shall go to or

remain at the secretary's table while the yeas and nays are being called, or ballots called, except the secretary and his assistants.

RULE 17. Any two members shall have the right to demand the yeas and nays upon any question before the result is announced; but if objection is made, the demand shall be sustained by one-fifth of the members present; if not sustained any member may, upon request, have his vote upon the question recorded upon the Journal, and upon the call for the yeas and nays, the secretary shall call over the names alphabetically.

RULE 18. Any three members have the right to demand a call of the convention, but if objection is made, the demand shall be sustained by one-fifth of the members present; and upon a call of the convention, the names of the members shall be called alphabetically and absentees noted.

RULE 19. Any five members have the right to demand the previous question. The previous question shall be put in this form: "Shall the main question now be put?" and until decided shall preclude further debate, and all amendments and motions, except one motion to adjourn and one motion to lay on the table. All incidental questions, or questions of order arising after a motion is made for the previous question and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

RULE 20. On a motion for the previous question, and prior to voting on the same, a call of the convention shall be in order; but after the demand for the previous question shall have been sustained, no call shall be in order; and the convention shall be brought to an immediate vote, first, upon the pending amendments in the inverse order of their age, and then upon the main question.

RULE 21. If a call for the previous question shall not be sustained, the subject under consideration shall not thereby be postponed.

ORDER OF BUSINESS FOR THE DAY.

RULE 22. As soon as the convention is called to order, prayer may be offered, the roll shall be called and the absentees noted, and a quorum being present, the Journal of the preceding day shall be read by the secretary, and, if necessary, corrected by the convention.

RULE 23. A majority of members elected to the convention shall be necessary to constitute a quorum to do business; and a majority of those voting shall be sufficient to decide pending questions.

RULE 24. As soon as the Journal is read and corrected as aforesaid, the President shall call for Presentations of Petitions and Memorials, Reports of Standing Committees, Reports of Select Committees, Final Readings. The above business shall be disposed

of in the order in which it is arranged, and shall not be in order at any other time.

RULE 25. Every petition and memorial shall be referred, on motion, without putting the question for that purpose, unless the reference is objected to by a member at the time of its presentation. No petition or memorial shall be printed unless by special order of the convention.

RULE 26. Communications from the Executive Department of the Territory may be received, read and disposed of at any time except when the President is putting a question, while the yeas and nays are being called, or while ballots are being counted.

RULE 27. The interim between any two sessions of the convention on the same day shall be termed a recess; and, on reassembling at the appointed hour, any question pending at the time of taking such recess shall be resumed without motion to that effect.

ON MOTIONS AND QUESTIONS.

RULE 28. Every motion shall be reduced to writing, if the president or any member shall require it.

RULE 29. When a motion is made and seconded, it shall be stated by the president; or, being in writing, it shall be read audibly to the convention by the mover or the secretary, before debate.

RULE 30. After a motion is stated by the president, or read by the secretary, it shall be deemed in the possession of the convention, but may be withdrawn, by leave of the convention, at any time before decision or amendment.

RULE 31. All questions whether in committee or convention, except privileged questions, shall be put in the order in which they are made, except in filling blanks, the largest sum or number and longest time shall be put first.

RULE 32. When a question is under debate, no motion shall be received but to adjourn; to take a recess; to proceed to the orders of the day; to lay on the table; for the previous question; to postpone to a day certain; to commit; to amend; to postpone indefinitely; which several motions shall have precedence of each other in the order in which they are arranged.

RULE 33. When a motion is made to commit to a committee of the whole convention, or to a standing committee, it shall not be in order to amend such motion by substituting any other committee; but if any other committee be suggested, the motion shall be first put upon the committee first named, and afterward upon the committee or committees suggested, in the order in which they are named; but a motion to refer to a committee of the whole convention, to a standing committee, or to a select committee, shall have precedence in the order named.

RULE 34. A motion to postpone to a day certain, or indefinitely, being decided, shall not again be allowed at the same stage of the proposition.

RULE 35. A motion to adjourn shall be always in order, but being decided in the negative, shall not be again entertained until some motion, call or order shall take place.

RULE 36. The following questions shall be decided without debate, to-wit: to adjourn, to take a recess, to lay on the table, to take from the table, to go into committee of the whole on the orders of the day, and questions relating to the priority of business.

Mr. AINSLIE. I would like the secretary to read again in regard to questions decided without debate.

SECRETARY reads Rule 36.

Mr. AINSLIE. It seems to me that question in regard to the priority of business is a debatable question only. I would like some explanation of the committee on Rules in regard to that rule. The question of order is always debatable in any body I was ever in. I move to strike out that part of that rule in regard to the priority of business. (Seconded).

The CHAIR. It is moved and seconded, gentlemen, that that portion of Rule 36 which declares that questions or motions relating to the priority of business shall not be debatable, be stricken out. The question is before the convention for debate. (Vote). The motion is carried. That portion of the rule is stricken out.

(The reading of the rules proceeds without objection, as follows:)

AMENDMENTS.

RULE 37. No motion or proposition upon a subject differing from that under consideration, shall be admitted under color of amendment.

RULE 38. A motion to strike out and insert shall be deemed divisible; and a motion to strike out on a division being negatived, or a motion to insert being decided in the affirmative, shall be equivalent to agreeing to a matter in that form, but shall not preclude further amendment, provided, that substitutes for pending propositions shall for the purpose of amendment, be treated as original propositions.

RECONSIDERATION.

RULE 39. A motion to reconsider must be made by a member voting with the prevailing side, and such motion, to be in order, must be made within the next day of actual session of the convention after such vote was taken, and the same shall take precedence of all motions except a motion to adjourn.

QUESTIONS OF ORDER.

RULE 40. If any member, in speaking or otherwise, transgress the rules of the convention, the President shall, or any member may, call him to order, and the member called to order shall take his seat, if required to do so by the President, until the question of order is decided.

RULE 41. The President shall decide all questions of order subject to an appeal by any member, on which appeal, no member shall speak more than once, unless by permission of the convention, except the member appealing, who may speak twice, and the President may speak in preference to any member.

RULE 42. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, he shall not be permitted to proceed, in case any member object, without leave of the convention.

RULE 43. If a member call another to order for words spoken in debate, he shall, if required by the President, reduce to writing the language used by the member which he deemed out of order.

OF COMMITTEES.

RULE 44. It shall be in order for the committee on Enrollment and Revision to report at any time when the convention is not otherwise engaged.

RULE 45. All reports of committees shall be signed by such of the members thereof as concur therein, and the report, with the name of the member or members signing the same, shall be read by the secretary or at the secretary's desk, by the members making the report, without a motion, unless the reading be dispensed with by the convention; where the report is unanimous it may be signed by the chairman alone.

RULE 46. No committee shall sit during the daily sessions of the convention unless by special leave.

COMMITTEES OF THE WHOLE.

RULE 47. When the convention shall be ready to proceed with the orders of the day, a motion to go into committee of the whole convention on the orders of the day, shall have precedence of all other motions, except to adjourn, to take a recess and for the previous question.

RULE 48. In forming a committee of the whole convention, the President shall leave the chair and appoint a chairman who shall preside, and vote as other members.

RULE 49. In committee of the whole, propositions shall be read by the chairman or secretary, and considered item by item, unless it shall be otherwise directed by the committee, leaving the preamble, if any, last to be considered. The body of the proposition shall not be defaced or interlined, but amendments shall be noted by the chairman or secretary, upon a separate piece of paper, as the same shall be agreed to by the committee, and so reported to the convention.

After being reported, the propositions, with amendments thereto of the committee of the whole, shall be immediately taken up for consideration, unless it shall be otherwise ordered by the convention and again be subject to discussion or amendment before the question to engross for final reading shall be taken.

RULE 50. The rules of the proceeding in committee of the Whole shall be the same as in the convention, so far as may be applicable.

RULE 51. All reports of committees, containing matter to be incorporated in the constitution, shall be considered in the order in which the reports are made, and upon their introduction and full reading before the convention, such matter to be incorporated shall lay upon the table, and be printed, and when printed shall be placed on the calendar to be considered in the committee of the Whole.

RULE 52. When such proposition shall have been considered in committee of the Whole and amendments proposed thereto have been disposed of by the convention, the question shall be on ordering the proposition to a final reading and fixing the time thereof.

RULE 53. So soon as any entire proposition for incorporation in the constitution shall have been disposed of, such proposition, if agreed to by the convention, shall be referred to the committee on Revision, to be by that committee embodied in the constitution.

The committee shall have full power to revise the language used in the various propositions, and arrange the same so as to be clearly expressive of the sense of the convention, and to make the instrument complete and consistent with itself.

RULE 54. The committee on Revision having completed its revision as provided in the preceding rule, shall report the article or articles of the constitution to the convention, when it shall be fully read, and when it is thus read, the question shall be on agreeing to the article or articles so amended and revised, and if the same shall be decided in the affirmative, the constitution as a whole shall be carefully enrolled under the supervision of the committee on Enrollment and Revision and signed by the president and members of the convention.

RULE 55. The final vote upon agreeing to each proposition, and upon agreeing to the instrument as a whole, shall be taken by the yeas and nays, and no such proposition shall be considered as agreed to, nor the instrument as a whole except a majority of the delegates present vote therefor.

RESOLUTIONS.

RULE 56. Resolutions giving rise to debate shall lay over one day before being acted upon, if, upon their introduction, any member shall give notice of a desire to discuss the proposition therein contained.

RULE 57. No compensation shall be voted to any officer, employe or appointee of the convention, other than fixed originally by resolution, and this rule shall not be altered or suspended except on three days' notice and by a two-thirds vote of the members elected to the convention.

CALENDAR.

RULE 58. A calendar of each successive day's business shall be prepared by the secretary, printed and laid upon the desk of each member every morning.

Upon such calendar all propositions for final readings and all special orders shall be placed in the order of priority in which the order is made.

Propositions for a final reading on a particular day, not reached on that day, shall be placed first upon the calendar in the order of final reading of each succeeding day until disposed of. No proposition found upon the calendar shall be taken up and read by the secretary out of its order thereon, except by direction of the convention.

ON RULES OF THE CONVENTION.

RULE 59. These rules shall not be altered, except after at least one day's notice of intended alteration, and then only by a vote of the majority of those elected to the convention, and no rule shall be suspended except by two-thirds of those present.

RULE 60. Cushing's Manual and Law of Legislative Assemblies shall be received in all cases not provided for in the foregoing rules.

OFFICIAL OATH.

Each member of the convention shall take the following oath:

You do solemnly swear (or affirm) that you will support the constitution of the United States, and will faithfully discharge your duties as a member of this convention, convened for the purpose of framing a constitution for the State of Idaho.

And each officer and attache of the convention shall take the following oath:

You do solemnly swear (or affirm) that you will support the constitution of the United States and will faithfully discharge your duty as an officer of this convention.

The CHAIR. What is your pleasure, gentlemen, in reference to the report of the committee on rules?

PROPOSED COMMITTEE TO DRAFT CONSTITUTION.

Mr. KING. Mr. President, before proceeding further, I would like to make a motion. We have now no form of a constitution before us for discussion. Under our present proceedings, I do not see that there is any probability of there being a form of constitution presented until we obtain the reports of the various committees. Therefore, we shall have to wait for some time. When these various committees make their reports, a constitution will be blocked out, you may say, ready to be presented to the convention. It is not probable, I think, that a constitution will be presented that will be acceptable to all the members. There will be a great many provisions in any constitution that may be presented that will not meet with the views of certain of the members, and each one will propose to make an amendment. Now, if we have to wait a number of days before this draft of the constitution is presented before us, we are losing time. I think we can gain time by appointing a committee to examine the various constitutions that have been adopted by our states, especially those states that are situated as we are with large canals on arid land and large blocks of mountains. Our industries are the same. They have adopted constitutions which have suited them very well. They have made the various amendments that experience has demonstrated to be necessary. If we had some of those constitutions to let the committee select what they consider the best and present it to this convention, then amendments can be sent to the proper committee for their report, and in that way we can get a constitution quicker, I think, than we can do it if we wait until those committees each report on their

departments. For instance, take the labor or the legislative departments, and take each one through the various appointments, if a person wishes to make an amendment, it will have to go back to the original committee for its consideration, then all decide upon it. But if we take up a constitution and make amendments to it, and then refer it to that committee—I therefore make a motion that the president appoint a committee of five to prepare a draft of a constitution and present it to this house at the earliest moment possible for their consideration.

The CHAIR. Is there a second for the motion?

Mr. POE. I think the gentleman is out of order in making the motion at this time. Already committees are provided on each branch of the constitution, whose province it is to draft a form of constitution on the questions submitted to them. I move that the report of the committee on Rules be adopted as amended. (Seconded).

The CHAIR. It is moved and seconded, gentlemen, that the report of the committee on Rules be adopted by the convention as amended. (Vote). The motion is duly carried.

Mr. KING. I move that a committee of five be appointed to prepare a draft of a constitution and present it to the consideration of this convention at the earliest possible moment. (Seconded).

Mr. AINSLIE. Mr. Chairman, I do not see any necessity for any such committee. We have already adopted the report of the committee on Committees and provided a number of committees to draft a constitution. Every member of this convention will be on probably three of these committees. If they desire, they can examine and compare all the constitutions from Maine to Texas, and make such provisions on the subjects apportioned to them as they think necessary. What is the use of making a supernumerary committee of five? Each of these committees will be a large committee. The province of each will be a branch of the constitution

that they are to frame on the questions they represent. Therefore, I say that the appointment of five or ten is to do away with these other committees. Now, I heard a member remark the other day, which is sensible, that the more committees we have the better, but you already have the committees appointed, and each will be engaged in doing the work all at once. If any member desires to make any number of suggestions in regard to any matter, it is easy for him to present the same before the committee in charge. It would be an endless matter to settle all these things in this convention.

Mr. MAYHEW. Now I certainly would be opposed to having a constitutional committee to draft a constitution as proposed by my friend King. It would be doing away with all we have done. I can only say it would be doing away with all the labor and work that all these committees are to do. The only safe way we can do is to consider a constitution presented by the committees appointed by this convention. And as the gentleman suggests, we would never get through in the world if a committee of five should draw a constitution and afterwards report bodily. There would hardly be a member who would not have an amendment to make. Now I certainly would be opposed to the appointment of a committee as suggested by the gentleman from Shoshone. (Question).

The CHAIR. You have heard the motion made by the gentleman from Shoshone, namely, that the chair appoint a committee of five to report the form of a constitution for the convention. (Vote). The noes have it. The motion is lost.

This closes, so far as the chair has any knowledge, all the unfinished business, with the exception of what is necessary under the rules adopted by the convention, namely, that the members of the convention and officers be sworn.

INCREASE OF JUDICIARY COMMITTEE.

Mr. MAYHEW. Before this I will send a motion up to the clerk's desk that is necessary to be made now.

SECRETARY reads: Mr. President, I move that the Judiciary committee be increased to the number of fifteen members. A. E. Mayhew. (Seconded.)

Mr. MAYHEW. I desire to state to the convention my object in making the motion to increase the Judiciary committee to fifteen. I have talked to quite a number of the members of the convention and they agree with me upon the proposition that the Judiciary committee is a committee that will have more labor to perform than any other committee here, and it is necessary to have as many members upon that committee as we can consistently have in order to facilitate the business before that committee. It would have this tendency, Mr. President: The Judiciary committee, when they make their report, that portion which is to be incorporated in the constitution—it will have this effect, to prevent so much discussion in the committee of the whole and so many amendments to be made of the report of the Judiciary committee. I think the convention will be much benefitted by having the Judiciary committee increased to the number of fifteen, and then when the committee meets, they can be subdivided among themselves on the different questions, and aid them very materially in making their report. They could make three divisions of that committee, if necessary. I hope that motion will prevail.

The CHAIR. It is moved and seconded that the Judiciary committee reported by the committee on Rules, be increased from nine to fifteen.

Mr. BEATTY. I desire to suggest in connection with that that the chair appoint the committee.

Mr. MAYHEW. Why, certainly, the resolution means that.

Question put and the motion is carried.

The CHAIR. I would suggest that it has been by unanimous consent that the report of the committee on Rules is amended to the extent of this increase. The rules call for a committee of nine.

RESOLUTION TO PRINT RULES.

Mr. SAVIDGE. I desire to submit the following resolution to the convention and move its adoption: Resolved, That 200 copies of the rules governing this convention be printed in pamphlet form for the use of members, with the names of the members and their post-office addresses given, with the names of the standing committees. W. H. Savidge. (Seconded).

The CHAIR. Gentlemen, you have heard the motion. All those in favor of its adoption will signify by saying aye.

Mr. BEATTY. Please read the motion again. I did not catch it all.

SECRETARY reads. (Vote).

The CHAIR. The ayes have it. The resolution is adopted.

Mr. MAYHEW. Now, Mr. President, I desire to ask for information. The report of the committee on Standing Committees was adopted this afternoon. I think it is necessary, if I am right, that those committees by an amendment should be inserted in the rules just adopted. It seems they are not adopted by the rules. They ought to be inserted in the rules.

The CHAIR. That is not necessary.

Mr. BEATTY. It seems to me that the next thing in order is to know whether our standing committees are yet selected, and if so, that they may be announced in order that they may get to work as speedily as possible. I know of nothing more important to come before the convention until we know how the committees are constituted.

SWEARING IN MEMBERS.

Mr. REID. Mr. President, I will state that we received yesterday evening the numbers on committees apportioned to the democrats. They met in caucus this morning and got about half through when the time for the meeting of the convention arrived and we adjourned until this session shall have been finished, when they

will meet, and I think they can get through in an hour. I think the next order of business before we can transact any business at all would be the swearing of the members.

The CHAIR. That was the idea of the chair. I will state to the convention that the chair has directed the sergeant-at-arms to see whether the Chief Justice, Mr. Weir, is in the building, and if so, I think it is advisable, at least it is not compulsory under the rules, but I think it is necessary that the oath of office be administered according to the rules before we proceed any further.

The chair is informed that the Chief Justice, Mr. Weir, is at the adjoining building, and I wait the pleasure of the convention as to whether we shall wait for him now or take a recess, which will enable the standing committees to fix a time for meeting.

Mr. AINSLIE. I move that a committee of three be appointed to wait on the Chief Justice and ask his personal attendance on the convention at 2 o'clock this afternoon, and that the convention adjourn until that hour. (Seconded).

The CHAIR. All those in favor of the motion, signify it by saying aye; contrary, no. The ayes have it.

Wait a moment, gentlemen, and I will appoint that committee before the members leave their seats. The chair will appoint as such committee, to wait upon the Chief Justice, Mr. Ainslie of Boise, Mr. McConnell of Latah and Mr. King of Shoshone. Gentlemen, the convention will now take a recess until 2 o'clock this afternoon.

AFTER RECESS.

2:00 P. M.

The CHAIR. The convention will come to order. I am informed that the Chief Justice is in the lower story and will be here in a moment, and we will simply suspend all proceedings until he arrives. I will state, gentlemen of the convention, that if there is any delegate present who has any conscientious scruples about taking

an oath and prefers to affirm, I hope he will make it known before the Chief Justice comes so that the affirmations will be administered to him, or them, separately.

Gentlemen, of the convention, the time has arrived when the members of the convention and the officers of the convention will be sworn according to the rules. You will please rise and have the oath administered to you.

CHIEF JUSTICE WEIR. You do solemnly swear that you will support the constitution of the United States and will faithfully discharge your duties as members of this convention, convened for the purpose of framing a constitution for the state of Idaho.

The CHAIR. The officers of the convention will please come forward and be sworn.

CHIEF JUSTICE WEIR. You and each of you solemnly swear that you will support the constitution of the United States and will faithfully discharge your duties as officers of this convention.

A MEMBER. Mr. President, I think there are one or more members who were not present when the oath was administered to the members on the floor. I know of one gentleman sitting at my right, and perhaps there may be more. It will be well to inquire, anyway.

The CHAIR. Is there any member of the convention who has come in since the oath has been administered? If so, they will rise and be sworn.

(Mr. Lemp rises and Chief Justice administers same oath).

EMPLOYMENT OF ADDITIONAL CLERKS.

Mr. BEATTY. It has been suggested to me, Mr. President, by the secretary, that he needs another assistant clerk, and after consultation with a number of the members, I move you, if it be now in order, that Miss Carrie Sweet of this city, be elected second assistant clerk.

The CHAIR. Is there any second to the motion? (Seconded).

Mr. BEATTY. I desire to state in that connection,

in deference to my democratic friends, I understand the lady is of democratic persuasion.

The CHAIR. It is moved and seconded, gentlemen, that Miss Carrie Sweet be elected by acclamation as second assistant secretary of this convention. (Vote). The ayes have it and Miss Sweet is elected.

SUPPLIES FOR CONVENTION.

The CHAIR. There is another matter here of some practical importance, and that is the purchase of a large water cooler and ice for the use of the convention. The weather is warm and when we get fairly to work here with the committees in this room, it will be necessary to have this convenience, and I am informed by the sergeant-at-arms that there is none in the building. If some member will make the proper resolution to obtain one, it will meet with my approval.

Mr. McCONNELL. Mr. Chairman, the doorkeeper informs me that there is no oil, and in case committees wish to meet at night, some provisions should be made for lighting the hall.

Mr. GRAY. Mr. President, it will take some little time to arrange this matter. It can be arranged tomorrow.

The CHAIR. If there is no objection, we will consider the motion seconded.

It is moved and seconded that the sergeant-at-arms be instructed to procure a large water tank and ice and oil for lighting the hall during the sitting of this convention. (Carried).

PETITION FROM W. C. T. U.

The CHAIR. The chair has received the following communication addressed to him, but intended to be a petition to the convention. Mr. Secretary, will you please be kind enough to read it?

SECRETARY reads: Boise, Idaho, July 6, 1889. Dear Sir: The Woman's Christian Temperance Union of Idaho respectfully asks that the constitutional con-

vention will receive them Tuesday morning at 10.00 o'clock for the purpose of presenting for their kind consideration two resolutions. I, as the President for Idaho, make this request on behalf of the Women's bands of Idaho and trust it may be received. Mrs. H. Skelton.

The CHAIR. There is no standing committee of the convention organized to whom it would be appropriate to refer this petition and the matter is therefore in the hands of the house.

Mr. AINSLIE. I move that the communication lie on the table until the committees are announced so that it can be referred to the proper committee. (Seconded).

The CHAIR. If there is no objection, that action will be taken. There is no objection. The petition will lie upon the table temporarily.

RESOLUTIONS ON THE DEATH OF COL. CHARLES. A. WOOD.

Mr. AINSLIE. Mr. President, if there is nothing before this body, I have an announcement I would like to make, one that I make with feelings of sorrow. Since the members of this convention were elected, a majority of them, we have received the news of the death of one of the most eminent of those who were chosen to represent this convention; a man whose acquaintance I had the pleasure of forming a number of years ago; one whom I practiced with at the bar in the lower courts as well as in the supreme court; a man who served his country during the war of the rebellion faithfully and well; a man who has served his people in every capacity to which he has been called, with honor to them and credit to himself. I refer to Col. Charles A. Wood, a man whose name is synonymous with honesty and integrity; whose ability recommended him to the people of the section in which he lived, but whose name was known throughout the whole extent of the northwest as a lawyer and statesman, a soldier and a gentleman of the highest order. Nothing that I can saw now can add to his fame, and nothing I can say can detract from his

character. I have the honor, Sir, to present the following resolution to be acted upon by this body.

(Resolution was handed to the secretary's table).

SECRETARY reads:

Whereas announcement has been made of the death of Col. Chas. A. Wood, who at the time of the sad event was a member elect of this body,

Resolved, That this convention receives with profound regret the sad news of his death, that by it this territory has been deprived of one of its most prominent citizens, a man of eminent ability as a lawyer; a ripe scholar and an experienced legislator; a man broad and liberal in his views; of a genial and whole-souled nature; beloved by all who knew him, and one whose patriotism and judgment could be relied upon under any and all circumstances. His death is a loss restricted to no county nor section in particular, but a loss to our whole territory.

Resolved, That we deeply deplore his death, and while deprived of his valuable aid and counsel in the work before this body, we bow in humble submission to the inscrutable decree of Divine Providence, and invoke for his stricken family in their bereavement that consolation which can come only from an All-Merciful Creator.

Resolved, That these resolutions be spread upon the records of this convention, and certified copies of the same be furnished the public press and the widow of our departed friend.

Mr. GRAY. Mr. Chairman, I second the adoption of the resolution.

The resolutions are adopted by the convention.

Mr. POE. Mr. President, before the Chief Justice leaves, there are some members who have come in that have not been sworn and they should be sworn.

The CHAIR. If there is any member of the convention who has not been sworn in, will he please rise and the Chief Justice will administer the oath.

(Members rise and the Chief Justice administers the same oath).

LIST OF MEMBERS OF STANDING COMMITTEES.

The CHAIR. Gentlemen of the convention, I will read the list of standing committees of the convention:

WAYS AND MEANS.

Sol Hasbrouck .....Washington County
Edgar Wilson .....Ada County

J. M. Shoup ..... Custer County
J. I. Crutcher ..... Owyhee County
Frank Harris ..... Washington County
H. B. Blake ..... Latah County

EXECUTIVE DEPARTMENT.

George Ainslie ..... Boise County
I. N. Coston ..... Ada County
John S. Gray ..... Ada County
J. W. Poe ..... Nez Perce County
W. H. Savidge ..... Bingham County
W. C. B. Allen ..... Logan County
H. S. Hampton ..... Cassia County

LEGISLATIVE DEPARTMENT.

John T. Morgan ..... Bingham County
A. J. Pinkham ..... Alturas County
W. D. Robbins ..... Latah County
John Lewis ..... Oneida County
S. S. Glidden ..... Shoshone County
H. B. Blake ..... Latah County
P. J. Pefley ..... Ada County
A. J. Pierce ..... Custer County
Homer Stull ..... Elmore County

JUDICIARY.

W. B. Heyburn ..... Shoshone County
Willis Sweet ..... Latah County
James H. Beatty ..... Alturas County
Edgar Wilson ..... Ada County
J. M. Howe ..... Nez Perce County
A. E. Mayhew ..... Shoshone County
George Ainslie ..... Boise County
W. W. Woods ..... Shoshone County
J. W. Reid ..... Nez Perce County
Homer Stull ..... Elmore County
Frank Harris ..... Washington County
O. B. Batten ..... Alturas County
H. S. Hampton ..... Cassia County
John T. Morgan ..... Bingham County
W. H. Savidge ..... Bingham County

PREAMBLE AND BILL OF RIGHTS.

James M. Shoup ..... Custer County
John T. Morgan ..... Bingham County
D. W. Standrod ..... Oneida County
W. W. Hammell ..... Shoshone County

Chas. A. Clark ..... Ada County
F. Steunenberg ..... Ada County

NAMES, BOUNDARIES AND ORGANIZATION OF COUNTIES.

J. W. Reid ..... Nez Perce County
G. W. King ..... Shoshone County
E. S. Jewell ..... Washington County
A. J. Crook ..... Custer County
Sol Hasbrouck ..... Washington County

SEAT OF GOVERNMENT, PUBLIC INSTITUTIONS, BUILDINGS AND GROUNDS.

Frank P. Cavanah ..... Elmore County
J. I. Crutcher ..... Owyhee County
H. B. Kinport ..... Bingham County
P. M. McMahon ..... Alturas County
John S. Gray ..... Ada County
W. J. McConnell ..... Latah County
H. Melder ..... Kootenai County

EDUCATION, SCHOOLS AND UNIVERSITY LANDS.

O. B. Batten ..... Alturas County
James M. Shoup ..... Custer County
A. J. Pinkham ..... Alturas County
H. O. Harkness ..... Bingham County
Henry Armstrong ..... Logan County
W. J. McConnell ..... Latah County
A. S. Chaney ..... Latah County
John Hogan ..... Lemhi County
A. D. Bevan ..... Shoshone County

ELECTION AND RIGHT OF SUFFRAGE.

James H. Beatty ..... Alturas County
O. J. Salisbury ..... Custer County
W. B. Heyburn ..... Shoshone County
Charles M. Hays ..... Owyhee County
George Ainslie ..... Boise County
A. E. Mayhew ..... Shoshone County
F. W. Beane ..... Bingham County

REVENUE AND FINANCE.

Charles M. Hays ..... Owyhee County
Willis Sweet ..... Latah County
Sol Hasbrouck ..... Washington County
A. J. Crook ..... Custer County
S. L. Glidden ..... Shoshone County

H. B. Blake ..... Latah County
John Hogan ..... Lemhi County
J. W. Lamoreaux ..... Cassia County
F. Steunenberg ..... Ada County

LEGISLATIVE APPORTIONMENT.

James M. Shoup ..... Custer County
J. L. Underwood ..... Bear Lake County
W. B. Heyburn ..... Shoshone County
J. W. Ballentine ..... Alturas County
Thomas Pyeatt ..... Lemhi County
W. A. Hendryx ..... Kootenai County
J. S. Whitton ..... Logan County
J. W. Brigham ..... Latah County
Charles M. Hays ..... Owyhee County
W. C. Maxey ..... Ada County
J. H. Myer ..... Boise County
H. B. Kinport ..... Bingham County
A. F. Parker ..... Idaho County
Homer Stull ..... Elmore County
J. W. Poe ..... Nez Perce County
J. W. Lamoreaux ..... Cassia County
D. W. Standrod ..... Oneida County
E. S. Jewell ..... Washington County

MILITIA AND MILITARY AFFAIRS.

W. W. Hammell ..... Shoshone County
Thomas Pyeatt ..... Lemhi County
Fred Campbell ..... Boise County
A. J. Pinkham ..... Alturas County
C. A. Clark ..... Ada County
J. H. Myer ..... Boise County
John Hogan ..... Lemhi County

PUBLIC AND PRIVATE CORPORATIONS.

A. E. Mayhew ..... Shoshone County
H. B. Kinport ..... Bingham County
A. S. Chaney ..... Latah County
A. D. Bevan ..... Shoshone County
J. W. Ballentine ..... Alturas County
N. I. Andrews ..... Lemhi County
W. H. Savidge ..... Bingham County
S. S. Glidden ..... Shoshone County
S. J. Pritchard ..... Owyhee County

FEDERAL RELATIONS.

Willis Sweet ..... Latah County
O. J. Salisbury ..... Custer County

A. B. Moss ..... Ada County
T. F. Nelson ..... Idaho County
Robert Anderson ..... Bingham County

MUNICIPAL CORPORATIONS.

W. W. Woods ..... Shoshone County
Albert Hagan ..... Kootenai County
A. J. Pierce ..... Custer County
P. J. Pefley ..... Ada County
L. Vineyard ..... Alturas County
James H. Beatty ..... Alturas County
H. O. Harkness ..... Bingham County
A. J. Crook ..... Custer County
Edgar Wilson ..... Ada County

LABOR.

Henry Armstrong ..... Logan County
A. M. Sinnott ..... Elmore County
J. M. Howe ..... Shoshone County
W. B. Heyburn ..... Shoshone County
W. D. Robbins ..... Latah County
G. W. King ..... Shoshone County
J. W. Lamoreaux ..... Cassia County
P. McMahon ..... Alturas County
P. J. Pefley ..... Ada County

SCHEDULE.

John S. Gray ..... Ada County
Willis Sweet ..... Latah County
J. M. Howe ..... Nez Perce County
W. W. Woods ..... Shoshone County
W. H. Savidge ..... Bingham County
H. S. Hampton ..... Cassia County
F. W. Beane ..... Bingham County
H. B. Blake ..... Latah County
L. Vineyard ..... Alturas County

MANUFACTURES, AGRICULTURE AND IRRIGATION.

Homer Stull ..... Elmore County
I. N. Coston ..... Ada County
E. S. Jewell ..... Washington County
F. W. Beane ..... Bingham County
S. F. Taylor ..... Bingham County
W. C. B. Allen ..... Logan County
W. J. McConnell ..... Latah County
H. O. Harkness ..... Bingham County
A. B. Moss ..... Ada County

MINES AND MINING.

J. I. Crutcher ..... Owyhee County
F. P. Cavanah ..... Elmore County
A. D. Bevan ..... Shoshone County
G. W. King ..... Shoshone County
D. W. Standrod ..... Oneida County
S. S. Glidden ..... Shoshone County
J. W. Ballentine ..... Alturas County
O. J. Salisbury ..... Custer County
Chas. M. Hays ..... Owyhee County

LIVE STOCK.

H. O. Harkness ..... Bingham County
J. L. Underwood ..... Bear Lake County
Thomas Pyeatt ..... Lemhi County
J. H. Myer ..... Boise County
A. J. Pierce ..... Custer County

PRINTING AND BINDING.

W. C. B. Allen ..... Logan County
Chas. M. Hays ..... Owyhee County
John Lemp ..... Ada County
A. M. Sinnott ..... Elmore County
C. A. Clark ..... Ada County
A. F. Parker ..... Idaho County
F. Steunenberg ..... Ada County

REVISION AND ENROLLMENT.

James H. Beatty ..... Alturas County
W. W. Hammell ..... Shoshone County
John T. Morgan ..... Bingham County
James M. Shoup ..... Custer County
J. M. Howe ..... Nez Perce County
Albert Hagan ..... Kootenai County
L. Vineyard ..... Alturas County
Frank Harris ..... Washington County
D. W. Standrod ..... Oneida County

SALARIES OF PUBLIC OFFICERS.

J. W. Poe ..... Nez Perce County
I. N. Coston ..... Ada County
J. W. Reid ..... Nez Perce County
Edgar Wilson ..... Ada County
Sol Hasbrouck ..... Washington County

PUBLIC INDEBTEDNESS AND SUBSIDIES.

A. Hagan ..... Kootenai County
O. B. Batten ..... Alturas County
S. F. Taylor ..... Bingham County
W. J. McConnell ..... Latah County
H. O. Harkness ..... Bingham County

The CHAIR. What is the pleasure of the convention? There is no business before it that I know of.

MEETINGS OF COMMITTEES.

Mr. BEATTY. I have a motion to offer and report to the secretary. I will read my motion, however. I move that the committees on the Executive, Legislative and Judiciary Departments, Preamble and Bill of Rights, Education, Election and Suffrage and Public and Private Corporations, be instructed to meet immediately on recess or adjournment of this body and continue in session from day to day until the completion of their labors.

That any member of said committee who is chairman of other committees may be excused when they desire to attend meetings of such other committees.

If I can get a second to that motion, I will give my reasons. (Seconded).

Mr. BEATTY. Mr. President, my object in offering that motion is to save time, if possible. We have, as we are all aware, a great many committees, more almost, it seems to me, than can work to advantage. If you will look over the roll of those committees, you will find that it amounts to nearly 200 committeemen—180 or 190, according to my count, and we have forty odd members present. The result is every gentleman is on from two to four committees, and I, for one, do not like to divide myself up into pieces, and I don't see how we can divide ourselves around and fill all those committees. Now, in offering this motion, I have selected the six or seven committees that I think will have the principal work to do. If it is understood that those committees have the precedence and shall continue to work regardless of whether the other committees get to work immediately or not, we will clean up the principal part of the work of the prin-

cipal committees, and from day to day the other committees, who have less to do, can put in the time as much as possible. Now, if we take a recess today and adjourn without any understanding as to what we are to do, it seems to me we will have no place to begin. That is, there is no place designated as to where these committees shall meet and we will lose a great deal of time. It strikes me that when the work of these six or seven committees shall have been completed, we shall have substantially a constitution, or the provisions most important. I make the motion with a view to saving time and getting down to work at once. I have made it after but little reflection, but with the idea that other members may make some suggestion as to what is the better mode of getting to work at once and working as speedily and rapidly as possible, for I know that most of us desire to get through this work as quickly as we can and get home, but do our work properly. Now, there are a number of these committees who have very little to do and they might wait a few days until these more important committees get their work off of their hands. There is a committee, for instance, on revision which will have considerable work to do, but their work will not commence for several days. If there are any suggestions better than that motion, I would be glad to hear them.

Mr. MAYHEW. Mr. President, I would like to hear that motion read again.

SECRETARY reads the resolution.

Mr. GRAY. The only trouble I see is, we do not in the reading from the President—that we do not hardly know exactly what committees we are on, and if we could have our list published, we would understand it better. In the hasty reading—perhaps it was neglect on my part—I do not know what committees I am on. It would be better that we should have our list before we act in the matter. Although I am ready to do anything so far as concerns any committee I am on.

The CHAIR. So far as these committees are concerned in this resolution, there will be next week in the

hands of the chairman of each committee, a list, and notifying the gentlemen of this convention.

Mr. MAYHEW. It strikes me that this motion contains instructions to the committees that they shall meet immediately after recess or adjournment for the day, and go into session. It has always been my idea from such little knowledge I possess, that the committees have a right to meet at just such times as they please without any instructions from the body. It is to be presumed that when a member is placed upon a committee, that he is always ready to perform his duty at the call of the committee at any time. Now if that motion should prevail, it seems to me that it certainly will conflict with the meeting of the convention every day here. Now it strikes me very forcibly that it should be with the committees themselves to say when they shall meet and adjourn, not that this committee, or these different committees, shall be instructed by this convention when they shall meet. I venture to say that in any well directed body anywhere, a committee has control of the time, place and adjournment of its meetings without any instructions from the main body of the convention itself. For one, I shall oppose that resolution, and do not see that I can vote for it, because it is imposing upon the committee a direction from this convention that I don't think should be placed upon the gentlemen. I trust and hope that the committees when they meet, will be allowed to meet at their own pleasure and adjourn at their own pleasure and not be under the control of the convention.

Mr. McCONNELL. I think the motion is a move in the right direction. As has been noticed, a number of members are on different committees and I presume the chairmen of those committees will endeavor to get their committees together as soon as possible. Then it will be a question for each individual member to determine, which committee he will visit, and it may be possible, under that state of affairs, it will be very difficult for those committees to get a quorum. I do not know that

it is the view of this body that they shall act at any particular time, but it should be generally understood that the members who belong to those committees shall come there to these meetings, and if it is possible, that the work can be apportioned out so that they can attend other committees, it should be done.

Mr. AINSLIE. I am like the delegate from Shoshone—I don't exactly like that resolution. I don't think it is the policy of the convention to instruct the committee, but refer a matter to it and instruct them to report. But a committee of a legislative body is a great deal like the Czar; meet at their own pleasure and adjourn as they please. If that motion is changed to a request for these committees to meet after the adjournment of the convention as soon as they can, I will be in favor of it; but as a command, I oppose it.

Mr. WILSON. I move an amendment to the motion of the gentleman from Alturas, that after the adjournment of this body today, these committees referred to in that resolution meet, and thereafter those committees and all other committees direct the time and place of their own meetings.

Mr. REID. Mr. President, I shall support the amendment of the gentleman from Ada. A distinguished friend of mine is chairman of the committee on Corporations; he will also be on the Judiciary committee. The purport of the resolution is that we continue in session those committees. Now the committee on Corporations will be deprived of his services as chairman or the committee on Judiciary will be deprived of his services. I make this suggestion because you will find this conflict in other cases. These committees should get together and regulate their meetings as is generally done in legislative bodies.

The CHAIR. Do I understand the gentleman from Boise to make his suggestion in the shape of a motion to amend?

Mr. AINSLIE. As an objection.

The CHAIR. Will the gentleman from Ada please state his amendment?

Mr. WILSON. I move to amend Judge Beatty's motion, that when this body takes a recess today, all the committees referred to in his motion shall meet, and that thereafter those committees and all other committees shall regulate the time and place of their own meetings.

Mr. BEATTY. Mr. President, I can't see that the amendment will amount to anything.

The CHAIR. One moment. It is a very difficult matter to put this amendment in a motion. If the gentleman from Alturas will—

Mr. BEATTY. I was about to suggest that the amendment would leave the matter just about as it now stands, and the gentleman, Mr. Reid, touched upon this question that this motion is intended to meet, which is that it is impossible for one man to be on two committees at the same time. I am aware of that, and it is utterly impossible, if we intend to have all of these committees meet at once, that anything can be done. My object is this: It is to get the committees so organized that as many members as possible of the committees can meet and in doing that, select the committees who have the principal work to perform. Now then, I would like some gentleman to suggest some better plan. If we adjourn from this body and we have no organized plan, what are we going to do? Here are twenty-five committees; each chairman will want his committee to get together; for the important man of the committee is the chairman, who may be anywhere. It will be utterly impossible to get them together. And so with the chairmen of the other committees. They will simply be adjourned from day to day and we will then get no work done. Now my position in this motion is that we can have the committees which have the principal work to perform designated as the committees that shall go to work at once, and then we will have the main part of our work under way. Now it is not designed, as a matter of course, by this motion, nor was it so expressed, that these com-

mittees must meet and be in continuous session. Any committee can adjourn to such hour as it pleases, but the idea is this, that they shall of others have the preference of the members. In other words, the committee of which my friend from Shoshone is chairman, cannot be entitled to demand the presence of the members of his committee when he is on the committees of those other six that I have mentioned. But I would be glad for any plan. I have felt from the start that we had too many committees. If we were a convention of 200 men, then we might make all our committees. But we have formed the committees and we must get at some plan by which we can get the committees together as soon as possible. Now I submit, if you will look over these six or seven committees which I have named, they have the most to do with framing the constitution; if those committees can get to work at once, it seems to me that in four or five days we will get a great deal of our work done. On the contrary, if the committees can do nothing without sending out for the chairmen, who are running around getting their committees together, it seems to me that we will be in a bustle for the next week to come. I intended to have the sergeant-at-arms designate some rooms which the committees should go to. In any event, we haven't enough rooms for the 24 committees. If any member can propose any plan better, by which we can—

Mr. ALLEN. The suggestion, it occurrs to me, is included in the amendment of the gentleman from Ada, that the important committees meet first; that they decide exactly their time and place of meeting and that they be obliged to attend. The room in which they are to meet, the hours in the day and the place where each committee is to hold its session or the hour of the session, and then let the other committees so arrange their time, when that is announced.

Mr. WILSON. I will embody my amendment in the way of a substitute and ask for the reading of it from the clerk's desk.

The CHAIR. The clerk will first read the original resolution and then the substitute.

CLERK reads.

The CHAIR. Gentlemen, the question recurs first upon the substitute. (Vote). The substitute is adopted. What is the further pleasure of the house?

Mr. MORGAN. Unless there is further business needing attention now, I move that the convention do now adjourn until tomorrow morning at 10:00 o'clock.

Mr. MAYHEW. I think it would be advisable to have at once a list of the committees and the members of each committee published this evening so that we can have them tomorrow morning, and every member may know what committees he is on.

The CHAIR. The committee on printing will look after that undoubtedly. It is their business.

LEAVES OF ABSENCE.

Mr. CAVANAH. I wish to be excused—a leave of absence for four days.

The CHAIR. Four days? Gentlemen of the convention, Mr. Cavanah desires to be excused for a leave of absence for a period of four days. If there is no objection, it will be taken that leave is given by unanimous consent. There is no objection to the leave.

Mr. SWEET. Mr. President, I request a leave of absence for three or four days.

The CHAIR. Gentlemen, the gentleman from Latah, Mr. Sweet, also desires or asks a leave of absence for three or four days. Is there any objection to this leave being granted? If there is none, it will be so ordered.

Mr. ALLEN. I desire to ask leave of absence for one day.

The CHAIR. If there is no objection, gentlemen, the gentleman from Logan, Mr. Allen, will be given leave of absence for one day.

Mr. BEATTY. Before we adjourn, can't we have some understanding as to where these committees may meet? If we do not know, we will be in confusion and

not know where to meet. I would suggest that there are two rooms back of the stair, and one on the left there, and I suppose there are three in connection with the supreme court room that are available.

The CHAIR. I would suggest that the convention take an informal recess—take about fifteen minutes—and during that time the names of the gentlemen which have been referred to as chairmen of the several committees, will take the committee lists of which they are chairmen and notify the members as they are now. They can be obtained from the lists here. And notify them also in regard to where the meeting shall be held.

Mr. ALLEN. I will call for the names of the committees that are instructed to meet immediately.

The CHAIR. The secretary will read the names of the committees in the resolution adopted by the convention.

(Secretary reads).

Mr. WILSON. Mr. President, I am on the Judiciary committee twice. That is too often for me.

The CHAIR. By leave of the convention, I will just scratch out the name and put somebody else in his place.

(Secretary reads W. H. Savidge on Judiciary committee).

Mr. MORGAN. Mr. President, I move that the convention do now adjourn until tomorrow morning at 10:00 o'clock. (Seconded and carried).

FIFTH DAY.

TUESDAY, *July 9, 10:00 A. M.*

The CHAIR. The secretary will call the roll.

The CHAIR. The convention will come to order. Gentlemen, the chair requests, as a part of our daily observance that the members of the convention will rise while the chalpain is imploring divine guidance.

(Prayer by Chaplain).

Present: Messrs. Ainslie, Anderson, Batton, Beatty, Brigham, Clark, Coston, Crook, Gliddon, Gray, Hampton, Harris, Hays, Hogan, Jewell, Lewis, Maxey, McConnell, Melder, Meyer, Morgan, Pefley, Pierce, Pinkham, Poe, Pyeatt, Reid, Salisbury, Savidge, Shoup, Steunenberg, Stull, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Excused: Allen, Cavanah, Heyburn, McMahon, Sweet.

Thirty absentees.

The CHAIR. By consent, the convention will proceed with the order of business, although a quorum is not present. There is scarcely any significance in this case about proceeding. If there is no objection, we will proceed. The secretary will read the proceedings of the first two days of the convention.

(Secretary reads).

Mr. BEATTY. To save time, I suggest that the reading of the proclamation be omitted. We are all familiar with it. (Seconded and carried).

The CHAIR. The secretary will omit the proclamation.

Mr. REID. Mr. President, I ask the unanimous consent that the reading of that report by Mr. Heyburn, chairman of the committee on Committees, be omitted. It has been read and adopted and it has been published.

The CHAIR. If there is no objection, it will be omitted.

A MEMBER. Before proceeding with the regular order of business, I desire to make a motion.

The CHAIR. I am informed by the secretary that he has not completed the reading of the minutes.

(Secretary reads minutes of orders and proceedings. The reading of the minutes of the appointment of committees of this convention was omitted).

AUTHORIZING PRESIDENT TO ADMINISTER OATH.

Mr. BEATTY. I move that the convention suspend the order of business for the purpose of making a motion

that the president be authorized to administer the oath of office to such members of the convention as may from this day arrive. I understand my colleague from Alturas county has arrived and he is here as a member of the convention. I make a motion, therefore, that the president be authorized to administer the oath of office to such members of the convention who have not already taken the oath. And it is suggested by the gentleman right here, to any future attaches of the convention.

The CHAIR. If there is no objection, the rules may be considered suspended for the purpose of putting this motion. Gentlemen, you have heard the motion.

Mr. MORGAN. Mr. President, it occurs to me that while we might authorize the president to administer this oath, there would be no law that would authorize us to do so, and at Washington they are very particular about these questions. They might question the authority to administer this oath. I only suggest this. We have, of course, in the building, several parties who are authorized to administer oaths, and it occurs to me that we might get ourselves into difficulties in this way.

The CHAIR. Will the gentleman from Alturas reduce his motion to writing?

Mr. BEATTY. Mr. President, if there is any one in the building who will administer this oath, it will obviate any necessity of this motion, but my object was to prevent the necessity of sending for the Chief Justice or other officer to administer this oath. I am doubtful of the suggestion of Judge Morgan, that this convention cannot authorize its presiding officer to administer such an oath. It is customary for the officers to administer oaths of this kind after taking the oath themselves. It is not a matter of sufficient importance to insist upon my motion. If there are any officers in the building that can be had from time to time to administer oaths, I will withdraw my motion. It is not a matter of importance at all. It is only to save time and inconvenience in sending for the Chief Justice that I made the motion.

Mr. MAYHEW. Mr. President, I do not believe that

ever I heard, even, that the presiding officer of a deliberative body of this kind had not the power to administer an oath. It is usually conceded by all bodies of this kind that the presiding officer, having once taken the oath, has the power and ability to administer the oath to any incoming member or absentee of that body. Now, so far as the meeting of this convention is concerned, we are here without any law. There is no act of this territory for convening this convention, but we have met here by a proclamation, formed ourselves into a body, oath has been administered to us by the Chief Justice, and we are fully organized. The full organization of a convention or of a legislative body carries that always, and I may say that I cannot imagine any authority to the contrary—that the president or presiding officer of that body has not the power to administer the oath or affirmation for members or attaches. I insist upon the motion that the gentleman has made, that it is correct and that it is legal, and it is not necessary every time that a new member arrives or any future attache may be elected to perform any duty in this body, that we have got to send out for a notary public or the Chief Justice to administer an official oath. If the parties take that oath administered by the chief officer of this convention, it is administered by just as much authority and solemnity as any other way. I hope the motion will prevail.

Mr. POE. My mode of business is always to be on the safe side. In the transaction of business, if there is a doubt in my mind as to which of two modes is the proper and right one, the one I know to be right and the other doubtful, I have always been disposed to adopt that which is certain and absolute. Now under our form of government, when the assembly has been called at any time, and we have organized ourselves as a meeting, under the parliamentary rules and usages we have a right to select a chairman, and because we select that chairman we may call upon some one to swear him to perform his duties. Now there is no particular law authorizing the

administration of that oath, and there is no law by reason of his having taken that oath to authorize him to administer the oath to other parties, and therefore, so far as an oath administered by that one is concerned, there is no legal validity to it, while if an oath is administered by a person who is authorized to administer it, I look upon it as being binding and obligatory. If we are to take an oath that has no obligation or no binding force, then we might have just as well proceeded in this transaction without taking any oath at all. But it seems that we saw proper in our wisdom to be sworn in so that we could give dignity and solemnity to our actions. I therefore oppose this motion, because there seems to be one way that is certain; there seems to be a doubt as to the other, and being a doubt, I take that which is certain.

Mr. MAYHEW. I would like to ask the gentleman one question, if he is of the opinion that we have no authority to administer oaths.

Mr. POE. I will answer the gentleman that we have, but there is no law to make it binding any further than the law that governs a proceeding of this kind. We are proceeding under no statute.

Mr. BATTEN. I think the history of constitutional conventions will show that just about as many conventions have been held where the members did not take any oath at all as there is when the oath was taken. The act of the Chief Justice swearing in the members of this body was an act of courtesy. We are only a body of delegates from the people of the territory to take this step. Now there being no law requiring the members of this body to take the oath of office or the president to take this oath of office, we have ventured to assume that obligation. In adopting the rules for the government of this body, we adopted Cushing's Manual, and adopting that, we adopted the principles which prevail in any deliberative body that the presiding officer of that body

shall have the power to administer the oath to the members of that body.

The CHAIR. It is moved and seconded that members as they may come in from day to day and new attaches as they may be elected from time to time, will be sworn in by the president. (Carried).

The CHAIR. I understand from the remarks made by the gentleman from Alturas that there was one delegate, at least, who had just appeared at the convention.

Mr. BEATTY. Mr. Vineyard.

The CHAIR. If he is present, in order that he may participate at once in the proceedings of the convention, the chair will ask him and any other gentleman who has come in to stand and be sworn in.

(The oath is administered).

Mr. AINSLIE. Mr. President, I believe we elected an assistant secretary yesterday and in order to save time, I believe she ought to present herself for the oath.

Mr. BEATTY. I move that Mr. Ainslie be authorized to assist the assistant secretary to the stand.

Mr. AINSLIE. I suggest that it would be more appropriate for some single gentleman to escort the lady.

(The oath is administered).

SUPPLIES FOR CONVENTION.

Mr. POE. I ask that the rules be suspended that I may make a motion. The motion that I desire to make is this. I have been informed by the sergeant-at-arms that there are not sufficient chairs and tables to accommodate the various committees of this convention, and I therefore move that the sergeant-at-arms be authorized to rent a sufficient number of chairs and tables necessary for the use and accommodation of the several committees of this convention. (Seconded).

The CHAIR. Gentlemen, you have heard the motion. (Vote). The ayes have it and it is so ordered.

The CHAIR. I will state that we are proceeding here without very much order, and we will resume the regular order of business of the day. Presentation of petitions and memorials.

Mr. BEATTY. Mr. President, there was presented yesterday by Mrs. Skelton a memorial which was referred, and the ladies are present this morning and have no reply. I would like to have the matter taken up now and referred so that there may be some action taken.

The CHAIR. If there is no objection, the memorial, or petition, rather, will be taken from the table and referred to the committee on——

Mr. REID. As I understand it, it was not a memorial, but a request to this convention so that the women may present a memorial. They do not ask to be heard before a committee, but before this convention. By referring this letter to the committee, the question will come back here whether we hear them on presenting this memorial. I think, Mr. President, that this committee of ladies should have a hearing here at such hour as this convention may designate. I think we ought not to send her letter to a committee without acting upon it. I think the ladies ought to have a fair showing—a fair chance to be heard.

The CHAIR. The chair agrees most heartily with the gentleman from Nez Perce, but under the rules of this convention, it will have to be referred to one of the committees unless there is another motion made to take the matter up.

Mr. REID. Mr. President, I move that the ladies be accorded a hearing tomorrow morning at 10:00 o'clock. (Seconded).

Mr. BEATTY. I call for the reading of that communication. I have forgotten what it is.

The CHAIR. The secretary will read for the information of the gentleman, the communication from Mrs. Skelton. (Secretary reads).

The CHAIR. It is moved and seconded, gentlemen, that the petition which was presented on yesterday, requesting a hearing before the convention on behalf of the W. C. T. U. be granted, and that tomorrow morning after the formal opening of the convention, reading of the

minutes, and so on, this hearing be granted to the ladies representing that Association, on the floor of the convention. (Vote). The ayes have it and it is so ordered.

The CHAIR. Are there any further petitions or memorials to be presented?

Mr. PEFLEY. I move you, sir, that there be a committee of three appointed to escort the ladies to this convention tomorrow morning at 10:00 o'clock.

The CHAIR. Is there any second to the motion? (Seconded).

The CHAIR. It is moved and seconded that a committee of three be appointed to escort the ladies representing this Association to this convention tomorrow morning at 10:00 o'clock. (Vote). The motion prevails.

Mr. AINSLIE. If it is not out of order, I move that Judge Mayhew act as chairman of that committee.

Mr. MAYHEW. I respectfully decline, not being equal to the task.

The CHAIR. The chair will appoint as that committee, Mr. Pefley of Ada, Mr. Mayhew of Shoshone, and Mr. Ainslie of Boise.

Are there any reports of standing committees?

REPORTS OF STANDING COMMITTEES.

Mr. BALLENTINE. I offer the following resolution:

Resolved, That all standing committees of the convention be instructed to report to the convention on or before Friday, the 12th inst., at 2:00 o'clock P. M. (Seconded).

The CHAIR. Gentlemen, it has been moved and seconded that all standing committees of the convention be instructed to report to the convention by Friday following at 2:00 o'clock P. M. Are there any remarks?

Mr. MAYHEW. Mr. President, I don't know what that resolution means by standing committees to report to this convention by Friday, July 12th. Report what? Report that they are in session? Report any part of the constitution, or what are they to report? Now it is

very evident to me with a number of standing committees it will be impossible for them to perform their entire duties, by getting up and finishing with that portion of the constitution and report it by next Friday—it cannot be done. If this resolution should pass, it would cause those committees to come in here with nothing to report and ask leave to sit again. I don't understand and can't pretend to, Mr. President, how you can force a committee to do something that in fact it will be impossible for them to do? Now this committee on Judiciary can't report that portion of the constitution which it is required for them to formulate and report. They can't do it by next Friday; it is impossible for them to do it. Further than that, Mr. President, there is quite a number of the gentlemen on those committees who are absent, whose knowledge, wisdom and experience this convention desires to have. Mr. Heyburn, chairman of the committee on Judiciary cannot be here until next Saturday; Mr. Sweet, who is a member of that committee, a very important man on that committee, with experience and knowledge, cannot be here until next Saturday to take any part on that committee. I think this resolution will be premature. To require the committees to come in here, they would have to ask for further time to report. I think they should have a longer time than three days to perform their duties. And I think this: If there is a single man on those committees who can get up a report on those subjects in three days, he is a very wise man. I hope the resolution will not prevail, because it is enforcing work upon the committee that it is impossible for them to perform. I hope the resolution requiring a report next Friday will not prevail.

Mr. BALLENTINE. Mr. Chairman——

Mr. MAYHEW. I want to ask here, how is the committee on Revision and Enrollment going to report? How is the committee on Public and Private Corporations to report? This is a sweeping resolution requiring all the committees to report or ask leave for further time.

Mr. BALLENTINE. Mr. Chairman, the object I had in introducing this resolution was to anticipate the business of the convention. It is a well known fact that all committees that are appointed by this convention have precedents for their government and I cannot see the impossibility of formulating their report in three days. I think if it is necessary, they could formulate all of the reports in that time, for the great majority of this convention are anxious to attend to business and get home. I, for one, feel that it will be impossible for me to remain here longer than this week; still I am anxious to participate in all business of this convention with the desire to expedite the business as quick as possible, and I can see no objection to the committees reporting at that time.

Mr. BATTEN. I think if the gentleman's motion were amended so as to read, and report what, if any, progress the committees have made, then it would advise us as to how the committees are proceeding with their work and remove the objection of the gentleman from Shoshone.

The CHAIR. Will the gentleman from Alturas make that as a motion?

Mr. BATTEN. I move as an amendment that the motion of the gentleman from Alturas be so amended as to read, that those committees be instructed to report what if any progress they have made upon the various matters committed to their care.

Mr. POE. I move as a substitute for that, and I think it will meet the end aimed at, this: That the several committees be requested to report to this convention as soon as practicable.

Mr. MORGAN. Second the motion.

The CHAIR. Any further remarks? It has been moved and seconded, gentlemen of the convention, that all the standing committees of the convention be required to report by Friday, the 12th day of July, at 2:00 o'clock P. M., and to that there is an amendment pending, offered by the gentleman from Alturas, that the

resolution be so amended as to require them to report progress, and to that amendment a substitute is offered by the gentleman from Nez Perce that the committees report to this convention as soon as practicable. (Vote). The ayes have it and it is so ordered. Any further business before the convention?

Mr. MORGAN. In order that these committees may get to work and do the work imposed upon them, I move that the convention do now adjourn until tomorrow morning at 10:00 o'clock.

LEAVES OF ABSENCE.

Mr. WHITTON. Before the convention adjourns, I wish to ask for leave of absence a few days. I've got to go home to attend the meeting of the county commissioners. I will have to make it indefinite—I don't know how long the business will last.

The CHAIR. If there is no objection, the leave will be granted. There is no objection.

Mr. HASBROUCK. I would like to make the hour of adjournment until 11:00 o'clock so as to give the committees time to work a little before the convention meets. There is, as a rule, after the convention meets, a great deal of time taken up.

Mr. MORGAN. I accept the amendment.

Mr. BATTEN. My colleague, Mr. McMahon, received a communication informing him of the serious illness of his wife. In his behalf I ask that he be excused from attendance this morning and be granted a leave of absence until next Tuesday morning.

The CHAIR. If there is no objection, the leave will be granted.

It is moved and seconded, gentlemen, that this convention do now adjourn until tomorrow at 11:00 o'clock. (Vote). The convention is duly adjourned.

SIXTH DAY.

WEDNESDAY, *July 10, 11:00 A. M.*

ROLL CALL. Present: Messrs. Allen, Anderson, Andrews, Ballentine, Batten, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Crook, Crutcher, Gliddon, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Hogan, Howe, Jewell, King, Kinport, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Moss, Pefley, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Savidge, Sinnott, Steunenberg, Stull, Taylor, Underwood, Vineyard, Wilson, Mr. President.

Excused: Cavanah, Heyburn, McMahon, Sweet, Whitton, Woods.

SECRETARY reads minutes of yesterday's proceedings.

Mr. MORGAN. Mr. Standrod is here; also Mr. Blake from Oneida County has not been sworn, and Mr. Harkness from Bingham.

(These gentlemen are sworn in by the President.)

The CHAIR. Presentation of petitions and memorials. Reports of standing committees. Reports of special committees. In connection with this call for reports of special committees, I will inquire whether the committee appointed yesterday to escort the ladies of the Woman's Christian Temperance Union are ready to report. A special order was made for 10:00 o'clock this morning for the purpose of giving the ladies representing that Association a hearing before this convention.

Mr. PEFLEY. So far as I am concerned, I don't know whether I am ready to escort the ladies or not, and I don't know whether the other parties are here or not. If it is in order, we will proceed now.

The CHAIR. It is in order.

(The ladies are escorted in.)

ADDRESS OF MRS. SKELTON.

The CHAIR. Gentlemen of the convention, in pursuance of the order of the convention that a hearing be

granted to the representatives of the Woman's Christian Temperance Union, I take great pleasure in introducing Mrs. Henrietta Skelton, the representative of the W. C. T. U.

Mrs. SKELTON. Mr. President, gentlemen and delegates of the constitutional convention of Idaho:—I have the honor today to represent Idaho and one small branch of the great body of the Woman's Christian Temperance Union. Our organization is only about a year old in this state—in this territory of Idaho. (You see, I want to make it a state right off.) But we have already planted our white banner on the mountains and in the valley and we intend to plant them everywhere, wherever there is a half dozen earnest women to be found to labor for God and home and native land. We come to you today, gentlemen, and we trust to your justice, to the chivalry of the men of the 19th century, and to your generous hearts as fathers representing this great territory and laying the foundation for its future eminence. You need not be afraid, dear gentlemen, to take us, the weaker vessels, to help you in the great movement that is to come. We are willing to stand beside you shoulder to shoulder; we are willing to bear the burden and heat of the day in the great battle which is to come. We are willing to do anything and everything to help you to make Idaho be the "Gem of the Mountains." But to do this, dear gentlemen, we come to you with a new voice today of the motherhood, of the sisterhood, of the womanhood, asking you to place in that constitution something which shall be a weapon to the dear women of the land to protect our homes, for without it, they will will not be able to do so. We also ask you to help to build a wall around this state,—put out strong drink, and to make your constitution so that when you place it before Congress next winter, it will be the admiration of the land.

A year ago I was an observer in the convention in Dakota and listened to that argument for several days in the convention. Again they are gathering in Dakota and you know the plank which they are putting in for female suffrage and prohibition will be a strong one. Washington, which joins you so closely, is asking for the same. Wyoming has tested woman's suffrage for twenty-five years, and if only Wyoming had as many women voting as men voters, Wyoming today would be free from everything that demoralizes manhood; but unfortunately Wyoming has only one woman voter for forty men voters, and Wyoming is not able to do what it should do. But when you go to Wyoming and at the University in Laramie, the men will tell you that it was our women got it through; it was our women who pushed that through Congress; it was our women who asked largely and received scriptural portion. So, dear gentlemen, I present to you in the

name of the Woman's Christian Temperance Union of Idaho, the following resolutions, trusting that they may be engrafted in the constitution which you are framing now:

PETITION FOR WOMAN'S SUFFRAGE AND PROHIBITION.

To the Delegates of the Territory of Idaho in Constitutional Convention, Greeting:

Idaho's Woman's Christian Temperance Union request and earnestly pray you, first, that in the constitution to be proposed to the citizens of Idaho for their approval or rejection, no discrimination on account of sex shall be made; but citizens of both sexes, possessing the necessary qualifications, shall be equally eligible as electors. Second, that the following shall be made an article of said constitution, namely:

ARTICLE .....

SECTION 1. The manufacture, sale, or keeping for sale of intoxicating liquors for use as a beverage is hereby prohibited, and any violation of this provision shall be a misdemeanor punishable as shall be provided by law.

SEC. 2. The manufacture, sale, or keeping for sale of intoxicating liquor for other purposes than as a beverage may be allowed in such manner only as may be prescribed by law.

SEC. 3. The general assembly shall at the first session under this constitution, enact laws with adequate penalties for its enforcement.

Very respectfully submitted,

MRS. H. SKELTON,

President.

Now, gentlemen, we only ask what every one who loves his home and its fireside and the rising generation must today ask for. We only ask, dear gentlemen, that you give us a weapon whereby we may protect ourselves. There are thousands of women in the land contributing taxes today who have not one vote to say how those taxes shall be expended or who shall be the man to expend that tax. Now, we want you as generous, noble-hearted, fair-minded men of Idaho, we want you to provide that at least some women who are paying taxes shall have a voice. I ask you, dear gentlemen, and I appeal to you and to all Idaho. There was a mother once who held you at her knee. There was a mother once who placed into your life all that which is noble and good. If that mother is alive, she must be proud of her boy who helps to lay the foundation for a grand work today in Idaho. If she is dead, her angel spirit will certainly hover around you today and will be there when you frame that constitution. There is a dear wife at home. She is one of our sisters. She may not wear the white ribbon as we do, but I am sure that every woman in Idaho

is with us heart and soul. There are many women who do not wear the white ribbon but they are heart and soul with us in the work. So, gentlemen, I want you to ponder well,—I don't want you to reject the resolutions. I leave to go over the mountains and am going into the basin the end of this week. I pass through the mountains and I go down into the valley and there comes the Macedonian cry to me from many places: "Why don't you come and organize us? We want to be in this great army who are laboring for the people of God's kingdom upon his footstool." So, gentlemen, we plead with you as brothers, for you are all our brothers in Christ Jesus our Lord. We believe you are honorable men, noble men who have it in your power today to honor yourselves by doing what we ask you to do, and if you do so, by and by, when some of us have folded our hands in silent death, when this day shall lie deep in the memory of those who are here today, those who are at our anniversary will point us out and say, "Oh, it was on this day that a woman's voice was heard in the deliberations of the convention and the dear men listened to the cry of the women, and gave them just what they asked." Here we are celebrating our annual convention here in Boise City. I trust that in that convention we will be able to embody in our next minutes such sentiments of thanks for the adoption of the resolutions, because you helped us; you did what we wanted you to do; you helped to build up God's kingdom and lay the foundation for a grand and glorious work for Idaho.

Thank you kindly, gentlemen, for your attention and for your generosity and for your chivalry in admitting us into this honorable body. We thank you from all the kindness of woman's heart, and so may your days be blessed and may every hour as you are sitting here in this convention be hallowed by the sentiment we are honoring ourselves by placing upon the statute book, and by placing in this constitution something which in after life we surely shall be proud of, then when this state comes, Idaho will be free from the liquor traffic. When on election day the dear women shall go to the polls as well as our husbands and say who shall or who shall not rule Idaho, when that day comes, we shall be gathered into a kind of jubilee and we will make the hills and mountains ring with joyful song, because it will then be that we realize the fact that our labor in the Lord has not been in vain.

Thanking you kindly again, gentlemen, for your courtesy. (Applause.)

I have the great pleasure in behalf of the W. C. T. U. of Idaho to present to the convention this bouquet with the sentiment attached to it. (Handing bouquet to the president.) (Applause.)

The CHAIR. The chair in behalf of the convention accepts of this offering by the ladies of the W. C. T. U.

for the cause which they represent. (Applause.)

Any other lady who desires to address the convention in this behalf?

A LADY. I want to ask and invite the convention to an ice cream social prepared by our Young Womens' Christian Temperance Union, in the reading rooms. Our W. C. T. U. have six reading rooms.

The CHAIR. The chair takes occasion to inform the ladies who have presented this petition and memorial that the same will receive proper attention, and justice will no doubt be done to the ice cream.

The petition is by the chair referred to the committee on Election and Right of Suffrage.

Gentlemen of the convention, what is your further pleasure?

Mr. PEFLEY. Mr. President, if in order, I would make a report in regard to the order of the day. I would say on behalf of the committee that they have performed the duty that was required of us to perform in conducting the ladies to the convention.

The CHAIR. If there is no objection, the committee will be discharged from further duty.

The chair will announce that we have finished the order of business for today, unless there is some special matter which some member of the convention desires to bring up.

Mr. MAYHEW. Mr. President, there is nothing further, I believe, before this convention at present. The committees now are at work preparing their reports and therefore I move you that this convention now adjourn until Friday morning at 10:00 o'clock. (Seconded.)

The CHAIR. The motion prevails.

SEVENTH DAY.

BOISE, IDAHO, FRIDAY, *July 12, 1889.*

The CHAIR. Gentlemen of the convention, you will please come to order.

Prayer by Chaplain Smith.

ROLL CALL. Present: Messrs. Ainslie, Allen, Anderson, Andrews, Ballentine, Batten, Beatty, Bevan, Brigham, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Harris, Hays, Hogan, Howe, King, Kinport, Lewis, Maxey, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Robbins, Salisbury, Sinnott, Shoup, Stull, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Excused: Messrs. McMahon, Cavanah, Heyburn, Savidge, Sweet and Woods.

Absent: Messrs. Beane, Blake, Campbell, Crook, Hagan, Hasbrouck, Hendryx, Jewell, Lamoreaux, Lemp, Mayhew, McConnell, Standrod, Steunenberg.

LEAVES OF ABSENCE.

Mr. STULL. I ask leave of absence for three days on business that calls my attention.

The CHAIR. Leave of absence is asked by Mr. Stull, delegate from Elmore county, for a period of three days. Is there any objection to this leave of absence being granted? Our rules provide, gentlemen, that leave of absence may be granted by the vote of the convention or by unanimous consent. The chair hears no objection and leave is granted.

Mr. Ballentine and Mr. Vineyard were granted leave of absence until Tuesday, July 16th.

Mr. Glidden was granted an indefinite leave of absence.

Mr. Harkness was granted leave of absence until Tuesday, 16th inst.

Mr. Sinnott was granted leave of absence until the 13th.

SECRETARY reads minutes of last day's proceedings.

The CHAIR. If there is no objection, the minutes of the last day's proceedings of the convention will be considered approved. There is no objection and it is so ordered.

The CHAIR. Presentation of petitions and memorials. Reports of standing committees. Reports of selected committees. Final readings. (None presented.)

Gentlemen of the convention, the regular order of business seems to be exhausted.

Mr. BEATTY. Mr. President, I move we adjourn until tomorrow morning at 10:00 o'clock.

MILEAGE OF MEMBERS.

Mr. HASBROUCK. Before the question is put, on behalf of the committee on Ways and Means, I desire that the members of this convention be requested to call at the committee room of Ways and Means and give in their mileage so that the committee can report intelligently upon the matter. The committee rooms are in the office of the clerk of the supreme court.

Mr. BALLENTINE. Before the motion is put to adjourn, I will in all probability be absent at the meeting of an important committee, and I desire my colleague, Major Pinkham, to represent me in that committee, and now ask that he be substituted for myself on the apportionment committee.

The CHAIR. Is there any objection to the substitution of Major Pinkham for Mr. Ballentine on the committee on apportionment? There is no objection and it is so directed.

Mr. REID. I ask permission to announce that immediately on the adjournment of the convention, the democratic caucus will meet in the rooms of the Supreme Court.

The CHAIR. It is moved and seconded, gentlemen, that this convention do now adjourn until tomorrow morning at 10:00 o'clock. (Vote.) The ayes have it and the convention is adjourned until tomorrow morning at 10:00 o'clock.

EIGHTH DAY.

SATURDAY, *July 13, 10:00 A. M.*

(Vice-President in the chair.) Convention will come to order.

Prayer by chaplain.

Mr. McCONNELL. I move that we dispense with the regular order of business this morning and adjourn until 3:00 o'clock this afternoon.

Mr. AINSLIE. Mr. Chairman, before that motion is put, I would like to ask for an indefinite leave of absence for Mr. Beane. He requested me to make this request. He may be here in a few days.

Mr. BEATTY. I have a suggestion before that motion is put.

The CHAIR. One matter is before the convention and then I will hear the gentleman from Alturas. The leave is granted.

Mr. BEATTY. I desire to make a report of the committee on elections and suffrage concerning the memorial that was referred to this committee.

The CHAIR. If the gentleman will wait a moment, I will see if the convention will dispense with the order of the business of the convention. The motion of the gentleman from Latah was that we dispense with the order of business.

Mr. McCONNELL. I would like to explain why I made the motion. There are a number of committees who are nearly ready to report and by adjourning until this afternoon, they will have an opportunity to bring their reports all in. That is why I made the motion.

Mr. MORGAN. I think there are some reports of standing committees that are ready to be brought in this morning, and it seems to me that we ought not to adjourn until we see.

The CHAIR. Gentlemen, the motion is to adjourn. (Vote.) The noes have it. The motion is lost.

The secretary will read the proceedings of the last meeting.

SECRETARY reads the minutes.

ROLL CALL. Present: Messrs. Ainslie, Allen, Anderson, Andrews, Batten, Beatty, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Crook, Crutcher, Gliddon, Gray, Hammell, Hampton, Harris, Hasbrouck, Hays, Hogan, Howe, Jewell, King, Kinport, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Poe, Pritchard, Reid, Robbins, Salisbury, Shoup, Stull, Taylor, Underwood, Vineyard, Wilson.

Excused: Beane, Cavanah, Heyburn, McMahon, Sinnott, Sweet, Whitton.

Absent: Ballentine, Coston, Hagan, Harkness, Hendryx, Lamoreaux, Lemp, Pyeatt, Savidge, Standrod, Steunenberg, Woods, Mr. President.

LEAVES OF ABSENCE.

Mr. GRAY. Mr. President, I would ask leave of absence for this forenoon. I am called before the court and the judge at chambers. It is necessary.

The CHAIR. The gentleman from Ada asks leave of absence this forenoon. Without objection, it will be granted.

Mr. PRITCHARD. I would request leave of absence for one week.

Mr. POE. Mr. President, I think it is perfectly proper when a member of this convention is so situated that it becomes absolutely necessary on account of sickness or some accident, for him to leave this convention, that such request should be granted. But we have come here, all of us, at a great sacrifice for the purpose of adopting a constitution for our future state. This indiscriminate business of granting leave of absence without any vote, seems to me has already been carried to an unreasonable extent. Men come here—they have assumed the responsibility, they have laid aside their business and come here for a particular purpose and, of course, this is an expensive matter, and I don't think that it is right that men should leave here for the purpose of attending to their business, for the reason, Mr.

President, that it retards the work of this convention. I know as a matter of fact now that the business of this convention has been retarded probably a week,—almost a week, at any rate, by reason of absence of certain members of this convention. They are on committees and those committees will not take the responsibility to go on and get up their report and present it to this convention until they have consulted with their colleagues upon the committees, and therefore, it retards the proceedings of this convention, and I think there ought to be a stop to this matter. Now here is a gentleman that asks leave of absence for a week. Now I presume this convention ought not to sit for more than a week. Of course, if the gentleman has some business that absolutely requires his attention, and is such as would justify this convention to act as a whole, they ought to do this, but this going home to see his family once a week and no business reason, I don't think the gentlemen should ask it, and therefore, in the future, I will oppose the absence of any member unless he has got some legitimate and good reason for going away and neglecting a business he has come to attend. I think it is as highly important as any business he may have.

The CHAIR. I do not understand the gentleman as opposed to any leave of absence. The rule on the subject is that unless there is objection, the chair will grant leave by unanimous consent. Of course, if any member objects, it will be necessary to take a vote on the question.

Mr. POE. Mr. President, before that motion is put, and before a vote on it—

The CHAIR. I will state to the gentleman, there is no motion before the house.

Mr. POE. I know that, but I would like to hear the gentleman's reasons for asking leave, before we vote.

The CHAIR. The chair will say that the gentleman has been excused. I put the motion. No one objecting, it was not necessary to vote.

Mr. POE. I rose, Mr. President, in order to make

that objection. I have stated my objections in language and words. Now I do object unless the gentleman can give some reason.

The CHAIR. The chair did not observe that the gentleman objected, but if he made it, I will put the question.

Mr. POE. I asked before that question was put, to have the gentleman give any reason he may have.

The CHAIR. The chair will give him an opportunity so that he can give his reasons, but I want to state before the convention the question is whether the gentleman from Owyhee should be excused for one week.

Mr. PRITCHARD. Our Board of Equalization meets the second Monday of next month, and I find that this convention is going to last a little longer than I thought it would. I thought I could finish my business so as to be ready the day after the convention adjourns, but I find I am not going to get to do so. Now, in the meantime, I have very little to do. They have excused a great number who are on several committees; some on four or five committees. I have been on one committee and been here a week—only one three or four hours' session of this committee. I have had nothing to do and there are a number that have been excused who have a great deal to do.

Mr. WILSON. I move that the gentleman be excused for one week.

Mr. POE. Mr. President, before that motion is put; it is only in the case of objection that it is necessary to put it to a vote. Now I have given my reasons for objecting to this convention, for raising that point at this particular time. It seems that this gentleman is a board official and it is necessary for him to attend to these official duties, and under those circumstances, I withdraw my objection.

The CHAIR. We will consider the gentleman from Owyhee is excused for one week.

The CHAIR. Presentation of petitions and memorials. None.

Reports of standing committees.

The chair recognizes the gentleman from Alturas to make his report.

Mr. BEATTY. Our report was sent up to the desk.

SECRETARY reads as follows:

COMMITTEE REPORT ON W. C. T. U. PETITION.

Mr. President, Your committee on Elections and Suffrage to whom was referred the memorial (herewith returned) of the Idaho Women's Christian Temperance Union, have respectfully considered the same and their conclusion upon the subject of female suffrage, therein referred to, will appear by the final report of your committee.

The memorial also directs attention to the subject of temperance, but the consideration of that question not being included within the authority granted your committee, is respectfully referred back to your honorable body.

J. H. BEATTY,
Chairman.

The CHAIR. Gentlemen, the committee refers the question of prohibition back to this convention as not being in their province. What will you do with that part of the report?

Mr. AINSLIE. I move that the report be received and adopted and the committee be discharged from the further consideration of that question.

The CHAIR. The question is now before the convention.

Mr. BEATTY. It is simply the question referred to in the memorial, I presume?

The CHAIR. Yes; that your committee be discharged from the further consideration of the question of prohibition. As I understand it, your committee retained the question of suffrage to be reported hereafter.

(The motion was carried.)

The CHAIR. The question is still before the convention and referred back to this convention. This committee is discharged from the consideration of the question of prohibition by the last motion. What will you do with the question now? It is now before the convention.

Mr. SHOUP. I move that it be referred to the committee of the whole convention.

The CHAIR. The gentleman from Custer moves that the memorial of the Woman's Christian Temperance Union in reference to prohibition be referred to a committee of the whole house. (Vote.) The ayes have it and the motion is adopted.

Any further reports from standing committees?

COMMITTEE REPORT—PREAMBLE AND BILL OF RIGHTS.

Mr. SHOUP. Mr. President, the committee on Preamble and Bill of Rights have unanimously agreed upon the report herewith sent to the secretary's desk.

Respectfully submitted,

JAMES M. SHOUP,

Chairman.

(Secretary reads report.)

The CHAIR. The report will go over, under the rule, and be printed.

COMMITTEE REPORT—MILITIA.

Mr. HAMMELL. Mr. President, your committee on Militia and Military Affairs hereby present their report and unanimously recommend its adoption as a part of the constitution of the state of Idaho.

(Secretary reads report.)

The CHAIR. The report, under the rule, will go over and be printed.

COMMITTEE REPORT—LEGISLATIVE DEPARTMENT.

Mr. MORGAN. Your committee on the Legislative Department of the constitution have instructed me to report the accompanying article, for the said Department, consisting of thirty-one sections.

(Secretary reads report.)

The CHAIR. The report will go over under the rule and be printed.

COMMITTEE REPORT—PUBLIC AND PRIVATE CORPORATIONS.

Mr. MAYHEW. The committee on Public and Private Corporations desire to report and respectfully sub-

mit the following report for your consideration.

A. E. MAYHEW,
Chairman.

(Secretary reads report.)

The CHAIR. The report will go over under the rule and be printed.

Reports of selected committees. None.

Final readings. None.

Gentlemen, that ends the order of business for today. What is the further pleasure of this convention?

PRINTING REPORTS OF COMMITTEES.

Mr. ALLEN. Gentlemen, if I am not out of order, in behalf of the printing committee, I would like to call the attention of the convention to the fact that it will require for these reports at least one week's time in which to present them to the convention. I would also like to ask instructions as to the number of copies required of each report. Without instructions, the committee had decided to order 100 copies.

Mr. MORGAN. I move that 200 copies of each of these reports be printed for the use of the convention. Do I understand the gentleman to say that these reports cannot be printed in less time than a week?

Mr. ALLEN. I meant to say that it will require a week's time to finish printing the entire number of reports as they will be presented.

Mr. BEATTY. Does the gentleman refer to a report of a committee or all the reports of the committees.

Mr. ALLEN. It will require at least this time, but they will be advanced as rapidly as possible. If there is any suggestion in regard to the precedence reports shall take, we will direct and act in accordance therewith.

Mr. MORGAN. I understand the reports are to be printed in the order in which they are introduced.

The CHAIR. Without instructions from the convention, that will be the order.

Mr. MORGAN. I don't still understand the gentleman quite in regard to the time that will be consumed in

printing these reports. It is the desire of course, of every one and of all the convention, on account of important business we have at home, to consider these matters at as early a day as possible.

The CHAIR. The chair understood the gentleman to state that to print all the reports that are made today and also all those yet to be made will take a week, but not that it will take a week to print those reported today.

Mr. MAYHEW. Mr. President, do I understand that it will take a whole week to have any one of those presented back to the convention? If that is the case, I shall make a motion that none of them be printed.

The CHAIR. The chair understands the gentleman from Shoshone, (Mr. ALLEN,) that it will take a week to print those reported today and those yet to be reported, but not a week to print those reported today by the committees.

Mr. MAYHEW. Gentlemen, the usual method of printing bills of a convention or legislative bodies is to put it in the hands of the committee on Printing. I am rather inclined to think it is the duty of the chairman of the committee on Printing to have that done as quickly as possible. I don't think there is any occasion for delay over 24 to 48 hours to have them printed. If it is going to take such a length of time, we shall not get through the convention for a month to come.

Mr. MORGAN. Can't the chairman give us any information as to how long it will take to print these three or four reports already handed in?

Mr. MAYHEW. I would like to inquire again, Mr. President, what has become of our rules that we ordered printed.

The CHAIR. The chair is unable to inform the gentleman. Can't the secretary or the chairman on Printing do so?

Mr. MAYHEW. There is just this thing about it, Mr. President, if we can't get the rules in time for the use of this convention, we do not want them at all. They are no good after the convention adjourns.

The CHAIR. The chair has been informed that the rules are partly finished. The printer will have them ready for distribution Monday morning.

The CHAIR. The question before the house is the motion of the gentleman from Bingham (Mr. MORGAN) to have 200 copies of each of the reports submitted printed.

Mr. BEATTY. I would like to ask the chairman of the committee on printing whether the ordering of 200 copies will make any material difference in the time required for the printing of these rules. If it will, I will make a motion that it be 100.

Mr. ALLEN. I merely made the statement, that being my judgment, simply to get instructions and information from the convention upon which the committee might act. We will do the very best we can, and the committee will advance this in every way possible and probably will be able to present some of these reports on the Monday morning session. But we are rather limited in our facilities for such work and I merely called your attention to this fact at this time in order that, if it is necessary to direct the precedence of any of these reports, we may be advised of it. The committee can report progress. It will do the very best it can.

Mr. MAYHEW. Mr. President, there has never been directly any motion about 200 copies to be printed. I have no doubt in my mind that the committee will do the very best it can. And perhaps the very best the committee can do is to have these things printed two or three weeks from now. But we can't stand that. Several members of this convention say if we cannot get these reports made and returned back, with both the rules and the other reports, in 48 hours after they are reported here, we had better go without these being printed. I ask the convention to consider this, if we are to sit here a number of days and do nothing after these matters are reported. You will observe, Mr. President, that all reports that have been reported by the committees are to be ordered printed and laid upon the table to be con-

sidered in their order by the committee of the whole.

The CHAIR. The chair will ask that the rules be read for the information of the convention.

SECRETARY reads RULE 51, as follows:

"All reports of committees, containing matter to be incorporated in the constitution, shall be considered in the order in which the reports are made, and upon their introduction and full reading before the convention, such matter to be incorporated shall lay upon the table, and be printed and when printed shall be placed on the calendar to be considered in the committee of the whole."

Mr. MAYHEW. I have not heard an answer, Mr. President, from the chairman of the committee on printing to the question of the gentleman from Alturas, (Mr. BEATTY) if it will make any difference in time to have 200 copies printed. If it is going to take any greater time to have 200 copies printed, I shall oppose the motion.

Mr. ALLEN. I don't think it will take much longer after the matter is set up and on the press, to run out 100 copies additional. It ought not to take more than an hour or two in the case of each report.

The CHAIR. The question before the convention is on the motion of the gentleman from Bingham (Mr. MORGAN) that there be printed 200 copies of each report of the articles to be incorporated in the constitution, for the use of the members of the convention. (Vote.)

The motion is adopted.

RESOLUTION OF INVITATION.

Mr. ALLEN. I understand that the Nebraska Editorial Association is within the borders of Idaho today, and the suggestion has been made that it will be desirable to extend the invitation of this convention in connection spend a day in the capital city while they are in the Northwest. I would, therefore move, Mr. President, if it is in order, that Governor Shoup in behalf of this convention be authorized to extend a cordial invitation to the members of that association to visit this city and this convention. (Seconded.)

The CHAIR. It has been moved by the gentleman from Logan that Governor Shoup in behalf of this convention be authorized to extend a cordial invitation to the members of that association to visit this city and this convention on their way through this territory. (Vote.) The resolution is carried.

The CHAIR. What is the further pleasure of the convention?

Mr. MAYHEW. I move the convention now adjourn until Monday morning at 10:00 o'clock. (Seconded and put to vote.)

The CHAIR. The motion is adopted and the convention is adjourned until Monday morning at 10:00 o'clock.

NINTH DAY.

BOISE, MONDAY, *July 15, 1889.*

The CHAIR. Gentlemen of the convention, you will please come to order.

Prayer by Chaplain Smith.

ROLL CALL. Present: Messrs. Ainslie, Allen, Anderson, Andrews, Batten, Beane, Beatty, Bevan, Blake, Brigham, Campbell, Cavanah, Chaney, Clark, Crutcher, Gray, Hagan, Hammell, Hampton, Harris, Hasbrouck, Hays, Hogan, Howe, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Pefley, Pierce, Poe, Reid, Robbins, Salisbury, Sinnott, Shoup, Standrod, Sweet, Taylor, Underwood, Wilson, Mr. President.

Excused: Messrs. Ballentine, Harkness, Heyburn, McMahon, Pritchard, Stull, Vineyard and Whitton.

Absent: Armstrong, Coston, Crook, Glidden, Hendryx, Jewell, McConnell, Moss, Pinkham, Savidge, Steunenberg, Woods.

The CHAIR. A quorum of the convention being present, the secretary will read the journal of the last session. (Approved).

Mr. MAYHEW. Several members have arrived who have not been sworn in.

The CHAIR. The chair would inquire whether the gentlemen are here present. If there are any delegates present who have not been sworn in as members of the convention, gentlemen, you will be kind enough to rise and be sworn. (Beane, Hagan and Taylor sworn by the president).

The CHAIR. Presentation of petitions and memorials. If there are none, the reports of standing committees are next in order.

Mr. AINSLIE. We will submit to the convention the report of the committee on the Executive Department.

Mr. HASBROUCK. Your committee on Ways and Means are ready to report.

The CHAIR. The secretary will read these reports in the order in which they came in.

COMMITTEE REPORT—EXECUTIVE DEPARTMENT.

SECRETARY reads report of the committee on Executive Department.

Mr. CLARK. Before this goes to the committee on Printing, I move that the secretary be authorized to number the sections consecutively.

Mr. AINSLIE. The committee in considering that matter probably thought it would be proper for the committee on Revision to number the sections. We thought that the committee on Salaries would have to fill them in also and it would come before the committee of the Whole after the amendment and then be inserted. The numbering would have to be done by the committee on Revision anyway.

The CHAIR. I understand the motion as made is practically temporary, for the convenience of the convention when each particular article is being considered in the committee of the Whole so that reference can be made to it. The final numbering of sections would, of course, have to be made by the committee on Enrollment and Revision. (Seconded).

The CHAIR. It is moved and seconded, gentlemen, that the secretary be instructed to fill up numerically the blanks of the report of the committee on Executive De-

partment by numbering the sections. (Vote and carried). It is so ordered. The report of the committee on Executive Department which is incorporated or proposed to be incorporated in the constitution, will lie upon the table, under the rule, to be printed.

SECRETARY reads report of the committee on Ways and Means.

COMMITTEE REPORT—WAYS AND MEANS.

The CHAIR. Gentlemen, what will you do with the report of the committee on Ways and Means?

Mr. HASBROUCK. I do not suppose that it will be necessary to print this report. It is a mere matter of expenditure of this convention. I have been to confer with the territorial secretary and perhaps it would be as well to refer it to him as he will have to make up the payroll and to have a list of the mileage of members.

The CHAIR. Does the gentleman from Washington make that in the shape of a motion?

Mr. HASBROUCK. I will move that the report be received and adopted and referred to the secretary of the territory for the purpose I have named.

Mr. ALLEN. I second the motion and call your attention to the fact that there is some mention of numbers and some corrections that might be made by the secretary, probably.

The CHAIR. It is moved and seconded, gentlemen, that the report of the committee on Ways and Means be referred to the secretary of the territory with the request that he shall issue certificates to the various members based upon this report, and that any corrections necessary to be made may be made by the secretary. Is that the understanding?

Mr. HASBROUCK. Yes, Sir.

Motion carried.

The CHAIR. Are there any further reports from standing committees? If not, reports from special committees? Final readings? Gentlemen of the convention, this constitutes the regular order of business for the day. What is your further pleasure?

Mr. WILSON. I would ask that Mr. A. B. Moss from Ada, be excused for three days. He went home Saturday and writes me that one of his children is sick and he cannot return.

The CHAIR. Is there any objection to excusing Mr. Moss for the period of three days? If there is no objection, it will be considered as ordered by the convention.

Mr. HARRIS. I would ask that Mr. E. S. Jewell of Washington be excused until tomorrow morning, for the reason that he has to prove up on land before the clerk of the court at Weiser and this necessitates his absence.

The CHAIR. How long will he be absent?

Mr. HARRIS. He will be in his seat tomorrow morning.

The CHAIR. If there is no objection, Mr. Jewell will be excused until tomorrow morning. There is no objection.

The CHAIR. The chair has received a note from Mr. W. C. Maxey, one of the delegates from Ada county, stating that he is called away by one of his patients for the day, and asking to be excused for the day. If there is no objection, he will be excused as requested.

Another matter has been called to the attention of the chair by Mr. Gliddon, one of the delegates from Shoshone, who requests that a proposition be submitted to the convention allowing him, inasmuch as his return is somewhat problematical, on account of his business, to withdraw from the committee on Revenue and Finance, and requests that Mr. O. J. Salisbury of Custer county be placed upon that committee by the consent of the convention. Is there any objection to this change being made? If there is no objection, it will be so ordered by the chair.

Gentlemen, what is your further pleasure?

Mr. MORGAN. I move that we proceed to the consideration of the reports that have been handed in to

the convention in their regular order, and the first one coming up would be the report of the committee on Salaries.

Mr. MAYHEW. I hope that the gentleman will withdraw that motion for the committee of the Whole to consider that report as made. I am requested just now by several members of this convention, to move that we adjourn until tomorrow at 2 o'clock. The object of doing so, Mr. President, I will state before I make the motion; most of the committees are now busy about preparing their reports to be submitted to this convention. They say if this time is given them, from now until tomorrow at 2 o'clock, most of the committees, if not all, will be prepared to report, and thereafter we can take up these matters and consider them by the committee of the Whole. I will state this, the members of the committee desire to be present when these reports are considered in the committee of the Whole. They also desire to be present at the meeting of their committees. They cannot be at both places at the same time. I think we would be prudent and gaining time if the convention will adjourn until tomorrow at 2 o'clock so that these reports can be made, so that we can take them up in their order and not be further delayed in considering them in the committee of the Whole. I move that this convention adjourn until tomorrow at 2 o'clock.

Mr. MORGAN. I withdraw my motion.

Mr. BEATTY. I move an amendment to that, that we take a recess until this evening at 5 o'clock. I will state my reasons briefly, thus: The committee on Printing will not have work enough to keep the printer busy, and by 5 o'clock a number of reports can be referred to the Printing committee. By this means we will save time. We understand the printer is pushed, and if we delay until tomorrow at 2 o'clock to get more work before him, he may be delayed several days to get the reports waiting for the return of the Printing committee, and we want all of these matters before us to

consider them in our rooms and not merely to consider them here in the chamber. Now if there are no more reports made until tomorrow at 2 o'clock, we will not get these reports printed until the next day or day after that, which will be near the end of the week. By adjourning until this evening at 5 o'clock, several committees may be ready to place their reports in the hands of the committee. I make the amendment with the hope of saving time. (Seconded). (Mr. Mayhew accepted the amendment).

The CHAIR. Gentlemen, it is moved and seconded that this convention do now take a recess until 5 o'clock this afternoon. Motion is carried.

AFTER RECESS.

5:00 P. M.

The CHAIR. Gentlemen of the convention, you will please come to order. The convention this morning took a recess to this hour for the purpose of enabling any reports of standing committees to be presented in order that they might go into the hands of the printer as soon as possible, so that they might be discussed in the committee of the Whole. If there is no objection, we will begin calling for the reports of standing committees.

If there are no further reports from standing committees of the convention, what is your further pleasure?

PRINTING OF COMMITTEE REPORTS.

Mr. CLARK. Mr. President, there was a disposition this morning to adjourn from day to day until the reports are all presented and printed. I simply would like to call the attention of the convention to this fact, as a member of the committee on Printing. I have conferred with the printers to find out about how fast they could get along. If the convention should carry out this sentiment of the morning to adjourn until all are in and all printed, it is my opinion that they will not be able to commence the consideration of the reports

before Friday. The printers are working as rapidly as they can; worked all day yesterday and all night. It is barely possible they might get through by Thursday. I simply give this as a warning, so that the members may reconsider that determination and get down to the general file tomorrow.

Mr. BEATTY. I would like to ask the gentleman much work they have before them now and how long it will take them to finish the printing of the reports they have made.

The CHAIR. There are four reports now ready upon the calendar and which are ordered to be printed. The report of the committee on Ways and Means was turned over to the secretary of the territory. Report of the committee on Legislative Department, on Public Salaries and Militia have been made and have been printed and are now upon the calendar.

Mr. ALLEN. Mr. Chairman, I will say to the gentleman that the report of the committee on Corporations is in the hands of the printer and will be ready for report tomorrow morning, I understand.

Mr. MAYHEW. Mr. President——

The CHAIR. One moment. I am informed by the secretary that in addition to those which are already printed, there are two others now in the hands of the committee.

Mr. MAYHEW. Mr. President, I would like to inquire. Our rules, as I understand it, demand that when a matter is reported back from the printer printed, it lies upon the files or secretary's desk to be considered in the committee of the Whole. Am I correct in that proposition?

The CHAIR. Substantially, I think.

Mr. MAYHEW. Now I would like to inquire, Mr. Chairman, if it would be proper to move that the convention continue to be ready to go into a committee of the Whole to consider the next report made by a committee, or are they to be taken up in order, and if they are to be taken up in order, what order are they to be taken

up in? Is it simply the preamble of the constitution to be considered first in the committee of the Whole, or can we take up any report that has been made by a committee—reported by the committees—and consider it in the committee of the Whole?

The CHAIR. The rules provide that any matter which is reported by any standing committee of the convention for incorporation into the constitution, after being printed in full, shall lie upon the table and be printed, and when printed, shall be placed upon the calendar and referred to the committee of the Whole. The chair does not understand that it requires any special motion to that effect.

Another rule provides that these various reports as printed and placed upon the calendar, shall be placed upon the calendar in the order in which they are presented to the convention. It would be, as a matter of course, entirely competent for the convention to suspend the rules of the convention and take up out of its order any one of the reports of the standing committees, but without suspension, of course, that could not be done.

Mr. MAYHEW. I would like to inquire, Mr. President, what report of a committee was the first report made.

The CHAIR. The secretary will please advise the gentleman.

SECRETARY. The first report made was Preamble and Bill of Rights; No. 2 is the Militia and Military; No. 3, Legislative Department; No. 4, Corporations report; No. 5, Executive Department.

Mr. MAYHEW. I would move, if I am in order, then, and the chair will inform me if I am not, that upon the convening of the convention tomorrow morning, after we listen to any reports that may be had, and after we get through with the general order of business, that we take up and consider in the committee of the Whole that article of the constitution on Bill of Rights and Declaration. I think they have it here—tomorrow

morning—after the morning order and ordinary business of the convention. If I can get support for that motion. (Motion seconded).

Mr. SHOUP. There was a memorial referred to the committee of the Whole before the Bill of Rights was in. Wouldn't that be the first business before the convention?

Mr. MAYHEW. Was that in relation to prohibition?

Mr. SHOUP. Yes, Sir. Well, before we take up the Bill of Rights, the first thing in order then would be the first thing in the order of business tomorrow morning, and I move we take up prohibition.

The CHAIR. The chair will have to rule that the motion of the gentleman from Shoshone is out of order, unless accompanied by a motion to suspend the rules. The rules provide that these reports must be considered in the committee of the Whole in the order in which they come in.

Mr. MAYHEW. That is just what I am trying to get at.

The CHAIR. If the motion covers that, it is unnecessary to make it a motion, because that is a part of the business under the rules. The chair will submit the question to a vote if the gentleman desires.

PROPOSED ARTICLE ON PROHIBITION.

Mr. MAYHEW. It is provided in the rules that when the committee shall be ready to proceed with the order of the day, a motion to go into a committee of the whole convention on orders of the day shall have precedence over all other matters except motion to adjourn or take a recess. Now if it would be in order, I would move that we go into a committee of the Whole in the consideration of this prohibition matter. (Seconded.)

The CHAIR. The previous motion is withdrawn?

Mr. MAYHEW. Yes, Sir.

The CHAIR. It is moved and seconded that the——

Mr. GRAY. Mr. President, I would say this: That there was to be a further hearing on this question of

prohibition. There was a communication, as I understand it, submitted or that was to be submitted, to be considered by this convention.

Mr. MAYHEW. I don't know anything about any future communication. This matter is now before the convention and should be taken up and considered in the committee of the Whole. We are in favor, if I am in order, to resolve that we consider this matter in committee of the Whole at once, or have this matter referred to some committee on temperance or prohibition.

The CHAIR. I would suggest to the gentleman from Shoshone, if he will not object, that I received some time today—I don't remember when—a communication upon this same subject, which, unless there is objection, I will pass to the secretary and have read as a connected part of the same general proposition.

Mr. MAYHEW. I will not insist upon my motion until this is read.

The CHAIR. Yes; your motion will be put when this is read.

SECRETARY reads:

Boise City, Idaho, July 15, 1889. To the Honorable President of the Constitutional Convention for the In-Coming State of Idaho. Dear Sir:—Will your Honorable Body kindly oblige the National Woman's Suffrage Association by granting the undersigned a hearing at some hour most convenient for yourselves, at any time within the next two days, for the purpose of considering the fundamental principles of liberty as women who are not prohibitionists understand them. Very respectfully, Abigal Scott Duniway.

Mr. MAYHEW. That seems to be rather indefinite —the next two days—when the madam will be here to lecture us upon that point. As I understand it, this communication is to take matters other than the prohibition question into consideration. I insist upon my motion.

The CHAIR. It is moved and seconded by the gentleman from Shoshone that this convention now resolve

itself into a committee of the Whole for the purpose of considering the prohibition proposition. (Vote). The chair is in doubt. All those in favor of the proposition will rise and stand until counted.

SECRETARY. Those in favor, 23; opposed, 22, Mr. President.

The CHAIR. The motion prevails and the convention has resolved itself into a committee of the Whole. The gentleman from Nez Perce, Mr. Reid, will be kind enough to take the chair.

CONVENTION IN COMMITTEE OF THE WHOLE.

Mr. REID in the Chair. The convention is in committee of the Whole on the resolution offered by the Ladies of the Woman's Christian Temperance Union. Secretary will read the resolution.

SECRETARY reads:

ARTICLE .....

SECTION 1. The manufacture, sale, or keeping for sale of intoxicating liquors for use as a beverage is hereby prohibited, and any violation of this provision shall be a misdemeanor punishable as shall be provided by law.

SEC. 2. The manufacture, sale, or keeping for sale of intoxicating liquors for other purposes than as a beverage may be allowed in such manner only as may be prescribed by law.

SEC. 3. The general assembly shall at the first session under this constitution, enact laws with adequate penalties for its enforcement.

Mr. SWEET. Just read the prohibition question.

SECRETARY reads: To the Delegates of the Territory of Idaho in Constitutional Convention, Greeting: The Idaho Woman's Christian Temperance Union request and earnestly pray you, first, that in the constitution to be proposed to the citizens of Idaho for their approval or rejection, no discrimination on account of sex shall be made; but citizens of both sexes, possessing the necessary qualifications, shall be equally eligible as electors. Second, that the following shall be made an article of said constitution, namely:

ARTICLE .....

SECTION 1. The manufacture, sale, or keeping for sale of intoxicating liquors for use as a beverage is hereby prohibited, and any violation of this provision shall be a misdemeanor punishable as shall be provided by law.

SEC. 2. The manufacture, sale, or keeping for sale of intoxicating liquors for other purposes than as a beverage may be allowed in such manner only as may be prescribed by law.

SEC. 3. The general assembly shall at the first session under this constitution, enact laws with adequate penalties for its enforcement.

The CHAIR. Now read the first section.

SECRETARY reads Section 1.

The CHAIR. The section is before the convention for consideration as a committee of the Whole.

Mr. MAYHEW. In order that we may have some expression on this matter, I move that the convention adopt the section as read by the secretary. We may as well do it at once. (Seconded). (Laughter).

Mr. McCONNELL. Mr. Chairman, I move that it be referred to the committee of three consisting of the members who were appointed by the chair to escort the ladies here, to draft an article.

Mr. MAYHEW. I call the gentleman to order.

The CHAIR. What is the point of order?

Mr. MAYHEW. That it is not an amendment to the motion I made for the adoption.

The CHAIR. The chair holds that the point of order is well taken.

Mr. AINSLIE. In order to test the sense of the convention, I move the whole subject matter be indefinitely postponed.

The CHAIR. As a substitute?

Mr. AINSLIE. Yes, Sir; takes the place of the other motion—to indefinitely postpone.

The CHAIR. The gentleman from Shoshone moves that the first section of the article read be adopted by the convention; as a substitute the gentleman from Boise moves that the whole matter be indefinitely postponed. Is there a second to the motion? (Motion is seconded).

The CHAIR. It is before the convention. Any remarks?

Mr. MORGAN. Mr. President, I rise to a point of order. I think the amendment of Mr. McConnell

was in order. I will read the rule upon which I rely. (No. 32). "When a question is under debate, no motion shall be received but to adjourn, to take a recess, to proceed to the orders of the day, to lay on the table, for the previous question, to postpone to a day certain, to commit, to amend, to postpone indefinitely; which several motions shall have precedence of each other in the order in which they are arranged." That would make his motion to commit to a committee in order.

The CHAIR. It was not to commit.

Mr. McCONNELL. Yes, to commit to the committee.

The CHAIR. The motion was to refer it to a committee to be appointed by the chair. As I understand it, the convention committed this to the committee of the Whole and his motion, then, to be in order, would have to be that the committee of the Whole report back to the house and refer it then with the recommendation to the house that it then be referred to the committee. As I understand the rule.

Mr. BEATTY. Before we vote on this question, I should like very much to hear from the able member from Shoshone who has moved the consideration of this subject. I would like to vote upon it intelligently, and I have no doubt he can give us some strong reasons why we should vote in favor of his motion. I do not like to vote ignorantly on the motion and I hope it will be properly discussed and that we may hear from the able gentleman from Shoshone.

Mr. MAYHEW. I should say to that, Mr. President, I decline to address this convention or committee upon that question of prohibition, but refer the question back to my friend from Alturas, and let us hear from him.

Mr. AINSLIE. In order to put that motion properly—— Under the rules it has gone to the committee of the Whole so that it is already committed. I therefore place the motion in parliamentary language, that it report this memorial back to the convention with the

recommendation that the matter be indefinitely postponed. (Motion seconded).

The CHAIR. The gentleman from Boise moves that the question now before the house, being the first of these several articles under this resolution, be reported back to the house with the recommendation that it be postponed indefinitely. Is the committee ready for the question? (Vote).

The chair is in doubt. All in favor may rise and stand until the secretary can count them.

SECRETARY. In favor, 19; opposed, 23, Mr. Chairman.

The CHAIR. The motion is lost. The question now recurs upon the motion of the gentleman from Shoshone, that the committee adopt the first section as read by the clerk. (Question). (Vote). The noes seem to have it. The noes have it, and the section is not adopted.

Secretary will read Section 2.

SECRETARY reads Section 2. The manufacture, sale or keeping for sale of intoxicating liquors for other purposes than a beverage may be allowed in such manner only as may be prescribed by law.

Mr. CLARK. Mr. President, I move that when the committee rise it recommend to the house the adoption of a section which I will send to the clerk as a substitute for the section now before the committee of the Whole.

SECRETARY reads. The first concern of all good government is the virtue and sobriety of the people and the purity of the home which all legislation should further by wise and well-directed efforts for the promotion of temperance and morality.

The CHAIR. The section to substitute is before the convention.

Mr. CLARK. In anticipation of the same question from the gentleman from Alturas upon my right (MR. BEATTY), I give my reason for favoring this as a substitute. It is a literal transcription of the temperance plank of the last republican convention. It commends

itself, therefore, to the majority of this body as emanating from the highest political authority in the land.

Mr. MORGAN. I would like to hear the substitute read again.

SECRETARY reads the substitute again.

Mr. MAYHEW. I would like to inquire in what part of the constitution the gentleman is going to put that. (Laughter).

Mr. CLARK. In the Bill of Rights.

Mr. MAYHEW. Very well, then, the motion should be that the Bill of Rights be amended or for this to be added to the Bill of Rights.

The CHAIR. Is there a second to the gentleman's motion that this be adopted as a substitute? (Motion is seconded by several).

The CHAIR. Are you ready for the question? The clerk may read the original section.

(Secretary reads Section 2 of the memorial; also the substitute).

The CHAIR. The question recurs upon the motion of the gentleman from Ada, to adopt the substitute in place of the original section as read.

Mr. SWEET. As this is strictly a non-partisan convention, I would suggest an amendment to that by adding the plank in the democratic platform on the same subject. (Laughter). I can't quote it; I don't know that platform by heart, but if I can get hold of it I will submit it in writing and we will then have a non-partisan affair.

Mr. MAYHEW. I hope the gentleman will have time to hunt that up. If he can find any such provision as that in the democratic platform, I would like to see it. (Laughter). They have been known to steal a good deal from the republicans, but I don't think they have stolen that. (Laughter).

Mr. SWEET. Mr. Chairman, I am informed that the democratic platform is out of print, but I thought it might be committed to memory, probably by the gentleman from Shoshone.

Mr. MAYHEW. I have no doubt but what that principle may have been adopted some time in the democratic platform, but my recollection of the last fifty years is, I never heard of anything of the kind, and I will state for the benefit of the other side it has now become obsolete.

Mr. SWEET. I think that is true in part.

Mr. MAYHEW. No doubt of that, and our republican friends, or some of them I know, have adopted our democratic principle, the more you drink the wiser you get.

(Question! Question!)

The CHAIR. Will the gentleman from Latah send up the amendment?

Mr. SWEET. I am unable to reduce it to writing.

The CHAIR. All in favor of the adoption of the substitute of the gentleman from Ada, say aye. (Vote). The ayes have it and the substitute is adopted.

The CHAIR. The clerk may read Section 3.

SECRETARY reads:

SECTION 3. The general assembly shall at the first session under this constitution, enact laws with adequate penalties for its enforcement.

The CHAIR. What will the committee do with this section?

Mr. MAYHEW. I move its adoption. (Seconded).

The CHAIR. The motion is that the committee do adopt the section as read by the clerk. (Vote). The noes have it and the section is rejected.

The clerk will now read all of the article or any part of it for which a substitute has been adopted as it will be reported to the convention.

SECRETARY reads:

SECTION 2. The first concern of all good government is the virtue and sobriety of the people and the purity of the home, which the legislature should further by wise and well directed efforts for the promotion of temperance and morality.

The CHAIR. The question now recurs, shall the

section as adopted be reported to the convention with the recommendation that it be adopted?

Gentleman from NEZ PERCE. I suggest a change in the number of the section.

The CHAIR. Yes; without objection, it will be numbered "Article ——, Section 1."

All in favor of the article as adopted, that it be reported back to the convention with the recommendation that it be a part of the constitution, make it known by saying aye. (Vote). The chair is in doubt. All who are in favor of the article as read by the clerk being reported back to the convention, rise and be counted.

SECRETARY. Ayes, 23. Those opposed, 19.

The CHAIR. The ayes have it and the article is adopted.

The committee have disposed of the subject ordered referred to it. The motion is now in order that the committee rise to report progress.

Mr. WILSON. I move that the committee rise and report progress and ask leave to sit again. (Carried).

CONVENTION IN SESSION—PRESIDENT CLAGGETT IN THE CHAIR.

Mr. REID. Mr. President, the committee of the whole house having had under consideration a memorial referred to it by the convention, report the following:

Article ——, Section 1. The first concern of all good government is the virtue and sobriety of the people and the purity of the home, which the legislature should further by wise and well-directed efforts for the promotion of temperance and morality.

They recommend that this be adopted as a part of the constitution.

The CHAIR. The chair understood that the motion was that the committee rise and report progress and sit again on this subject. Am I mistaken?

Mr. WILSON. Yes, Sir; that was the motion I put.

Mr. REID. Not on this subject, but sit again.

The CHAIR. Well, if that is the motion, that is, what was adopted, I did not so understand the gentle-

man. The report of the committee of the Whole, gentlemen, is that the committee report the pending proposition back to the convention and report progress thereon and ask leave to sit again on this question.

Mr. MORGAN. If I understood it correctly, the committee upon its vote recommended that this become a part of the constitution. I suppose it was gotten at rather awkwardly. The intention of the committee of the Whole was that it be reported back to the convention with the recommendation that it become a part of the constitution, and the chairman of the committee of the Whole has so understood it and so reported it.

Mr. REID. If that had not been the understanding, it would have been out of order, without annulling the action taken upon it. Now the question is whether the report of the committee be adopted.

The CHAIR. The chair is, of course, perfectly willing to put anything to vote which was reported, but the understanding of the chair was, the motion was that the committee rise and report progress and ask leave to sit again. No one raising an objection, I assumed that that was correct.

Mr. REID. The question was put to the committee of the whole whether it be recommended to the convention to become a part of the constitution and that was submitted on an aye and no vote, and then the question was put by the chairman of the committee of the Whole that it was then in order to rise and report progress. I then understood the gentleman from Ada (MR. WILSON) to make a motion for the committee to rise and report progress and sit again on some other subject and we had then disposed of it.

The CHAIR. The chair understands under parliamentary rules that when an entire proposition is disposed of and reported, that to report progress and ask leave to sit again leaves it in the same position as it was in case the resolution or proposition had not been finally passed upon. I will ask the gentleman from Ada, Mr. Wilson, what the motion was.

Mr. WILSON. My motion was that the committee rise and report progress and ask leave to sit again; that is, leave to sit again on this question. No objection was raised and the motion was put and carried, and it was perfectly in order for this reason, that the special order on which this body went into a committee of the Whole was a question of constitutional prohibition. My friend from Ada county introduced a substitute which is not constitutional prohibition. I don't know what it is. It is a very nice sentiment because it is a portion of the Republican platform of last year, but it is not constitutional prohibition and that is what we are considering—what we have been considering in the committee of the Whole in order to determine upon it, and therefore my motion was perfectly in order and was carried.

The CHAIR. That will be the ruling of the chair unless there is further light upon it. The report of the committee, gentlemen, is that the committee rise and report progress and ask leave to sit again on the proposition pending before the committee. All those in favor of adopting that report signify it by saying aye. (Vote). The chair is in doubt. All in favor of adopting the report will rise and stand until they are counted.

SECRETARY reports 17 in favor; 19 opposed.

Mr. REID. Mr. President, I move that that part of the report of the committee of the Whole which recommended the adoption of the substitute offered by the gentleman from Ada be now adopted as a part of the constitution. (Seconded). And on that motion I demand the ayes and nays, if I can get sufficient support. (Seconded).

The CHAIR. The secretary will call the roll.

Ayes: Messrs. Allen, Andrews, Armstrong, Batten, Beane, Beatty, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crook, Crutcher, Gray, Hagan, Hammell, Hampton, Hasbrouck, Hays, Hendryx, Hogan, Howe, Kinport, Lamoreaux, Lewis, McConnell, Melder, Myer, Morgan, Pefley, Pierce, Pinkham, Poe, Pritchard, Pye-

att, Reid, Salisbury, Sinnott, Shoup, Standrod, Sweet, Taylor, Underwood, Wilson and Mr. President. 46.

Nays: Messrs. Ainslie, Harris, King, Lemp, Mayhew. 5.

Mr. MAYHEW. Mr. President, I desire to change my vote. I vote aye. (Laughter).

The CHAIR. Forty-seven votes in favor of the adoption of the motion that was made by the gentleman from Nez Perce, and 4 against. The motion is adopted.

Mr. REID. In order to dispose of it finally, I move that the motion by which it was adopted be reconsidered and that that motion lie on the table. (Seconded).

The CHAIR. It is moved and seconded that this motion by which the report of the committee of the Whole was adopted, be reconsidered and that the motion to consider shall lie upon the table. (Vote). The chair is in doubt.

Rising vote shows 32 in favor, 30 opposed.

Mr. MAYHEW. I now move that the adoption of that portion just read and adopted by this convention as a part of the constitution, be made a part of the Bill of Rights. (Seconded).

Mr. REID. I rise to a point of order. The consideration of the Bill of Rights is not before the convention and should be considered in committee of the Whole, and furthermore, I think that falls within the province of the committee on Revision anyway.

Mr. MAYHEW. I wanted it in a prominent place.

The CHAIR. The chair holds the point of order well taken. What is your further pleasure?

Mr. BEANE. I move that we adjourn until 10:00 o'clock tomorrow morning. (Seconded).

The CHAIR. It is moved and seconded that the convention adjourn until 10:00 o'clock tomorrow morning. (Carried).

TENTH DAY.

TUESDAY, *July 16, 10:00 o'Clock A. M.*

Convention called to order by the president.

Prayer by Chaplain Smith.

ROLL CALL. Present: Messrs. Ainslie, Allen, Andrews, Armstrong, Batten, Beane, Beatty, Bevan, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crook, Crutcher, Gray, Hagan, Hammell, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Howe, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Savidge, Sinnott, Shoup, Standrod, Taylor, Underwood, Whitton, Wilson, Mr. President.

Excused: Messrs. Ballentine, Glidden, Harkness, McMahon, Moss, Stull, Vineyard.

Absent: Blake, Harris, Hendryx, Jewell, Pefley, Robbins, Steunenberg, Sweet, Woods.

Journal of yesterday read by secretary, and approved.

Mr. SHOUP. I believe there are some members of the convention present who have not taken the oath.

The CHAIR. Will the gentleman inform the chair who they are?

Mr. SHOUP. Mr. Anderson from Bingham and Mr. Heyburn from Shoshone.

The CHAIR. The delegates present who have not been sworn in as members of this convention, will please rise.

(Messrs. Heyburn and Anderson sworn).

The CHAIR. If there are no objections, the reading of the report of the Ways and Means committee will be dispensed with. Any corrections to be proposed?

Mr. AINSLIE. I believe I was here at roll-call, Mr. President. I am reported absent.

Mr. CLARK. I was in before the conclusion of roll-call. I would like to have the entry so made.

The CHAIR. If there are no further corrections, the journal will be considered as approved.

PRESENTATION OF PETITIONS AND MEMORIALS.

Mr. BEATTY. Mr. President, I will move to suspend the rules for the purpose of making a motion. I believe that this convention should hear the representatives of all causes, whether we believe in those causes or not. A lady is present who has a national reputation, and desires to address this convention. I believe her written communication is before the convention. I move you, therefore, that the rules be suspended for the purpose of making the motion that she be allowed to address this convention at such time as may be agreed upon. She is present this morning and I suppose would like to have some disposition made of her communication before the convention. It was passed over yesterday, I think, without objection offered and informally.

Mr. AINSLIE. Before that motion is put, I desire to offer an amendment in order not to delay members here in committee business, that when the convention adjourns today, it adjourn to meet at 8:00 o'clock tonight for the purpose of hearing the lady on this subject. (Seconded).

The CHAIR. It is not necessary to make any motion to suspend the rules, as I understand it. This petition was presented upon yesterday and sent up before the convention in the regular order of business on Petitions and Memorials.

Mr. BEATTY. Then I will withdraw that motion and Mrs. Duniway may be heard at the hour of 8:00 o'clock this evening, if that will suit her. I don't know whether that hour will suit her or not.

The CHAIR. It is moved and seconded that when this convention adjourns, it adjourn to meet at 8:00 o'clock this evening, for the purpose of affording Mrs. Duniway the opportunity of presenting before this convention the propositions which are contained in the petition presented by her on yesterday.

(Motion put and carried).

REPORTS OF STANDING COMMITTEES—SEAT OF GOVERNMENT, ETC.

SECRETARY reads as follows:

"To the President and Members of the Constitutional Convention: Your committee on Seat of Government, Public Institutions, Buildings and Grounds, respectfully submit the accompanying report. FRANK P. CAVANAH, *Chairman.*

The CHAIR. The report will lie upon the table to be printed. Any further reports from standing committees? Reports from select committees? Final readings? That exhausts the regular order of business for the day, gentlemen, so far as reports are concerned.

Mr. SHOUP. Mr. President, I move that the convention go into a committee of the Whole on the orders of the day. (Seconded by Gray). Motion put and carried.

The CHAIR. The gentleman from Custer, Mr. Shoup, will take chair.

Mr. SHOUP. Mr. President, I suggest that the first matter under consideration is the Bill of Rights, and I am chairman of that committee; I ask that some other member be called to the chair.

The CHAIR. The Vice-President, Mr. Reid.

Mr. REID. Mr. President, I ask to be excused. I have some amendments to offer for that bill and suggest the gentleman from Bingham until the first bill is disposed of and then I will relieve him.

COMMITTEE OF THE WHOLE.

Mr. MORGAN in the chair.

ART. I.—PREAMBLE AND BILL OF RIGHTS.

The CHAIR. Gentlemen, the convention is now in a committee of the Whole. What is your pleasure? The report of the committee on Preamble and Bill of Rights is in order. The secretary will read the first section.

SECTION 1.

SECRETARY reads Article I., Section 1. All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.

Mr. SHOUP. Mr. President, I think the preamble should be first read and considered.

SECRETARY reads Preamble as follows:

We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessing and promote our common welfare, do establish this Constitution.

The CHAIR. The secretary suggests that under the rules, the Preamble is to be last read and last considered. What is the number of the rule?

Mr. WILSON. Rule 49.

The CHAIR. The chair holds that under the rule the Preamble should be last read and considered. Then what shall we do with the first section?

Mr. ALLEN. Mr. President, I move its adoption. (Seconded).

The CHAIR. Are you ready for the question, gentlemen? (Question put and adopted).

SECTION 2.

SECRETARY reads Section 2: All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the Legislature.

Mr. HARRIS. I move the adoption of Second Section. (Seconded). Motion put and carried).

SECTION 3.

SECRETARY reads Section 3: The State of Idaho is an inseparable part of the American Union, and the

Constitution of the United States is the supreme law of the land.

(It was moved and seconded that it be adopted. Carried).

SECRETARY reads Section 4:

SECTION 4.[1] The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State; nor to permit any person, organization or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

It is moved and seconded that it be adopted. (Mr. Ainslie and Mr. King rise).

The CHAIR. I recognize Mr. King.

Mr. KING. Mr. President, I desire to amend that section. Not that I have anything against the words that I propose to strike out. I propose to amend by striking out all after the word "opinions" in the third line and to the word "crime" in the eighth line of the printed bill in the 4th section. My reason for doing it is that it seems to me the words I propose to strike out are utterly unnecessary. The first line asserts a principle that every man, I believe, in this territory agrees to, that "The exercise and enjoyment of religious faith and worship shall forever be guaranteed." I presume there is not a man in the territory of Idaho that would

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1—From a copy of the section as reported.

object to that. "And no person shall be denied any civil or political right——"

Mr. BEATTY. I rise to a point of order. The gentleman is speaking on a question that is not before the house.

Mr. MAYHEW. Well, I second the amendment in order that the gentleman may be heard.

The CHAIR. Proceed, Mr. King.

Mr. KING. The second thing in this is, "And no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions." That is a simple statement of fact that I do not suppose you could find a man within five thousand miles of here that would object to. "But the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations." Now, why that is put in I haven't any earthly conception. Does the granting to a man—guaranteeing to him his religious faith and worship and guaranteeing to him protection that he shall not be deprived of any of his political rights or privileges or capacity—is there anything in those rights that by any possible power of construction would lead a man to suppose that he could claim exemption from being put under oath or affirmation? If the clause read "that the liberty of conscience hereby secured should not be construed to dispense with oaths," then it might interfere with a man's religious faith, because we know that there are large bodies of men all over the world who have conscientious scruples about taking an oath, but they are perfectly willing to affirm. Secondly, a man could not under the exercise of the two clauses I have read, guaranteeing religious faith and that no man "shall be deprived of his civil or political rights, privileges or capacity on account of his religious opinion"—no man could claim to be exempt from taking an oath or affirming, one or the other. Then why put that in there? Of course, no man would expect, under the clause giving him freedom of worship, that he could claim exemption from taking an oath or an affirmation if he

be put before a jury, if he is brought up to testify as to whether he will support the constitution of the state or the United States, or any other necessary clause in the trial of a suit, and claim that he could neither be compelled to take an oath or affirmation because the state had guaranteed to him his religious freedom. I don't see any necessity for putting that clause in. I cannot conceive that it is possible that any man should have an intellect so obtuse as to claim under those guarantees for freedom of religious worship, the freedom or right to be exempt from either taking an oath or affirmation in the ordinary affairs of life. But yet, if you put that in, it would seem to hold to the idea that you might put in a clause relating to oaths and affirmations that would interfere with the rights that are guaranteed. Then it goes on with the disjunctive conjunction, if you will fill up the ellipsis, "but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the state." Why put that in? I cannot conceive. Simply because the state guarantees a man his right to religious liberty and that he shall never be deprived of any of his privileges as a citizen on account of his religious belief; to say that these clauses shall not be construed to prevent laws from being enacted to prevent men from the commission of crime! You might continue that clause indefinitely, almost, and say that these clauses shall not be construed to excuse acts of licentiousness, polygamous or other pernicious practices inconsistent with morality or the peace of the state. Is there anything in the first two sections there that by any possible construction, a man could claim a right to practice any of those things? Could any man possibly claim a right to act in a licentious or polygamous manner or any other pernicious manner inconsistent with morality or the peace of the state, simply because he had been allowed the right of freedom to worship God as he saw proper, and to guar-

antee to him his rights and liberties and privileges as a citizen that they should not be taken from him on account of his religious belief? Could a man under either of those clauses claim to have the right to act in a manner contrary to the natural and moral law of the country? Certainly not. It seems to me a jest. Then why insert these clauses in there? They add no force; they add no limit, as I can see, to the powers granted in the first two clauses. Then it seems to me unnecessary to put this in. It goes on then: This section shall not be construed so as to "permit any person, organization or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy or any other crime." We might insert any amount of crimes there; murder, treason, robbery and all that. Is there any person in the world that would claim exemption from punishment and the loss of his liberty, of his rights as a citizen on the ground that, though he had committed those acts, he had been granted religious liberty? Why, it is absurd to think any living man would claim exemption from these crimes. I cannot see that it is any use to put these clauses in. They have no force, no bearing, they assert no principle; they are not in accordance with the first and second clauses; have no connection with them that I can see. There is no reason to suppose any man would claim a right to do these acts simply because he had been guaranteed the right of freedom to worship. Then I say it is useless to put that in. Therefore I would strike it out. Now the next two clauses I am perfectly satisfied with: "No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship." Probably not a man in the house would dispute that, or in the state, but I can't see why it is necessary to put it in the constitution. Why, we are asserting principles, asserting something that has no bearing

upon this particular place that it seems to make an exception of.

(Question!).

The CHAIR. The gentleman will send his amendment to the secretary.

SECRETARY reads: I move to amend Section 4 by striking out all the words between the word "opinion" in the third line to "crime" in the 8th line.

CHAIR. Are you ready for the question? (Question, question). (Motion put and lost).

Mr. AINSLIE. I desire to offer an amendment to Section 4.

SECRETARY reads: To amend Section 4 by continuing after "worship" at the end of line 11, the following: Bigamy and polygamy is forever prohibited in the state and the legislative assembly shall provide by law for the punishment of such crimes. (Seconded).

Mr. AINSLIE. In reading this Bill of Rights over, I find nothing in here in regard to these two offenses except by implication in the preceding line of Section 4. Now this question of bigamy and polygamy has been an important question in the politics of this territory, and I believe the republican party have posed as the champions of domestic virtues and the great foe of bigamy and polygamy. In the report made by the committee, of which the majority are republicans, and the chairman is a republican, I fail to find any denunciation of these two heinous offenses. Now, sir, as the democratic party has been placed in the false position—the attempt has been made to place the democratic party in a false position in this territory as being the apologists and defenders of these polygamous practices of Mormonism, I desire to say I do not wish to leave that question to the fluctuations of legislative assemblies, the complexion of which may be changed every two years. I desire to plant in the organic law of the land, the constitution for the state of Idaho itself, the principle of opposition to these two offenses, and place the two political parties squarely upon that issue here today.

If the republicans are honest in their denunciations of bigamy and polygamy and they doubt the honesty of the democratic party as represented by this convention through their delegates upon this question, let that show, sir, upon the call of the roll or upon the vote taken in this committee and upon the call of the roll in the convention, as to whether the two parties are honest or not in their attempts to stamp out this twin relic of barbarism. Now, sir, I move that as an amendment to that section.

Mr. BEATTY. I am very glad indeed to find that my friend from Boise takes the position he does upon this question. I congratulate myself as chairman of the committee on Elections and Suffrage, that when the important question comes before that committee, as it will when the committee meets, that my friend here will not be in opposition to the strong position that the republicans of that committee will take upon that question. This amendment he now proposes to this section, will be in part as a duplication of what I know will be proposed and upheld before that committee on Elections. I will say, however, that I will not object to this amendment, for one, for I do not care how often that principle—that principle of bitter opposition to these crimes —shall appear in this constitution. I want the people of Idaho and the people of the world to know that the republican party and the democratic party, or, in other words, the loyal American people of the state of Idaho is opposed—are opposed to that crime. And therefore I say let it appear in this constitution, if my friend desires, in every section of the constitution, and he will not find this republican, for one, voting against it as often as it may come up. (Applause on the republican side).

Mr. SHOUP. I would like to hear that amendment read.

SECRETARY reads as follows: To amend section 4 by continuing after "worship" at the end of line 11, the following: "Bigamy and polygamy is forever pro-

nibited in the state and the legislative assembly shall provide by law for the punishment of such crimes."

Mr. REID. Mr. President, I suggest that the word "is" be stricken out and the word "are" put in, as an amendment to the amendment. They are two distinct crimes.

The CHAIR. Is the amendment accepted?

Mr. AINSLIE. I do not care anything about the construction of it so the sentiment is inserted.

The CHAIR. The chair will recognize the gentleman from Custer if he wishes to address the house.

Mr. SHOUP. I have no objections to that amendment if it cannot be in any way construed as imposing any restrictions upon the legislature in this matter. From the reading of it, I am not able to see that it will.

Mr. BEATTY. I will call for the reading of the section again, the amendatory portion.

SECRETARY reads: To amend Section 4, etc.

(Question! Question!). Question put and amendments is adopted.

Mr. MAYHEW. I now move the adoption of the section as amended. (Seconded).

Mr. HEYBURN. I desire to move an amendment to the section, with your permission, on Bill of Rights. Amend by inserting in the 4th line, after the word "with," the word "such," and after the word "affirmations," the words "as may be required to be done before exercising the right of franchise or acquiring any portion of the public lands as provided by this constitution or the laws of the state."

Mr. AINSLIE. I think that properly belongs to the committee on Suffrage. This is endeavoring to usurp the functions of another committee of which the gentleman from Alturas is the chairman, and I think the committees will be able to dispose of that matter and report it to the convention without incorporating it in another place where it has not been considered.

Mr. MAYHEW. I would like to hear the amendment read.

SECRETARY reads: To amend by inserting in the 4th line, etc.

Mr. HEYBURN. Mr. President, the object in offering that amendment is to reserve to the committee, to which the gentleman has referred, the powers that are vested in it and to reserve to this convention the power and authority to make such provision as it may see fit; to reserve to the legislature of this territory the power to provide for these oaths and affirmations. That is the primary cause of inserting it in this clause. It reads: "But the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness," etc. It simply defines the nature and character of oaths that shall not be excused by the special clause contained in the first three lines of this section, so that it will provide it shall not be construed to dispense with such oaths and affirmations as may hereafter be provided to be taken before exercising these two rights—the right of franchise, leaving it open to this convention and to that committee to take such action as they may deem proper and leave it also open to the legislature to take such action as it may deem proper in reference to these oaths.

Mr. BEATTY. I would like to hear the section read as proposed to be amended.

SECRETARY reads.

Mr. MAYHEW. Mr. President, I can't say that I am opposed particularly to the incorporating in this section of the amendment proposed by the member from Shoshone (MR. HEYBURN) provided it does not appear in any other article in this constitution. It strikes me, however, that the amendment is a good one and should appear in some part of the constitution, but my impression at present is it belongs to that portion of the constitution in relation to franchises and elections. I am not opposing the amendment, the principle to be incor-

porated, but I think it should come in that portion of the constitution. I do not want to be considered as opposing the principle enunciated by this amendment, but I think it belongs in another part of the constitution—to another article.

Mr. BEATTY. I am with the member from Shoshone who last addressed the committee. I do not oppose the principle, but I have this to suggest: That certainly will be provided for, at least we will attempt to have that provided for in the report of this committee to which reference has been made. Now the question in my mind is whether we had better encumber our constitution with too many qualifications. This constitution is to go before congress. It has to act upon it, and I do not, for one, want to get these matters repeated in section after section so that congress will think we are wild and may induce them to reject our work. Now the sentiment is all right and certainly every member here knows that they must be embodied in the provisions which will be reported by the committee on Suffrage and Elections. Now I believe as the gentleman from Shoshone (MR. MAYHEW.) I am in favor of the motion suggested—I think it will not interfere with any action that may be taken by that committee, but it certainly will result in a repetition of the same matter in the constitution. Now, there is another thing I am watching. I don't know what we propose to do, whether when we get through with this bill of rights we will then make a motion which will make it substantially a part of the constitution and cannot be changed by any subsequent act, or which will prevent us from afterwards proposing anything in conflict with it. I am inclined to think in going ahead now and adopting this without knowing what provisions will be reported by the other committee, we are somewhat at sea, but at all events, if we put this duplication in here, I don't want it in such shape that we cannot afterwards amend it so as to make it in harmony with the report of the committee on Elections, and I must say I doubt the propriety of putting it in

here, because it certainly ought to appear in the other report.

Mr. SWEET. I hope the amendment offered by the gentleman from Shoshone will be adopted. I don't think it is in place in this section, or, rather, I did not think it ought to have any place in this section until the amendment offered by the gentleman from Boise was adopted. But I do think that since the first amendment has been adopted, the second amendment is necessary, and I think further, in continuing the thought advanced by the gentleman from Alturas, that if we attempt to make political records instead of a constitution, that we will very likely wind up with a constitution that we will have to call upon the Supreme Court to interpret, the first thing we do, and we will be likely to so mix this question up between suffrage and constitutional provisions that the first act passed by the legislature adding an additional qualification for suffrage will be found to be unconstitutional by the Supreme Court. I think it will be the duty of the legislature to prescribe the punishments and penalties for polygamy and bigamy and unlawful cohabitation and all that stuff, and I am in favor of inserting such a clause in the constitution in some place (if it should be necessary) as will enable them to do so. But when it comes to having this matter involved in every section, nearly, of the constitution, then I think we are absolutely endangering our ability to take care of it through the legislature. And I propose and insist that this convention guard against the privilege of the legislature to treat this question in every way, shape or form in which it may be presented from time to time after we have become a state and it becomes the duty of the legislature to meet it. I do not know, Mr. Chairman, that the two amendments, the one suggested by the gentleman from Boise and the other by the gentleman from Shoshone, will be likely to result in any such danger, but certainly it has gone far enough in the matter, and I do not think there will be any doubt about the understanding of the

sentiment and opposition of this convention on the question of polygamy when the clause relating to the right of suffrage is presented. I therefore think the less we encumber the matter by leaving the legislature to worry in the premises, the better it will be for us. But as I said before, since the first amendment has gone in, I think it essential there in order that it may be clearly understood that the amendment proposed by the gentleman from Shoshone go in also and I therefore hope that it may be adopted.

Mr. HEYBURN. Before taking a vote on this, inasmuch as some gentlemen seem to have misapprehended the meaning of the mover of this amendment, I desire to call your attention to the first and second lines in this section that is proposed to be amended, which reads: "The exercise and enjoyment of religious faith and worship shall forever be guaranteed." Now I am not addressing myself to any party or the members of any party; but I am addressing myself to every member of this convention who is opposed to the institution of polygamy and bigamy as it is embodied in the Mormon church, and the object of offering this amendment grows out of the fact that one of the arguments that have taken place in the Supreme Court of this territory[1] and elsewhere against the validity of the test oaths that all people have been required to take, is that it is a violation of these principles and would be a violation of these two first lines of Section 4, and in order that it may never be said in argument in the court hereafter, or elsewhere, that the makers of this constitution did not intend to except that institution out of the provisions of those two first lines of Section 4, I hope that this convention will put it in such language that there will be no uncertainty about it, and for that purpose I move this amendment, so that it shall read, first, that these things shall be guaranteed to all people—that the enjoyment of relig-

1—See Innis *v.* Bolton, 2 Ida. 442.
Wooley *v.* Watkins, 2 Ida. 590.

ious faith and worship shall forever be guaranteed, and then let this convention state in the constitution that it was never contemplated that these things come within the scope of religious faith and worship, or the enjoyment of religious faith and worship, by stating so on the face of the constitution itself and excepting these institutions from out of the operation of the grace of this clause, so that if, as the gentleman from Alturas would seem to indicate, we were encroaching upon the functions of another department of the constitution, this does not provide that any test oath or any other oath or affirmation shall ever be required. It simply leaves it open for this constitution in express terms to require, if it is deemed wise, and leaves it open for the legislature of the state, if this constitution shall endow it with the power, to provide and protect itself against this institution. And it seems to me that it is in entire harmony with the sentiments that are expressed by both the gentleman from Boise and the gentleman from Alturas and the gentleman from Latah, that we shall express our principles upon this question in no uncertain terms, but so certain that it will not be a case for the Supreme Court or any other court to interpret the constitution as to what we mean when we say "religious liberty," and the right to worship God as man pleases shall be one of the fundamental rights of every citizen, so that it will not be a question for interpretation, but a question of the plain letter of the statute, and with those omitted, there will always be that argument to be met that Section 4 of your constitution guarantees us a right that the section that afterwards prescribes the suffrage of the citizen denies us, and the constitution on its face is inconsistent. It is against that evil that we desire to protect ourselves by this amendment.

Mr. HAGAN. The amendment goes to that portion of that section which originally is aimed at this proposition—that the liberty of conscience shall never be so construed as to dispense with oath or affirmation in relation to certain pernicious practices mentioned in

the section. Now the amendment is wider. If the clerk will read this amendment again. The amendment does not propose to confine this oath to the subject the section itself did.

SECRETARY reads: "Amend by inserting in the fourth line after the word "with," the word "such," and after the word "affirmations," the words, "as may be required to be done before exercising the right of franchise or acquiring any portion of the public lands as provided in the constitution or by the laws of the state."

Mr. HAGAN. We have nothing to do with the disposal of the public lands of the United States, nor can our constitution or our statutes impose upon the subject or citizen any unnecessary oaths or affirmations in the entry of public lands, nor does this section propose to deal with that subject. Now, as was remarked by the gentleman from Alturas, there is a report which is bound to come before this convention that will cover this field so far as elections are concerned. I know of no report that will come here concerning the disposition of public lands, because we are limited by the constitution of the United States as to that subject. I do not believe in the amendment for the reason that it is not in harmony with the section itself and does not strike where it should. The oaths or affirmations provided for in that section refer, as the context shows, to the excusing of acts of licentiousness, or justifying polygamous or other pernicious practices inconsistent with morality and the peace and safety of the state. These are the oaths and affirmations spoken of in this section, and I think, with all due deference to the vote of the convention, as a lawyer, that all of that is entirely unnecessary because no court, no lawyer or no constitution as ever construed —in fact, the Supreme Court of the United States has decided that the liberty of conscience would not excuse a person from taking oaths or affirmations required by law to prevent just such crimes as are provided for in

that section. In the case of People vs. Reynolds,[1] liberty of conscience was set up and the Supreme Court of the United States decided upon it. I think if it is here as a declaration of our principles, it may well stand; as a lawyer drawing a constitution I would say it is entirely unnecessary to have it there at all; I voted to retain it there, but I say the amendment does not apply, in my opinion, to the subject to which consideration is had in the section itself. I therefore think it should be rejected. And I think it ought to be rejected on the other ground stated by the gentleman from Alturas, that if we are here to reiterate and repeat in every article of this constitution something that we must anticipate in another section, we certainly will have after a while an incongruous and inconsistent mass of stuff clear through it. So far as election is concerned and suffrage is concerned, there is a competent committee that will report here in due time upon that subject in this convention and the convention will declare its principles upon this subject. I therefore hope the amendment will not prevail.

Mr. HEYBURN. As a matter of correction, drawing the attention to the point in reference to public lands, I did not suppose for a moment we would ever have any control of the public lands of the United States, but it is to be hoped that this state will possess the public school lands, the university lands and a large body of other lands such as may be donated to it, and it was looking to the protection of those lands that the amendment embodying that principle was made.

Mr. HAGAN. I will ask the gentleman if there is any committee on this subject that will report here upon the public lands of the territory or the state.

The CHAIR. There is such a committee.

Mr. AINSLIE. There is one view I think has escaped the attention of the gentleman from Shoshone, if you read carefully the section where it is proposed to make this interlineation or amendment on the question of

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[1]—98 U. S. 145, 25 L, 244, affirming 7 Utah 319.

"liberty of conscience as hereby secured shall not be construed to dispense," etc. Now the original text of the report is "dispense with oaths or affirmations" which covers every case where oath or affirmation might be required by the legislature, such as verification of pleadings in civil actions, or the oath of a witness in court or his affirmation in court. Now to restrict it in terms as proposed by the gentleman from Shoshone, that it shall not be intended to dispense with such oaths and affirmations as shall be required to be taken before exercising the right of franchise and public lands, would put it in a restrictive sense and deny the right of the legislature to provide for oaths and affirmations of witnesses in court or in verification of pleadings. Now the report by the gentleman from Custer County would leave it open for the legislature to provide for all of these oaths and affirmations wherever they thought it necessary. It is controlled in its scope and actions by necessity. The language used by the gentleman from Shoshone, it seems to me, would confine it exclusively to oaths provided by the legislature in the exercise of the right of suffrage and public lands.

Mr. BEATTY. Mr. President, I want to refer to one other matter, and that is the difficulty the state of Nevada[1] got into and also the state of Wisconsin.[2] There is a decision from each of those states upon this question. The constitution attempted to prescribe, or did prescribe, the qualifications for its electors. The result was when Nevada attempted to pass a law recently to prevent Mormons from voting, they found it was construed to be in conflict with the constitution and the law was held invalid. Now I don't want to be understood to say that the amendment which the gentleman from Shoshone

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[1]—See Whitney *v.* Findley, 20 Nev. 198, construing Sec. 7, Art 2, Nevada Const.

[2]—State *v.* Williams, 5 Wis., 308, construing Sec. 8, Art. 13, Wisconsin Const., and State v. Baker, 38 Wis., 86; both cited in the Nevada case.

brought in here as they come, with little chance for deliberation and final consideration, I fear we may proposes will have that effect. These amendments being adopt something that will operate in that restrictive form to which the gentleman from Boise has referred, and which I know has so disastrously operated in the case of Nevada as well as in Wisconsin. And if I did not think this matter would be fully provided for in the committee on Elections and Suffrage, I certainly would be in favor of introducing it here. But it certainly will be provided for in that committee, and I will say in stronger terms than these—in as strong terms as can be framed by the use of the English language. I must deprecate the idea of putting too many duplications in this constitution, unless the convention will finally give the committee on Revision the power of eliminating these duplications so as to have it appear harmonious. I don't know that it will have that power, but if it has that power, our actions here would not be regarded as final and the committee will eliminate these duplications thus proposed. We can correct them. But I hope we will not by amendments put on here in a hurry tie ourselves up so that the legislature cannot from time to time add additional qualifications for suffrage so as to meet the schemes of the Mormon church. We know how they operate, and it is in the intention of the committee to which I have referred, when they make their report, to leave the legislature alone in the future to meet these questions. I have been trying to convince myself that the member from Shoshone, the mover of this amendment, is right, but I am unable yet to convince myself. I am always ready to change my opinion when I am convinced that I am wrong in my first opinion, and if I can be convinced by the gentleman's eloquence or that of any other gentleman who has taken the position he has here, I would be glad to change, but I am now of the opinion that this amendment should not be made.

Mr MAYHEW. I desire to call the attention of the convention to one fact. I don't believe the committee

on Revision would have any right to eliminate any of those amendments from any one article. I don't believe it belongs to them to amend a section or strike out any amendment offered by this committee in a section. I think they have not the power to do so. While I don't desire to discuss this matter any further, after weighing the arguments of the gentleman, I am inclined to think that this amendment is not correct, that it should not appear in this article, that it belongs to the committee on Election and Suffrage to provide that and not in this part of the constitution.

The CHAIR. The question is on the amendment of the gentleman from Shoshone. (Vote). Motion is lost.

Mr. CLARK. Mr. President, I move to insert in line 9, after the word "denomination," the words "or pay tithes," so the section will read, "No person shall be required to attend or support any ministry or place of worship, religious sect or denomination or pay tithes against his consent. (Seconded).

Mr. SHOUP. I don't understand how any one can be compelled to pay any tithes by law.

Mr. CLARK. Mr. President, the question is a pertinent one. If the gentleman lived in a Mormon settlement and the water right was held by the church and he did not pay tithes and his water right was cut off, he would find a mighty strong compulsion to pay his tithes. This guarding clause is to be inserted in the constitution of Utah where there are one hundred thousand Mormons. It is absolutely necessary to protect these men who live in this settlement and would like to be free from its control. This provision prohibits the compulsory payment of money to support religious denominations. The tithe often is not only to support religious denominations, but it is also to support a board of emigration and a large number of other expenses connected with the same. The claim may be made, therefore, that it is hardly a religious contribution, and yet it is a contribution as strictly enforced in certain settlements as

any other tax is enforced, and in a way that men find it very difficult to escape.

The CHAIR. Are you ready for the question? Will the secretary read the amendment?

SECRETARY reads: Insert after the word "denomination" in line 9, the words, "or pay tithes."

MEMBER. How would the section read?

SECRETARY reads: No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent. (Vote). Motion carried.

The CHAIR. The motion is on the adoption of the section as amended. Are you ready for the question? (Question, question). Carried without a dissenting vote.

SECRETARY reads Section 5:

SECTION 5.

"SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law."

The CHAIR. It is moved and seconded that the section be adopted. (Carried).

SECRETARY reads Section 6:

SECTION 6.

"SEC. 6. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The CHAIR. It is moved and seconded that the section be adopted. (Carried).

SECRETARY reads Section 7:

SECTION 7.

Mr. REID. I offer the following amendment:

SECRETARY reads: "In Section 7, line 1, insert after the word "but," "by consent of the parties."

Mr. REID. Mr. President, it will read "but by consent of the parties in civil actions, three-fourths of the jury may render a verdict" I recognize the fact, Mr. President, that we are disposed to put in innovations. We are making departures from some of the old precedents in one or two instances. I think that parties ought not to be compelled to consent to a verdict of three-fourths. I take it under the statute that they can consent to a majority verdict, a verdict of three-fourths, but the object of this amendment is to prevent the legislature from enacting a statute which will make it compulsory. I know in civil actions, by stipulation, you can agree to almost anything. This reads "in civil actions," etc. Now if the legislature follow that up by a statute making it compulsory upon the parties to accept a verdict of three-fourths, then I am opposed to it. I think it ought to be put in there "by consent of the parties." They can then provide by statute, if they wish, that where parties agree to it, three-fourths of the jury may render a verdict. If three-fourths can render a verdict, why not just have the jury of nine and save the expense connected with the other three and let the verdict be unanimous? With a great deal of hesitancy I think we ought to depart from the old precedents. If parties choose to do so, let them consent, but we have tried this jury system a number of years. It has been handed down to us through two centuries, and I believe about the only innovation that has been made in it, the number has been cut down to twelve, whereas it was originally twenty-two or twenty-three, and it has proven to be one of the best of human systems we can adopt and I think we ought to hesitate how we depart from it. By inserting these words, parties by consent may do it, but it will also prohibit the legislature from making it compulsory. This is the object with which the amendment is offered.

Mr. SHOUP. Mr. Chairman, I would ask the mover of this amendment how that consent is to be expressed.

Mr. REID. They can consent in open court or by

stipulation. The legislature can provide the machinery. I would strike out the whole, but I think it can be so amended so as to reach the same thing. I want to prevent the legislature from making it compulsory that we shall accept a verdict of three-fourths. We can do that now under the statute in civil cases. We cannot in criminal cases, and it is well that the committee put in a proviso that you may waive jury trial in certain criminal cases. But I want to fix the constitution so the legislature cannot make it compulsory on civil suitors to accept a verdict of three-fourths. I will say, sir, in answer to the chairman of the committee, that I suggest that it leave the machinery for the legislature. They can regulate it by any statute, and I say this consent may be expressed in open court or by stipulation.

Mr. CLAGGETT. The amendment offered by the gentleman from Nez Perce (MR. REID) covers one of the most important propositions that this convention will ever be called to pass upon, and that is the question of the jury system. I take issue entirely with the gentleman when he says he proposes to leave this question to the legislature. If the amendment which he has offered is adopted, the legislature has no function to perform in connection with this matter. No one can waive the old common law rule of unanimous verdict except the parties to the action themselves, and that is a waiver that need never be expected as long as the attorney for the plaintiff or defendant, as the case may be, considers that he has a bad case to try. It is an axiom in the legal profession that whenever you have no right, demand a trial by jury, and stand upon a verdict of twelve, for the reason that where you have no case, you have a chance at least to secure some one or two persons to hang the jury. The section which we are now considering makes it a part of the organic law of the state that the verdict of three-fourths of the jury may stand as the verdict of the whole. In other words, that nine out of the twelve may bring in a verdict. So far as this particular provision is concerned, it is no in-

novation in this western country. It was put in the constitution of Nevada in 1864.[1] At that time it was an innovation, and it was fought with all the influence of the legal profession in spite of the absolute necessity for the insertion of this provision in the constitution. Nevertheless, the necessity for such a provision was so patent, so evident, that it was placed there, and adopted by the people of the state; and any one who should now undertake to say that in civil cases in that state (or wherever it has been tried) the verdict should be of the entire 12 would be laughed at as being entirely behind the times. Since then it has been adopted by the state of California[2] as we find it in this section; it has been adopted now by the convention in Montana,[3] it is incorporated in the proposed constitution of Dakota,[4] and I may say, generally that ever since the ice was once broken with regard to this old abuse of the jury system, it has practically been incorporated in the constitution of every state which has had occasion to call a convention, since it was first put in the Nevada constitution.

I take this position, Mr. Chairman, and I speak from observation and pretty long practice in that regard. Whenever a case is tried to a jury, and the jury retires to deliberate upon its verdict, it is either one of those cases concerning which there is practically no dispute and upon which a jury of twelve or a jury of fifty would equally and promptly agree, or else it is a case concerning which there is a decided difference of opinion. And I state it to be a fact, and I think every practicing attorney will bear me out in the statement, that in all cases where there is a radical difference of opinion in the jury box after retirement, and where notwithstanding those

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1—Art. 1, Sec. 3.

2—Art. 1, Sec. 7, Const. 1879.

3—Art. 3, Sec. 23, Const. 1889 (provides two-thirds may render a verdict.)

4—Art. 6, Sec. 6, Const. 1889, So. Dakota (the legislature may provide.)

differences, a unanimous verdict is finally rendered, the verdict of the twelve is less apt to be right than the verdict of the nine out of the twelve; for the simple reason that wherever there is a controversy of that kind in the jury box the verdict is inevitably the result of a compromise which gives neither the plaintiff nor the defendant what he is entitled to as a matter of law. We are here engaged in the work of making a constitution which we can recommend to our constituents on account of the economy which it will bring to pass in the administration of our county governments, among other things. And yet, in civil cases where large sums of money and valuable property are involved, it is almost an absolute certainty that you will have from one to two jurors upon the jury who have been bought to hang it, on the one side or the other; or, if they have not been bought, they are influenced by personal or private considerations of such a character as practically disqualifies them to sit as jurors, if the facts had been known at the time they were impaneled. The consequence of this is, as it was in Nevada in 1864, (when in Storey county there were four thousand cases on the calendar, and where although they had been litigated by trial by jury for five years, they had never succeeded except in a single instance in obtaining a verdict in an important mining case) namely, hung jury after hung jury, the hanging generally being done by one or two men who were there for a purpose and that purpose not one which the law contemplates or authorizes. And so here in this state, if we become a state, you will find that without this provision in the constitution making it obligatory, our county treasuries will be subject to charge after charge of useless and unnecessary trials where the simple application of this provision will prevent the whole thing and secure that which a subsequent clause of this Bill of Rights declares shall be the fundamental right of the citizens, a right not only to a fair trial and an impartial one, but a speedy determination of the controversies which he has occasion to bring into court. I can-

not conceive how there can be any possibility of dispute about or objection to this provision as it stands, with regard to civil actions. I propose when this matter is disposed of, and before we leave this section, to bring up a much more radical proposition than is embraced here; that is, to apply the same rule (except substituting five-sixths instead of three-fourths) in all criminal actions except where the death penalty is imposed by law. And I say to this convention now, that you may hunt the statute books of the states and territories of this Union, and you will find that taken as a body the legislation of the state and territories embodies more principles of equity and fair dealing and equality as between man and man, and between corporation and corporation, than can be found in the legislation of any of the civilized countries upon the face of the earth outside of these United States. The troubles of which the people complain are not about legislation; the difficulties that arise in the administration of the law do not as a rule arise upon your statute books. The total failure of so many state and territorial governments to answer the purposes for which governments are created, is due not to the bad legislation upon your statute books, but to the fact that you cannot enforce the laws which you have. In other words, they break down in their execution, and until you reform the tribunals that administer the law, and do away with those abuses which have grown up under the changed conditions and circumstances of society and everything of that kind as we find it today, you may pile up statute on top of statute until you have the finest code of laws in theory that it is possible to enact, and still you will have the same old clamor going up from the masses of the people as to why its laws are not properly administered and properly enforced. We must go to the root of the evil. The legislative bodies are all right; the trouble lies with the judiciary and the jury box, and those old matters which time-honored tradition has brought down, and which we have outlived. There is a demand from all parts of the coun-

try that these abuses shall be cut off from these ancient tribunals, and they should be left free to flourish in their old vigor and in all of their old usefulness.

Mr. HEYBURN. Mr. Chairman, I desire to send up a substitute for the amendment offered by the gentleman from Nez Perce.

SECRETARY reads substitute for the amendment of Mr. Reid: To amend Section 7 by striking out all after the word "inviolate" in the first line.

Mr. REID. I will accept the substitute in place of mine. It effects the same purpose.

CHAIRMAN. So that the section will read how, Mr. Secretary?

SECRETARY. The section will then read "Section 7. The right of trial by jury shall remain inviolate."

Mr. REID. I withdraw my amendment and accept the gentleman's substitute; it says the same thing.

Mr. HEYBURN. Mr. Chairman, the object in offering this amendment is to strike out that which, with the exception that the gentleman (Mr. CLAGGETT) has specified, of Nevada and California, and perhaps some other jurisdictions of which I am not advised, is an innovation upon the jury system of this country. Mr. Chairman, I cannot agree with the gentleman in regard to the wisdom of changing entirely the system that is as old as government itself, that no man shall be deprived of his rights, of his liberty or his life, except by a unanimous verdict of a jury of his fellow citizens who have no interest other than to see that justice is done him. This principle has been deemed so important that at one time the demand that man should be protected by right of trial by jury revolutionized the civilized world. The question is in a manner sprung upon this convention this morning, and I suppose that other gentlemen like myself have scarcely had time to collect their thoughts in fit form for expression upon this matter. It is only since I entered this chamber that I knew of the existence of such a provision or such a report; that was not the fault of the convention, but my own, having

been absent; but I cannot see this old institution of trial by jury swept away without entering my solemn protest against it. It is the strong arm of the law that stands between the weak and the strong, between rich and poor, between oppressed and oppressor. Recognizing the principles that the gentleman from Shoshone has invoked, of economy and speedy justice, it may result in economy and speedy injustice to the man who is not able to buy a jury, if juries are ever bought. I do not believe myself that juries are a merchantable article; I believe that there is a principle, an element of safety in the conservative American jury that is just as reliable as that which we vest in the legislature or in the judiciary. I believe that juries can be selected from the body of the whole community that are just as trustworthy as the judges that sit upon the bench, or the gentlemen who sit in the legislative hall and make the laws. I agree with the gentleman that the fault is more in the administration of the laws than in the making of them; that is true in a limited sense, but admitting the truth of it, it is still not necessary for us to say that less than a unanimous verdict shall deprive any man of either his liberty or his personal rights. We cannot afford in the interest of economy nor in the interest of speedy justice—or of speedy trial, more properly speaking—to lessen by one hair's breadth the safeguard, the assurance every man has that his property or his rights will not be taken away from him, unless it is clear, beyond a reasonable doubt that they do not belong to him, and that that reasonable doubt is to be determined by a unanimous verdict.

I therefore move, Mr. Chairman, that all of that section after the word "inviolate" which provides that less than a unanimous verdict of a jury shall be received in any case, either civil or criminal, be stricken out.

Mr. CLAGGETT. I would like to be indulged in another word, Mr. Chairman. When this discussion first opened, it was with an amendment offered by the gentleman from Nez Perce (MR. REID), under the specious

claim that the whole matter was to be left to the legislature. We now have a substitute for the amendment, which has been offered by the gentleman from Shoshone, Mr. Heyburn, namely that the question of unanimity of the verdict of the jury in all cases shall be preserved as a matter of constitutional law, which the legislature itself cannot hereafter change. That is the proposition that is now before this convention. I have heard, Mr. Chairman, for years, all of that same talk about trial by jury. I have seen all of these same old, ancient stick-in-the-bark legal propositions and sacrifices of substantial justice to mere legal technicality. I have seen the members of the legal profession, who ought to be the leaders in all matters of practical reform, not only in the creation, but in the execution of the laws, fighting step by step and stage by stage, every effort to change or modify any one of these ancient traditions, hoary with time, it is true, but which still, under changed conditions, now defeat the ends of justice, until at last there has come to be a widespread conviction throughout the United States that the legal profession itself, very largely by its failure to meet these changed conditions, constitutes one of the things that needs the greatest reformation. (Applause). I know very well that in the argument I am making in behalf of good government and substantial justice, that we can rely but little upon my brethren of the profession upon this floor; not because they do not desire equally with the rest to do that which will be most beneficial to the community, but because they are so completely tied down by precedent, that they are incapable of rising above it as a general proposition. When I am thus speaking, I speak generally and not particularly, and consequently we need not expect much, so far as this matter is concerned, from the legal profession. We have had this matter up in the judiciary committee day after day; it has been in session five or six days, and has prevented the action of

that committee to a considerable extent from being ready for report.

Now let us go back. What was trial by petit jury at common law? I am not now talking about the common law as it was perverted after the Norman conquest; I am going back to the very roots of the common law as it was established by the ancient customs of our Saxon forefathers, and before the principles and ideas of the law which were brought in by the Norman Conquest had perverted to any degree whatever the English jurisprudence. What was the old common law practice with regard to trial by jury? Not only was it true with reference to the grand jury, but it was also the law with reference to the petit jury, that the jury should consist of twenty-three persons drawn from the vicinage and consisting originally of the witnesses in the case, supplemented where necessary by additional members, and that a verdict of the majority was the verdict of the jury. That is the common law as it was known to the customs of our Saxon forefathers; and this thing of a unanimous verdict is itself a perversion of the old common law and came historically around in the following way. As time went on, it was found that the cases multiplied in the court so that instead of having a case now and then, the courts were constantly in session with large calendars and multiplied controversies. It was found that a jury of twenty-three was too large and too expensive and it was cut down to sixteen, and afterwards to twelve, as a mere matter of economy. In the meantime the phrase, "It takes twelve men to make a verdict," in other words, that it takes a majority to make a verdict, had gone into the law books, had been announced time and time again by judicial utterances from the bench. So that when the jury was finally cut down to twelve we had a complete perversion and prostitution of the principles of the old common law, by the substitution of a unanimous verdict for the verdict of a majority. These old ancestors of ours, Mr. Chairman, no matter what their barbarisms may have been,

laid down the axiom by which today your courts are administered wherever the common law of England prevails in Great Britain, in the United States, or in the English-speaking colonies of Great Britain throughout the world. And every year that I have lived, from the time I became acquainted with these customs which we now call our laws, I have been more and more profoundly impressed with the wisdom of those old savages, if you choose to call them so, for we have scarcely made a change in those customs; and the changes we have made have largely operated to defeat public justice.

We are seeking here, at least I am, for one, to recover back to the people the real merits of a trial by jury. No one advocates or upholds that institution more strongly than myself. But we have certain abuses connected with it, one of which is the unanimous verdict which time and experience has shown to operate to defeat the ends of justice. I propose to eliminate that which tends to defeat the ends of justice and leave the trial by jury not as it was, under the old original common law, but something like an approximation to it, by abolishing this absurdity which does not prevail anywhere else, or in any portion of our government, of requiring twelve men to agree unanimously before the litigant can get justice in the courts. Do you apply it upon the bench? You have five judges, and three render the judgment. Do you apply it in your boards of arbitrators? You may have one or more, but the laws always provide that the majority governs. Do you apply it in the gravest questions of legislation, either in committee of the whole or convention? No, the majority governs. Do you apply it in the business affairs of your life? Is it applied anywhere except in this question of trial by jury? Does not the common sense of the business community, does not the common sense of the public, does not the common sense of every individual man reject it, as applied to any and every other consideration or matter of business which arises, which requires settlement or adjudication, or even agreement in the mat-

ter of carrying on a business? Do you apply it in the case, even, of your large corporations? By no manner of means. What kind of a corporation would it be if it took a unanimous vote of all the stock to agree to every resolution that might be offered in a meeting of stockholders or a board of directors? What kind of a proposition would it be to carry on business where there were a number of men in the firm or association of individuals if it required the unanimous consent of all before anything could be done? Does not every member upon the floor of this convention plainly see that the application of any such rule as that to any of the business affairs of life would operate as a complete paralysis of the ends for which business operations are transacted or projected? And if it is true with regard to all of our business relations or is true with regard to the determinations of our courts, if it is true in regard to the awards of our arbitrators, if it is true with regard to the elections of those who shall rule over us, where the majority prevails, and if the substitution of any other rule in all these varied relations of life and political freedom, would operate as a paralysis of the functions which are therein performed, then, Mr. Chairman, I ask the members of this convention, does not this fact sufficiently explain how it is that the courts of justice are so frequently paralyzed in the administration of the law? You have inserted in the body of your law that which practically destroys the vitality of its administration.

How do you find it abroad? It is only two years ago that in the large city of Cincinnati, containing three or four hundred thousand people, there was a riot in which many men were killed and hundreds were wounded, where the people rose up in arms and undertook to sack the jail, and hang the prisoners there confined. Why? Because under the constitution of the state of Ohio requiring this unanimous jury verdict, public justice had become a mockery, and by influencing one man to hang the jury, it had become utterly impossible to secure the ends of justice, and the ends for which all governments

are originally created, and at great expense to the taxpayers are maintained.

I do hope, Mr. Chairman, that this convention will do one of two things: That it will either adopt this provision as it is reported by the committee on the Bill of Rights, or, if this is considered a new question, and the members desire to study the matter more carefully than this hasty examination permits, let us pass the section for the present and consider it some other time; but, in all events, let us take such action as calm deliberation requires to be taken.

Mr. REID. It is with diffidence, Mr. President, that I talk in the presence of these Hannibals, old soldiers of the law, but I have learned in the affairs of life and government, in the short experience I have had, that the conservative course is always the safest; and as the gentleman states, this is an innovation which we ought to approach carefully, thoughtfully, considerately; we should not hurry through it; we ought to take time for deliberation. As the gentleman has stated, this question has been before the judiciary committee, but he should have gone further and stated that it was there rejected by that committee after full discussion. Now, Mr. Chairman, in taking up this Bill of Rights and reading it through, you will find it contains all of those old safeguards, all those old fundamental principles which constitute the ground-work of our government in the western empire, and upon which all these great states have been built up in the eastern part of our Union, have flourished and grown and become mighty and strong and made us the most powerful nation on the earth. Every one of these principles of government which have been enunciated here, are the inherent right of the people to have political power, the state shall be an inseparable part of the union—a question which was sealed by blood, that religious liberty and conscience shall always be secured, and habeas corpus shall never be suspended, that no excessive fines, unusual punishments nor bail shall be required, and right along, constituting one

of the bright jewels in this constitution is that the right of trial by jury shall never be waived, a right which back in the ages was wrung from oppressors and tyrants. It is true, it has the sanction of time; it does come down hoary with age; but it comes down also hoary with the protecting of the people and their rights.

My distinguished friend argues that there is an analogy between majorities in political parties and in the ordinary affairs of life, and as between jurors. Why not carry his analogy further and apply it to all criminal cases, which he does not propose to do? Why apply it only to misdemeanors, why not go further and say that the man who is accused of a felony shall be convicted by a majority verdict, or three-fourths? That is not proposed. Why not? Because he is not willing that this humane doctrine which has become part of the jurisprudence of every civilized country—the doctrine of a reasonable doubt, that any one in his conscience can have, before he convicts a fellow-being of a crime, that the jury shall give heed to that doubt and return a verdict of mistrial or disagreement—shall be annulled. But why not apply the gentleman's argument to that? If your right of liberty, if your person is sacred and inviolate by a jury of twelve men, when your home and the title to your home and your water rights and mines come into litigation, why should not twelve men just as well say that you shall be deprived of your property rights as of your liberty?

Now, gentlemen, we are laying the foundation of a great state. We have made one innovation which we are all apprehensive about; I mean this question with regard to polygamy and bigamy. So far as that is concerned, we all unite on that proposition. And why do we make it? Because we find an extraordinary condition of things in our new state, and we are determined to put it down. We are going carefully and as far as we can go without jeopardizing the adoption of our con-

stitution by congress, to enable us to get rid of this evil, and we are going to do it. Gentlemen, let us not make any more innovations.

My friend said—what I was sorry to hear him say—that perhaps our honorable profession needs reformation. The people of Idaho do not think so; out of this body representing Idaho, I am proud to say that nearly one-half are lawyers. In naming the twenty-five committees which my friend (MR. CLAGGETT) formed here, I am glad to say he did not carry out his theory, because such was his unbounded confidence in his brother lawyers that at the head of those 25 committees he put sixteen lawyers. Furthermore, I say that in no profession, whatever it may be or wherever you may find it, considering the number of important and delicate trusts committed to its care, are there fewer breaches of trust, in none are there more loyal men. I do not recognize that the profession needs reformation so much, but I do assert that whenever it sees an innovation, whenever it sees the rights of the people menaced, those who have studied the law and precedents and from experience found out what protects the rights of clients and people, have always been first to battle back any innovation that has encroached upon the rights of the people. And as an evidence of this, I appeal to the convention that framed the Constitution of the United States and that framed the constitution of every state in this Union. Where lawyers were in a majority, they have adopted constitutions that have made this country and these states great and glorious. I appeal to this convention to be careful in adopting innovations. We have a great empire here, a glorious territory; we have great resources of hidden wealth, that the wildest imagination never dreamed of. We have the great principles of government under which the eastern states have prospered and profited. Let us follow experience. Hereafter, when we get to be a great and glorious state, such as California is, or such as Nevada is not, we may adopt these innovations; but when we have offered to you a conservative, tried, known, safe and secure way, and on the other hand, an

experiment, when you are building a new state, I take it that it is the part of a conservative man to adopt that which is known to be safe and secure in the past. That is the reason I support the substitute. Mr. friend, (MR. CLAGGETT) says we have been a little specious in regard to this matter; that I first wanted to leave it to the legislature. I suggested that for this reason: I thought from the report of the committee that perhaps there was such a sentiment here as would be ready to take this new departure, and by thus offering a compromise, it might be accepted; but in the first instance I was prepared to go as far as my friend from Shoshone (MR. HEYBURN), and say that trial by jury, which has been transmitted to us through two hundred years, shall remain sacred and inviolate. Hence, I support the substitute.

Mr. SHOUP. I move the convention take a recess until one o'clock.

Mr. MAYHEW. I move an amendment to that, that the committee now rise and report progress and ask leave to sit again. (Seconded).

Motion carried.

CONVENTION IN SESSION—PRESIDENT CLAGGETT IN THE CHAIR.

Mr. SHOUP. I move we take a recess until two o'clock.

The CHAIR. What will you do with the report of the committee of the Whole? It is not in order to make a motion until this action is disposed of.

MAYHEW. The chair might ask the committee to report.

The CHAIR. The motion was that the committee rise, report progress and ask leave to sit again.

Mr. MORGAN. Mr. President, your committee of the Whole have had under advisement the report of the committee on Preamble and Bill of Rights, and report progress and ask leave to sit again.

The CHAIR. All those in favor of adopting the

report of the committee of the Whole, say aye. (Vote). The report is adopted.

Mr. MAYHEW. Mr. President, I do not desire in this motion to cut off this debate upon this question that is being considered in committee of the whole this morning at all, but I desire to make a motion that this convention adjourn until 8:00 o'clock this evening. I believe we have to meet this evening for the purpose of hearing some lecture upon some subject. I simply desire to state, not to discuss the question, that the committee on Judiciary and other committees, desire to have time to consider the questions before them and that they may report at an early hour to this convention. If we go on considering these matters, we will never reach the end. (Seconded).

The CHAIR. It is moved and seconded that this convention adjourn until 8:00 o'clock this evening. Carried.

EVENING SESSION.

The CHAIR. Gentlemen of the convention, you will please come to order. The convention adjourned until this hour for the purpose of listening to Mrs. Duniway in support of her petition with reference to female or woman's suffrage. As the lady is not here, by general consent, inasmuch as I understand there are several standing committees ready to report, we will now receive the reports of standing committees in order that the manuscripts may go to the printer as soon as possible.

COMMITTEE REPORT—PUBLIC INDEBTEDNESS AND SUBSIDIES.

Mr. HAGAN. The committee on Public Indebtedness and Subsidies desires to make the following report. ALBERT HAGAN, *Chairman.*

(Report read by secretary and ordered to lay upon the table to be printed).

CHANGES IN COMMITTEES.

The CHAIR. Any further reports of standing com-

mittees? I will call attention to the fact that Mr. Stull who was chairman of the committee on Manufactures and Irrigation will be compelled to remain away for some time and he requests that his colleague, Mr. Cavanah from Elmore county, be substituted in his place as chairman of that committee. Is there any objection to the granting of that request. If there is none, it will be so ordered.

My attention also has been called to the fact that a representative on the committee on Apportionment from Kootenai county, Mr. Hendryx, has not yet reported to the convention, which leaves Kootenai county without a representative upon that committee and under the rule which provides that one committeeman should be appointed from each county, the number has not as yet been filled by the appearance of all the delegates so appointed, and Mr. Melder, who represents that county here, requests to be placed upon that committee in the absence of Mr. Hendryx. Is there any objection? If not, it will be so ordered, and Mr. Melder will act as a member of that committee.

Mr. REID. Mr. President, I move that Mr. Cavanah be placed on the committee on Legislative Apportionment in the place of Mr. Stull for the county of Elmore, and in the same motion, I will move that Mr. Hagan, the gentleman from Kootenai, be placed on the Judiciary committee in place of Mr. Stull. (Seconded).

The CHAIR. It has been moved and seconded that Mr. Cavanah be placed on the committee on Legislative Apportionment in the place of Mr. Stull, and that Mr. Hagan be placed upon the committee on Judiciary. (Carried.)

The CHAIR. Gentlemen of the convention, the convention this morning took a recess until this hour for the purpose of listening to Mrs. Duniway in support of the petition which she has been pleased to present to this convention in reference to the subject of woman's suffrage. The time has now arrived and it gives the

chair great pleasure to introduce to you the lady speaker in this behalf.

ADDRESS OF MRS. DUNIWAY.

Mrs. DUNIWAY.

Mr. President and Gentlemen of this convention:

It affords me great pleasure to accept the honor with which you have kindly consented to endow me on this occasion; and I beg you to take notice that in the controversies that arise among men concerning great public affairs, the women seem destined not to be left much behind in the race as their struggles go onward and upward toward liberty. And although we may and do differ very much as women, sometimes, as to the methods and aims of public work, yet in a multitude of counsellors there is wisdom. The women are learning, although they may criticise each other's aims and purposes, to be tolerant of each other, which we were not in the years gone by before we had tasted even in anticipation of the sweet luxury of liberty.

I come before you tonight to consider two propositions, or, rather, to place before you two alternatives, either one of which I believe you, in your judgment, will consider carefully, and one of which I am not without hope that you will adopt. Which one, of course, will be left to your wisdom, your magnanimity and your chivalry to determine. Just as in the infancy of the government of the United States, the people who lived beyond the Rocky Mountains and beyond the valley of the Mississippi formed newer and better conceptions of the fundamental principles of liberty under the plastic conditions of their then new environment than had even been dreamed of by their ancestors, so in the proposed incoming states, in which I have the proud honor to claim a permanent interest, being a resident of Idaho, the people of the new generation are forming yet broader conceptions of the glorious heritage in store for them and their children than their ancestors ever anticipated. I realize as I stand in this honorable presence that we, the people of Idaho, are making history, for although the class I represent is not otherwise represented in this honorable body, the fact that you gentlemen have now for the second time convened yourselves to give woman a hearing is proof that the world is moving in the right direction.

Without taking up the time of this body in rehearsing facts of history with which it is considered you are all acquainted, I will at once take up the subject which your chivalry has permitted us to consider, namely, the fundamental principles of liberty upon which the government in these United States is professedly founded. The fact that governments derive their just powers from the consent of the governed, is not longer dis-

puted by any set of lawmakers, nor is its logical sequence disputed, that taxation and representation are co-existent factors in all just governments.

You, gentlemen, have already occupied a fortnight in convention assembled, combining your wisdom, erudition, eloquence and logic in the incubation of a state constitution to be presented to your electors—no woman's unless by your permission—in the forthcoming month of October. So far as you have yet gone in the completion of such parts of your work as have come under the observation of lonely stock-ranch cabins like ours in the Lost River wilderness, it has seemed to most of us that you have legislated wisely and well. We cordially approve the public spirit you have manifested in considering the just claims of the executive and judiciary as well as the legislative departments of a state government to such constitutional protection, as well as such constitutional restriction as shall best insure the proper administration of public and private affairs among men.

We also cordially and heartily approve of your manifest determination to permit no alien or theocratic power to arise among us to wield our ballots and control our offices while bearing allegience to a dynasty of priests. And although there is a diversity of opinion upon some questions which women have sought to place before you, to-wit, the trite one of prohibition, for instance, to which less than two per cent of the women of the territory or of the nation adhere, there is a remarkable unanimity among us concerning our own enfranchisement. Women, like men, are rapidly outgrowing the idea that prohibition is the reformatory measure they a few years ago considered it. When first the idea was placed before them by press and pulpit, large numbers of them grasped at it as a sort of a providential compromise between their own growing and struggling mentality and their desire to do something which all men might praise and pet them for attempting. They soon discovered also that as an ally of the church, they had not only found an avenue to fame and honor, but to emolument also; and say what you will, gentlemen, there are few men and fewer women who can forego financial considerations altogether, as you will demonstrate before you are through with the financial problems with which you will be called upon to wrestle here. These facts and more especially the last named, so stimulated woman's long-repressed and naturally emotional sensations that it was not difficult for political cranks, the one-idea men, who had been kicked out of the old parties, to secure their catspaw services in raking chestnuts for themselves from the fires of political controversy.

It was and is the easiest thing on earth to make a prohibition speech. It is so easy to depict the ways of intemperance, the iniquities of the dramshop and the horrors of the drunkard's

home. We have heard it all our lives, more or less, through the oratory of the John B. Goughs and Francis Murphys, who from time to time have visited us in rural communities, and the heart of woman being emotional by nature, it is not to be wondered at that the very first avenue or opening that seemed to come to them would find women ready and willing to enter therein, who are conscientious in what they do, although in the judgment of those of us who have had a broader and more practical conception of life through out struggles in the far, free West, it has seemed sometimes that they have looked as through a glass darkly.

Money is the motive power that moves the world. It is more potent than religion and more powerful even than love. No organization can long exist without it. It is as potent a factor in the church as with its adversary, the saloon and is not lost sight of by even that honorable and excellent body, the Woman's Christian Temperance Union, or its latter ally, the Woman's Suffrage Association. I am not complaining of these things, but simply stating facts that you may see that women are not blind to the financial situation. Hitherto their opportunities have been sadly circumscribed in money matters, as they are now except in certain directions. And it is not to be wondered at that they have sought the first avenues that opened to them for making money in which they may work and travel and receive pay and the plaudits of men, while at the same time comforting their consciences by the feeling that they are serving God and doing good. Multitudes of the great rank and file of prohibition women are not to be included in this category, no more than are the multitudes of the great rank and file of women in the church and in the home who have given aid and comfort to whatsoever means might open to them to work in their quiet, humble way for the enfranchisement of women. But it is the leaders of whom I speak, and I beg you, gentlemen, to remember that in pursuing this hobby and never losing sight of its emoluments, they are only following the example of men engaged in the same business. So I beg you, gentlemen, that you will cease the harsh criticisms that I sometimes hear of women who are engaged in this work, because you claim that they are after the money. Show me a man who is not after it, but who thinks he can live without it, and I will show you an inmate of the poorhouse or a pensioner. Be patient with them. They have plenty of material in sight in every town they visit upon which to expend their eloquence, nor can you expect they will cease to harp upon that string as long as they can make it profitable.

Of the philosophy of prohibition, I need say but little. Every thinking man or woman who analyses the subject closely reaches one conclusion, and this is, coercion or any species of arbitrary

law never yet restrained any man in his vices so long as he was not constrained in his liberty. Give a man who desires to indulge a vice the liberty of locomotion, and depend upon it, he will find the opportunity to indulge that vice. Openly, if he can, but secretly if he must. That is human nature, and men have for so many generations been accustomed to oppose the arbitrary laws of women, that it is little wonder that they have risen up with remarkable unanimity (only now and then a man excepted and he a leader in the prohibition ranks), to oppose with vehemence or ridicule, or whatever else may seem to him most convenient, the growing desire upon the part of women to deposit the "white-winged messenger" of peace on earth and good will to all the people in the ballot box. The stale argument that compares horse-stealing, against which we have prohibitory laws by common and undisputed consent, with liquor selling, about which there are many differences of opinion, is most unfair, since there are no laws against horse-selling—provided the purchaser is ready with the cash, and the horse offered for sale is all its owner claims for it. In like manner the comparison about the prohibition of murder is unfair, since the sale of guns, knives and ammunition is not prohibited, except under certain conditions, nor are humanity and horses forbidden to exist because some men are murdered and many horses are stolen.

Of the evils of intemperance and the sufferings of its victims. I need not speak, since I could not hope to teach or to edify you on these points. If I were the Omnipotent Power, and I say it reverently, I should not hesitate with my finite conception of things, to prohibit everything that is evil. I would prohibit disease, poverty, slander, arson, murder, vice in any and every one of its various forms wherever it raised its hydra head. I would with the mandate of Omnipotence, provided I possessed it, with my finite conception of things, at once strike it down. But since I cannot do this, and God plainly teaches us that he won't, I have no desire to do so, nor has the very large majority of American women whom I have the honor to represent, nor have they the remotest wish to run atilt against that Omnipotent power. Clearly the prohibition movement is dying out. I am sorry, but truth and candor compels me to tell these truths in the face and eyes of dear and earnest women who so desire the contrary; but I am here with your permission, gentlemen of the constitutional convention, to tell the truth as I understand it, feeling satisfied that as the years go on the proof will not be wanting that will compel all women to confess it. Need I instance Michigan, Massachusetts, Vermont, Oregon, Rhode Island, Pennsylvania and Connecticut, where prohibition has lately met with overwhelming defeat, in support of this statement. Women as well as men have lost faith in it by the tens of thousands within the

past few years, hence these defeats. Many women in Washington territory who had never lifted voice or finger to secure the ballot before it came to them, but who unwisely yielded to the counsels of women from the east who sought them out, on a handsome salary, to induce them to use their newly found ballots as cats-paws in the hands of idealists and cranks, have discovered under the humiliation of the great defeat that has deprived them temporarily of the ballots they had but just learned to prize, that what women need for the purification of the race is not an arbitrary law for the coercion of men but liberty for themselves, that they may rise above the conditions of subjugation against which their forefathers rebelled, and under which they are now so often compelled to become the mothers of a progeny of drunkards.

In Wyoming where the women have been voters long enough to learn wisdom before the prohibition rage became the fashion, better counsels prevailed and no such innovation has been introduced to act as a boomerang against their ballots. Consequently when the incoming state of Wyoming wheels into line with her constitution, unless you, gentlemen of the convention, shall have proven yourselves wondrous wise and grandly chivalrous and gloriously patriotic, the territory of Wyoming bids fair to be the only one in which the full, free voice of the people shall be heard upon its constitution.

I am making no fight against prohibition per se, since I realize that everybody has a right to ride a pet hobby even when riding it to its death, provided, of course, that he does not override the principles of liberty with his hobbyhorse. But I wish I might convince every man in this convention that most women realize, and as keenly as any of you do, the fact that every woman who sits behind the prison bars of her present political environment, lifting her manacled, ballotless hands to men and saying, "Give us the ballot and we will put down your whiskey," not only tells us a self-evident untruth, (since all the force of arms to say naught of ballots could never do it unless men should voluntarily put it down themselves) but every such woman merely offers the strongest possible inducement to most men to say, "Very well; we will see that you do not get the ballot at all if you are going to use it when you get it as a whip." That is the way they talk, and while I am not speaking now of what ought to be, I am here to tell you as nearly as I can, what is.

What the women ask, gentlemen of the convention, the great majority of the women of the territories are asking for, I mean, women who have no time to spend in running to ice cream festivals to induce men to fill their stomachs with an indigestible compound for a consideration, that sends them to the dramshop for an antidote; women who look upon the practical side of every

subject and are not sent out as the paid representatives of any set of men or any political party, is that you will engraft into the fundamental law of Idaho a clause in your chapter on suffrage and elections providing that, other rights and qualifications being equal, (except the right to bear arms which nature accords to man, and the still more perilous right to bear armor-bearers, which the same inexorable power assigns to woman) there shall be no restriction placed upon the suffrage on account of sex. Do this wise and patriotic thing, gentlemen of the convention, and your constitution will be adopted by spontaneous combustion. You will put power in the hands of your wives and mothers with which they can level blows of irresistible strength at the demon of polygamy that now menaces their daughters in many sections of the southern and eastern portions of this rising commonwealth.

While I can and do point to Wyoming where the women have voted for the past two decades, in proof that women's ballots will not bring prohibition and also to Washington, where for three and a half years a majority of the women refused to use the ballot as a whip to coerce men into leading strings as though they were little children, I do say without prospect of contradiction that women are quite as much opposed to drunkenness in husbands as men are opposed to drunkenness in wives. And when women are everywhere free and equal with men before the law, they will cease to rear children of such weak moral fibre that they are unable to resist temptation. Grant us the right of suffrage, gentlemen, and we will not only pledge to you our lives, our fortunes and our sacred honor in aiding you to adopt this constitution, but we will when it is adopted, feel so proud of you and of ourselves that we will proclaim the glad tidings of our freedom among all the cities and countries of the east and by so doing, turn the tide of immigration into Idaho, just as we exultantly directed it to Washington during the period of three and a half years when we could do so consistently, because Washington was then "the land of the free and the home of the brave."

But, gentlemen, I well know there is no other dogma that dies so hard as any species of tyranny. I know that many of you, if married, may delude yourselves with the idea that you are "heads of the family." Your wives know better, but you do not. I know how persistently your wives—kind diplomats—persuade you to believe that you are the supreme power in the household. Your vanity and self-love are fed upon this sophistry and I do not wonder that you like it. Perhaps if the tables had been turned these six thousand years, we would have been equally blind in the same direction. You, like us, are very human and we, like you, are by no means perfect. We know every one of your threadbare arguments against our liberties by heart. You

say we must fight if we vote, forgetting or pretending to forget that life's hardest battles everywhere are fought by the mothers of men in giving existence to the race. You say we do not wish to vote, when all the opportunities we have ever had to vote have been as freely utilized in that direction as your own. You say if we wish the ballot, let us ask for it, when we have been asking for it for lo, these forty years.

You say bad women will vote, when you well know that bad men vote and claim the ballot for their protection, while you do not say them nay. You say we must sit on juries if we vote when ever and anon a woman is to be tried. May we not, gentlemen, look forward to the day when woman may be tried by a jury of her peers?

I do not mean that all, or nearly all, of you will say these hard, illogical things. Quite a number of you I know to be in favor of woman's full and free enfranchisement, and I sincerely hope that all of you will be so convinced of the justice and expediency of our plea that you will not hesitate to make your names immortal as the first body of constitution writers under the sun which has ever dared to be wholly just with the mothers of the race. But, O gentlemen, if in the extreme of caution that induces other men to uphold their own prejudices in opposition to the aspirations of women, you do not dare to grant us the free boon of full enfranchisement, we have another plan to lay before you which we have been hoping will not fail to meet your unqualified approval.

Remember that we ask you, appealing to your chivalry, your sense of justice and patriotism, appealing to your spirit of liberty and honor, to grant us as a part of the fundamental law you are making our own free, unquestioned right to vote; but if you will not grant this request, then we pray you as a compromise with your consciences and with us to put a clause in your chapter on suffrage and elections providing that the legislature may at any session pass a bill extending the elective franchise to women on equal terms with men. Surely you will not compel your wives and mothers under a constitutional law of the state of Idaho, which you have denied us the right to any voice in framing or adopting; surely you will not compel us to go before the ignorant and prejudiced voting classes of men with our hands on our mouths and our mouths in the dust, beseeching half fledged boys who have just attained their majority and have not ceased struggling with weak mustaches, or praying foreign-born voters who cannot speak our language or comprehend the first principles of our free institutions,—surely you will not so humiliate us and so outrage our sense of justice as to remand us to these powers only to be sent away when we ask for liberty, with a brutal and derisive "No," as has been so often done in older states when

we have asked their voters to amend their constitutions in our behalf. Surely you will not be thus unpatriotic, thus unchivalrous, gentlemen. You have opportunity to so frame your constitution in the very inception of your government that your picked men of the legislature may be allowed to sit in final judgment upon our plea for ballots.

The eyes of the world are upon these territories. The freedom-loving spirit of the west has long passed into a proverb. Shall we, the women of this borderland who have shared alike your trials and your triumphs, shall we not be permitted to go up to Washington next winter, bearing aloft like the women of our neighboring territory, Wyoming, the proud banner of our own freedom? Shall we not have the power to proclaim everywhere the chivalry and honor of our constitution makers, telling the world that these men scorn to accept a right for themselves which they would deny to the mothers of men? Will you not so equip us with the watchword of liberty that we can inspire all the world to turn its eyes upon Idaho as the promised land—the land of free women and brave men?

"But what," said a dear little earnest woman to me today, who has never had any avenue to work in except prohibition, "what do the woman suffragists who are not prohibitionists propose to do with the whiskey traffic; there's the point?" We answer: Tax whiskey and all other intoxicants as heavily as the traffic will bear, not so heavily as to amount to prohibition, for experience proves that the ends of justice are thus defeated for then the dealers will sell and pay no tax at all. I know all the arguments against the whiskey tax by heart. Time was when I supposed the tax on liquors was what men call it, a license, but study of the subject long ago convinced me of the mistake. Intemperance is among us like an ever-flowing, dark, deep pestilential river. Liquors are sold because men buy them, and the river of intemperance flows because it has a perennial fountain in the desire of the consumer. Men who drink immoderately are not the chief source of its supply, but no matter when the supplies come, the river is always flowing, flowing. You may obstruct it here and viaduct it there, but you cannot stop the flow. At the mouth of the Mississippi there is an immense swamp, so dark and pestilential is it that yellow fever lurks in the marshes and a green slime crawls upon the top of the stagnant water, among which reptiles play at hide and seek.

"Prohibit the accursed thing," cries out the moralist and the theorist; "don't tamper or temporize with it, but put it down." Vain hope, vain mandate, vain endeavor! If you cover the slum and slime with a prohibition plaster, be it ever so strong, the virus will exude, or, worse, it will burrow deeper and deeper into hidden places, marking its track by desolation and death.

Then what is the remedy? Science says, build levees upon the banks and so says common sense. Regulate what you cannot destroy. Confine the stream to a limit as narrow as will contain its flow and keep the dykes high and in order. This is high license, falsely so-called. It is a levee upon the banks of the stream of which even those who use the stream for financial purposes can recognize the need. Give us the levee, gentlemen, and oh, give woman the ballot with which to build it high and strong and we will help you build right royally.

Away across—far across the continent in the eastern city of Minneapolis—that wonderful growth of modern energy and enterprise, with its mammoth mills and merry-hearted men and women—we, a short time ago, held a national convocation of the women suffragists, and the great building there was filled to overflowing. The aisles and all the steps were crowded and the interest increased from day to day, and I remember an incident upon the closing night, when the only genuine woman voter we had among us, who has since, to the shame of the people of this nation, been disfranchised by a scheme that would have aroused a universal howl if she had been a negro in the south, Miss Bessie Isaacs, a most talented and genial and lady-like woman of Washington Territory—the only woman voter among us in all that vast enthusiastic congregation. And as we were about closing the exercises preparatory to adjourning *sine die*, that vast audience arose as with the voice of one and joined in the chorus of the Battle Hymn of the Republic, and there between Lucy Stone upon the one hand, venerable Lucy Stone who for more than forty years has been wielding voice and pen in behalf of human liberty, Lucy Stone with her snow-white hair and her snow-white cap and her matronly appearance which well becomes her seventy years, stood upon the one hand and your humble speaker upon the other, and in the center stood Julia Ward Howe, author of the Battle Hymn of the Republic, and as that vast audience joined in singing the chorus of that wonderfully inspiring battle hymn, the enthusiasm grew more and more intense as stanza after stanza rolled and swept through the vaulted ceiling, until at last as the last line of the last stanza died away in the evening air, a universal shout went up from that vast multitude, broken only at last by the sweet spoken refrain of Lucy Stone who put her hand upon the head of Julia Ward Howe upon the one side as I did upon the other, and said: "Yet, men and women, she cannot vote!"

Away in the city—in the classic city of Hartford, in a plain, unpretending house of considerable dimensions, hard by the elegant home of Mark Twain, and near the not much less sumptuous residence of Charles Dudley Warner, is the residence of the greatest woman that America has yet produced, Harriet

Beecher Stowe. When I was in Washington last winter attending the National Woman's Suffrage Convention, one of my nearest neighbors at the hotel where we all had headquarters, the Riggs House in Washington, was the youngest sister of Harriet Beecher Stowe, Isabella Beecher Hooker, and as our rooms were thus contiguous for days and days, our conversation naturally turned on much that interested us both. Mrs. Hooker, who is also getting well stricken in years, said to me that she would not have thought, so infirm was she at that particular time, from the effect of a severe cold, that it was possible for her to attend the convention, "But," said she, "I visited my sister Harriet before I started. Harriet, as you know, is in very feeble health and is just recovering from what we feared would be her last illness, but she entreated me with tears in her eyes to attend the convention and do what I could in her behalf to uphold the cause of liberty for women." And the tears stood upon the cheek of Isabella as she spoke of Harriet, and she said, "The last words Harriet urged upon me as I came away were not to forget that it was her wish to live long enough to see the work accomplished for women that had been accomplished for the negro."

Oh, men and brethren of this convention, as I looked as the sun came in at the window upon the pale gold of Isabella Beecher's white hair and watched her fine countenance lighten up with a halo that was indescribable and I realized that this wonderful woman and her more wonderful sister had yet to endure the humiliation of disfranchisement which all of those women are bearing, I could not help but say in the words of one of the old anti-slavery agitators: "I tremble for my country when I remember that God is just."

Men and brethren, I do not wish to detain you longer. All I ask of you as my last word is that when in your deliberations you are considering this question which I have hurriedly prepared in the rough draft to lay before your honorable body, this manuscript having been written this afternoon for the benefit or convenience of the press, as I appeal to you with my last words, let me again urge you to remember that the liberties of Idaho are not alone being weighed in the balance. You are making history. And as on the 2nd day of April 1787, Abigail Adams, for whom your humble speaker was named, went before the constitutional convention away over yonder in the city of Philadelphia and there made a plea for the enfranchisement of women, which was only temporarily, as they thought at the time, tabled that men might try the experiment of human liberty a little longer,—even as did Abigail Adams in her parting injunction to that august body, with George Washington in the chair, and her husband acting as secretary of the occasion saw fit to expunge from the minutes the fact that his wife had been there, and it was left for

Charles Francis Adams, a descendent of hers to unearth the fact and publish it in 1876,—as he did, even I, as the humble representative of such a grand foremother as that, say to you in all seriousness and with a plea that I would, that I might make so eloquent that no man would dare deny the plea, I would leave with you a plea that you will in the magnanimity of your wisdom and the chivalry of your own liberties add as a clause to your bill of suffrage and elections this section: "The right of suffrage shall not be prohibited to any law abiding person, if a taxpayer, or person of good moral character, on account of sex, provided always that such person be able to read, write and speak the English language."

Now, gentlemen, I ask you, is there any objection to such a clause as this in the constitution of the state of Idaho? A clause that would fire the patriotic fervor of womanhood all over this country; that would arouse an enthusiasm for the adoption of this constitution that no power could gainsay, if you would help us and we would help you, and the combined influence in behalf of the constitution would thus be irresistible. But if you are afraid to do this, if you are afraid of the foreign vote and the rabble vote; if you are afraid to grant us what we ask because of that vote, and that we know is the only reason why you can be afraid, then we ask you in the spirit of compromise to give us this substitute as a section: "Nothing in this chapter shall be construed to prohibit the legislature from extending the elective franchise to women."

These are the crude ideas as pencilled down for the deliberation of your committee on Suffrage and Elections, which I do hope will reconsider its somewhat arbitrary determination to do away with the women. I have nothing more to say in this matter. I feel sure that you will in the magnitude of your wisdom as a convention hear our plea, for I tell you, gentlemen, you cannot afford under the growth and impetus of woman's intellectual demand for liberty to ignore her petition.

I thank you for the courtesy you have extended to my humble endeavor in behalf of all womanhood. (Applause.)

The CHAIR. The petition of the speaker who has just addressed the convention, as embodied in the resolution presented by her, is submitted, under the rules, to the committee on Suffrage for their consideration and report.

The regular business of the convention has been, so far as the chair knows, exhausted. What is the pleasure of the convention?

Mr. REID. I move the convention do now adjourn until tomorrow morning at 10:00 o'clock. (Carried.)

ELEVENTH DAY.

WEDNESDAY, *July 17, 1889.*

Convention called to order by the President.

Mr. PRESIDENT in the chair.

Prayer by Chaplain Smith.

Roll Call. Present: Messrs. Ainslie, Anderson, Andrews, Armstrong, Batten, Bean, Beatty, Bivens, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Hagan, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Pefley, Parker, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Sweet, Taylor, Underwood, Whitton, Wilson, Woods, Mr. President.

Excused: Messrs. Ballentine, Glidden, McMahon, Moss, Stull and Vineyard.

Absent: Allen, Blake, Crook, Gray, Hendryx, Jewell, Mayhew, Robbins.

Journal read.

Mr. BEATTY. I think the minutes record that adjournment was taken until 8:00 o'clock. Our rules provide it should be termed recess.

Mr. PRESIDENT. The secretary will correct the record in accordance therewith.

Mr. WOODS. I desire to be sworn in, Mr. President. (Mr. Woods sworn in by the President).

The CHAIR. If there are no objections, the record will stand.

JOURNAL RECORD.

Mr. AINSLIE. It appears to me that when a body goes into committee of the Whole, the proceedings that take place in the committee of the Whole becomes a part

of the journal. I know that is the rule in Congress and I think it is the rule in legislative assemblies, that the proceedings of the committee of the Whole shall form a part of the record. I see they are omitted in the journal of this morning.

Mr. MORGAN. I called the attention of the secretary to that fact this morning, Mr. President, and that matter will be corrected. I think the report of the chairman of the committee of the Whole should state what proceedings had been had and this should form a part of the journal, and the secretary will correct the report of the chairman of the committee of the Whole and the proceedings of the house will be incorporated in the journal.

Mr. AINSLIE. I believe that should be a part of the record just the same as if the convention was in regular session—should state who takes the chair and proceed as if the conventon was in regular session, and if they come to any conclusion, report of the chairman of the committee of the Whole is generally that the committee of the Whole has had under consideration such and such a measure, has come to no conclusion, but has made progress thereon and asks leave to sit again. The whole proceedings of the committee of the Whole should be transcribed in the journal.

The CHAIR. The chair understands the rule to be this: That whatever conclusion the committee of the whole arrived at, the report to the convention goes into the journal, but not the proceedings in the committee otherwise than as they are reported on the rising of the committee. If there is any doubt with regard to this matter we may as well settle it now some way.

Mr. MORGAN. My proposition was, Mr. President, and what I supposed to be right, that the chairman of the committee of the Whole should report that sections two, three, four and five, as the case may be, were adopted; that Section one was adopted as amended, and that they asked leave to sit again.

Mr. AINSLIE. My impression is, Mr. President,

that all the proceedings of the committee of the Whole have to go in. The proceedings, if they are printed and published after this convention adjourns, like the proceedings of Congress, should show exactly what was done in the committee of the Whole. Nine-tenths of the business of this convention will be done in committee of the Whole; by referring to the congressional records, if the business done in Congress is done in committee of the Whole, by referring to the congressional records, if any numbers are kept here, they will show that all proceedings of the committee of the Whole are included in the record as if they are proceeding in open session. Now that is my understanding of it. To state the conclusions of the chairman of the committee of the Whole does not state what took place there except their conclusion. If we are to be governed by the parliamentary practice in Congress, the proceedings of the committee of the Whole should be recorded at length. There are several of the gentlemen here—Col. Reid has been in Congress, Judge Mayhew is an old parliamentarian—and I think they will concur in this statement.

The CHAIR. That is no doubt true with regard to the House of Representatives under its rules, but this convention has not adopted the rules of the House of Representatives. It has adopted a set of rules which are silent upon this subject, and they have provided that Cushing's Manual of Procedure shall supplement the rules on matters not provided for in the rules. And my understanding is from all parliamentary usage independent of any one rule such as they have in the House of Representatives, that the record is made up from the report of the committee. In other words, the committee comes in and makes a report like one of the standing committees. The discussions that have been had in the committee rooms are not made a part of the record of any body, but whatever the committee do or accomplish is reported to the convention by the chairman and is incorporated in the journal, and until further advised with regard to it, I will be compelled to hold to

that effect. If it is desirable in any way to incorporate in the journal the proceedings of the committee of the Whole, I think it would be necessary to provide for it by special rule.

Mr. WILSON. Mr. President, I think the congressional record contains everything that transpires in Congress whether in the committee of the Whole or otherwise, but I do not think the journal does. That is my understanding of it. Of course, our record here will contain everything that transpires.

Mr. REID. Pardon me; the journal contains an abstract of it. It does not contain a record of the speeches. The journal contains a record of all amendments offered —everything. You can't tell the difference, if the clerk did not state the fact, that they went into committee of the Whole. The journal would be just the same only they do not call the ayes and nays.

Mr. WILSON. Our secretary here has been chief clerk of the legislature—the lower house of our legislative assembly, and probably it might be well to follow the proceedings of that body and call on him for that—as to what the practice is there.

Mr. AINSLIE. Our rules, Mr. President, refer to the committee of the Whole on Page 25 and Page 26, Rule 49. (Reads). Rule 50 (reads). Now I doubt that any proceedings in the committee of the Whole have been in pursuance with the rules adopted, as the record shows how they proceeded to work in committee of the Whole. Now the record shows nothing but conclusions of the committee as reported by the chairman, and under Rule 50 the proceedings of the committee of the Whole shall be the same as in the convention, so far as practicable, and Col. Reid says there is no provision made to call ayes and nays in the committee of the Whole. Therefore I think the whole proceedings of the committee of the Whole should be engrossed. The speeches form no part of the record, but when a motion is put, lost or carried, an abstract of the proceedings showing exactly what the proceedings were in the committee of the

Whole should be journalized and form a part of the proceedings of this body, I think.

Mr. MAYHEW. May I inquire what the question is before the house?

The CHAIR. There is no question before the house at all. I would suggest, gentlemen, that this is an important matter and it may be there will be no objection to the incorporation of all the proceedings had in the journal. I would suggest that some member draft a resolution which will cover the case, if it seems to be left in doubt, so that we may pass upon it and have no more trouble with it in the future. The chair's understanding of this rule is as stated. He may be wrong.

Mr. CLARK. Mr. President, yesterday morning the gentleman from Shoshone county moved that the convention, when it adjourned, should adjourn until 8:00 o'clock to hear an address upon woman's suffrage. Subsequently that motion was adopted. I think that was the actual form of the motion. I would like to have the record show whether that was the case or not. If it was, the proceedings of last night were entirely out of order and should not have been recorded. I would like to have it show whether the adjournment had not taken place for this specific object to 8:00 o'clock last evening.

The CHAIR. The journal does show that fact.

Mr. CLARK. Then I would like to rise to a point of order, whether it was possible for the convention to transact any other business last night. A large number of the members were absent on that understanding and therefore it was a sort of notice to them that no other business would be transacted.

The CHAIR. The answer to that is, whether it was done regularly or irregularly is a matter of no consequence. As a matter of fact it was done, and being done without objection, by unanimous agreement, it is equivalent to a suspension of all rules on the subject. It it too late to raise a point of order on that question now. Gentlemen, we will proceed to the regular orders of the day.

Presentation of Petitions and Memorials. Are there any to be presented? None. Reports of standing committees?

COMMITTEE REPORT—MUNICIPAL CORPORATIONS.

Mr. HAGAN. The chairman of the committee on Municipal Corporations has not been able to be here this morning. At his request, however, I desire to make the report for and on behalf of that committee. I will state this, that there is one member who disagrees with the report of the committee in a minor matter. But it has been covered by another report that is now on file in this convention. I will send the report to the secretary.

The CHAIR. The secretary will read the report on Municipal Corporations.

SECRETARY reads: "We, your committee on Municipal Corporations, beg leave to submit the following report. Albert Hagan for the chairman, W. W. Woods."

The CHAIR. The report will lie on the table and be printed. Are there any further reports from standing committees? None. Reports from select committees? Final readings? None.

Mr. AINSLIE. Mr. President, I would say that Mr. Jewell, of Washington county, being unavoidably detained at home, being a member of the committee on Apportionment, asks that during his absence Mr. Harris his colleague, may serve as a member of that committee until he returns. The committee desires to make report.

The CHAIR. If there is no objection, it will be so ordered.

JOURNAL RECORD—RESOLUTIONS.

Mr. AINSLIE. I will now offer the resolution in accordance with the suggestion of the chair.

SECRETARY reads: "*Resolved,* That the proceedings of the committee of the Whole be entered of record

in the journal in the same manner as the proceedings of the convention." (Seconded). Carried.

COMMITTEE CHANGES.

Mr. BEANE. I would suggest that my colleague, Mr. Anderson, be put upon the committee on Manufactures and Agriculture in my place. My affairs at home are so unsettled as to necessitate my absence for a day or so, and we have not yet had a meeting of that committee.

The CHAIR. If there is no objection, his request will be granted. It is so ordered.

Mr. ARMSTRONG. Mr. McMahon, who is a member of the committee on Labor, is unavoidably detained at home and does not know when he will be able to return. His wife is dangerously sick and he asks that his colleague, (Mr. BATTEN) be placed on the committee in his place.

The CHAIR. If there are no objections, the change will be made as suggested by the gentleman from Logan.

Mr. BATTEN. I have just received a letter from Mr. McMahon, my colleague, stating that he would be here tomorrow evening unless his wife's condition should be unfavorable.

The CHAIR. Is the request to substitute withdrawn?

Mr. ARMSTRONG. I will withdraw the suggestion.

Mr. MAYHEW. Mr. President, I do not know what will be the sense of the convention upon the proposition. I desire to make a motion now for adjournment. It seems to me that the committee on Judiciary and several other committees have so much before them that they have not had time as yet to complete their labors. Now I desire to make a motion that we adjourn until some time this evening before we resolve ourselves into a committee of the Whole in order to give time for these committees to perform their duties. Mr. President, you are aware, as one of the members of the committee on Judiciary, that there is a great deal before this commit-

tee—a great deal for them to consider. I really think we will save time by allowing the committees to perform their duties, formulate their reports and return them to this convention and have them printed, and after this is done, we can have a full discussion upon all questions that may come up. I therefore move, Mr. President, if I may be supported, that this convention adjourn until 4 o'clock this evening. I am satisfied that we will be saving time. In committee yesterday the Judiciary committee spent three or four hours in the discussion of the serious matters there coming before it, and if that discussion is made there and we can get up an article to meet the approbation of the convention, it is better to fix the whole thing in that way than to have a long discussion and amendments offered in this convention. I hope my motion will meet with the approbation of this convention.

NOTICE OF MOTION TO AMEND RULE XI.

Mr. BATTEN. I have a motion to make before that motion is put. I hereby give notice that tomorrow, July 18th, 1889, I will move to amend Rule 11 of the standing rules as follows: "Amend by adding after the word "Convention" at the end of the second line of said rule, the following: 'and in no case shall any member be allowed to occupy more than fifteen minutes at any one time except by unanimous consent of the Convention.'"

A MEMBER. I move an amendment of the motion to take a recess, that it be to adjourn until tomorrow at 10:00 o'clock. (Seconded).

The CHAIR. It is moved and seconded that the convention now adjourn until ten o'clock tomorrow morning. (Vote). Carried.

TWELFTH DAY.

THURSDAY, *July 18, 1889.*

Convention called to order by the President at 10:00 A. M.

Prayer by Chaplain.

Roll Call. Present: Messrs. Ainslie, Allen, Anderson, Andrews, Armstrong, Batten, Beatty, Bivens, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Gray, Hagan, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Hendryx, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, McMahon, Melder, Myer, Morgan, Moss, Pefley, Parker, Pierce, Pinkham, Poe, Pyeatt, Reid, Robbins, Salisbury, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Stull, Sweet, Taylor, Underwood, Vineyard, Whitton, Woods, Mr. President.

Excused: Messrs. Ballentine, Beane, Glidden.

Absent: Blake, Crook, Pritchard, Wilson.

JOURNAL read.

The CHAIR. If there are no corrections, it will stand approved.

MR. PARKER SWORN IN.

Mr. REID. I desire to present the credentials of Mr. A. F. Parker, delegate elected from the county of Idaho, and move that they be received and he be sworn in. (Motion seconded.) Carried. Mr. Parker is sworn in by the president.

QUESTION OF PERSONAL PRIVILEGE.

Mr. AINSLIE. Mr. President, I rise to a question of personal privilege, and desire to send to the clerk's desk and have read——

The CHAIR. We are inclined to think at this time that this will be out of order until we get through with the regular order of business.

Mr. AINSLIE. I understand a question of personal privilege is in order at any time.

The CHAIR. I am not sure but what the gentleman is correct. The chair will withhold any ruling on that question.

(Secretary reads extracts from the *Salt Lake Tribune* of July 17th).

AINSLIE. Now, Mr. President, the representatives of the press through the courtesy of this convention,

have seats upon the floor for the purpose of furnishing the papers they represent with a fair and honest account of the proceedings of this convention. Now, sir, the statement, the first part of it there, that I stated that I was ready to withdraw from the democratic party is too ridiculous for denial. No such assertion was made on this floor by me, but I will give the representative of that paper the credit of having come to me this morning and apologizing for that portion of the dispatch, but, sir, it is a very singular thing to me how history repeats itself in this convention, so far as deliberative bodies are concerned, that the representatives of that paper invariably at democratic conventions or legislatures, and here now in the constitutional convention, invariably misrepresent and falsify the positions and statements of democrats, but never makes a mistake as to the republicans. That is the truth. I have never seen the positions of the republicans misrepresented or falsely stated by the representative of that paper on this floor, but I will say that it has been the habit and constant practice of the correspondent of that paper to falsely state the positions of the democrats, not only in their conventions but to cram the columns of the paper full of lies about democrats upon every question, nearly, that may arise touching the position of the Mormon people in this territory. Now, sir, I have been a democrat ever since I have been old enough to know the difference between democrat and whig, and it is too late in life to have any idea in the world of changing my political opinions. I have no desire to answer that part; any such assertion refutes itself.

Now, Sir, as to that man Hoge, I never saw the man that I know of in my life until the other day and I did not know who he was then until I was introduced to him. I never had any conversation or conference with him nor said a half dozen words to him, except what was said at the Overland Hotel when it was crowded with people. I did not know what his business was here and did not care what it was, but I do have to say that this

man Hoge has always been regarded as a republican. Now, sir, I have no consultation with a man like that who has been fighting the democratic party ever since I have been in the territory, so far as I know. I know that in '82 when I ran for congress, as well as the time this man Hoge was on the committee—the territorial committee—there was no consultation with them, but he did the best of his ability to secure the vote of the Mormon element of Bear Lake county for the republican candidate in congress. I know nothing about Mr. Hoge personally and nothing of his political history except what I have seen published in the *Idaho Statesman.* I never met him until the other day, when I was introduced to him and asked him how long he was going to remain, or something of the kind, but I never had any conference with him.

Now, sir, it has been the purpose of this paper to abuse not only me, but the democratic party of Idaho Territory, ever since this man Charlie Goodwin got to be editor-in-charge. I believe the proprietor of it claims to be a democrat. Well, I have heard of such democrats before—men who talk democracy and vote republicanism. They start out professing to be an independent and fair sheet—an independent and fair newspaper. They are against polygamy and polygamists among the Mormons of the territory. I have not been apologizing for bigamists or polygamists in any manner, shape or form, and while I have had the honor to serve the people of Idaho Territory in Congress four years, I never yet, to my knowledge, have received any letter or communication from any Mormon in regard to any political matter whatever. The only communication I received from a Mormon for any service at all, was one from Bear Lake or eastern towns of Idaho, asking that the postoffice be established at some settlement. Well, I will attend to that for anybody, whether Mormon, Gentile, Negro or Indian. People have their rights and are entitled to postoffices, and when they send petitions signed by a sufficient number of people to present to the postoffice de-

partment, I would recommend that a postoffice be established and that they have those advantages.

But this paper is continually assailing me for some purpose or other, because probably I may have said some time or other that I did not like the *Salt Lake Tribune,* and I suppose you know my opinion of it partly, and that it is the most infernally filthy sheet that was ever published on the face of God's green earth, and my opinion of the conductors of the sheet is about equivalent to that of the paper. Now the other day I expected to rise to a question of privilege on this first assertion, "is here in constant consultation with the Mormon wing of the democratic party in the interest of the Church," etc. Upon stating my intention to rise to a question of privilege on behalf of the democratic party as represented in this convention, I was requested by several republicans not to do so, that a full and fair retraction would appear in the columns of this paper. This has never appeared. Now I say if such a sheet as that possesses the privileges accorded them on this floor, of misrepresenting and falsifying the people—falsifying the democratic delegates of a large part of this territory, that probably may have a majority or be almost equal in voting strength to the republican party—I say when they are accorded privileges by the courtesy of this convention, that they should not be permitted to abuse them, but I hope that any correspondent, no matter what paper it is, democrat or republican, will be fired out of this hall when they falsify the position and principles of the democrats as they have done in this instance. I think I have stated my position clearly and I submit the question to the convention.

Mr. CAVANAH. Mr. President, I have read the *Salt Lake Tribune* for twelve or fifteen years. I have been in sympathy with it, and its fight against Mormonism, and believed everything it has said. My faith was a little shocked at those letters issued by the paper. I have heard no democrat in caucus or out of it but what has stood squarely as anti-Mormon. I have good friends

on this floor, both democrats and republicans, who know that I have voted that from the commencement. And they know that I have been a strong anti-Mormon democrat, and I would like to know where this information comes from. If there are any Jack-Mormons in our party, I would like to know it. I have voted, not for political emolument, like some republicans have; I have voted from strictly honest conviction, and I feel as if I am imposed upon the same as the rest of my party in this issue, and I strongly protest against it. It is unmanly—it is unfair. We were sure—I was sure that if we would say nothing about that article that was in the paper a week ago, that there would be a full retraction. Is this the retraction?

Mr. MAYHEW. Mr. President, I am willing to accord to every one of my republican brethren on this floor, and heretofore have always been willing to accord to every republican in the few past legislatures I have had the honor to be a member of, the privilege of expressing their sincere and honest convictions against the questions of polygamy and Mormonism. I do not think it is fair, just or honorable for any correspondent of a newspaper or any association of persons, I do not care what their political proclivities and sentiments may be, to continually put a brand upon the party that we claim and which we purport to be a member of, to brand them by false representations as to their sentiments upon any given question. I say that it brings odium and disgrace and shame upon the party that is national in its character, and I must say that the democratic party, so far as my knowledge extends, has a desire for the prosperity and desire for the greatness of this country equal to that of our republican brethren. Now, I say when a correspondent of a paper does use language and sentiments and utters ideas and language that is derogatory to the true character and position of any political party, that that correspondent, when he has been accorded the privilege of this floor to correspond with his paper, should not be permitted to falsify the position of

any member of this convention, making no difference what his political sentiments may be. I read with some astonishment the two articles that appeared in the *Salt Lake Tribune* and in the *Statesman,* that the democratic party in its caucus had invited or had in its midst a Bishop Hoge. Now, Mr. President, I don't know Bishop Hoge, I never saw Bishop Hoge, and I may say that I can express an honest sentiment when I say that I do not know that I ever saw a Mormon. I never have had the misfortune to live in a section of the country where Mormonism was taught—where that class of people resided, and I will say this, that there was no man in the democratic caucus on that day that we were charged with having Mormons in our midst, except the members of this convention and the members of the democratic caucus. If any member of that caucus should have said that we had Jack-Mormons or any Mormons in that gathering, they are sadly mistaken, and how it can be so uttered and stated to the people at large that we were closeted with those Mormons, and that that Mormon was about to influence the democratic caucus—I say it gives to the world and to the people of this territory to understand that the democrats are associated with the Mormons in order to perpetrate and continue their infamous crimes. It is wrong to do so—it isn't right, and I think, Mr. President, the correspondent, I don't care who he may be, is a falsifier in placing men just as honorable as any upon this floor in a false position, and I hope that this convention, both democrats and republicans, will not permit anything of that kind in the future to be done. For one, as a democrat, if I thought any democratic paper or editor should falsify the position of any republican in this house or upon this floor, I should feel it my bounden duty to rise in my place on this floor and refute such false assertions. I think our republican brethren here are as equal in honor and as honest in the conviction of their sentiments, so far as Mormons are concerned, as democrats. We would claim on the part

of the democrats some rights. So far as my sentiments are concerned, so far as my action in this convention will be or ever has been since I have been a resident of this territory, it has been universally against Mormonism and polygamy, and I think by God's will and power, I shall always continue so, and I hope no man, correspondent, or any one else, shall be permitted on this floor as correspondent or otherwise to falsify men as honorable as any in this territory or upon this floor. It is not right; it is ungenerous; it is impolitic. I regret that such is the case. I feel the sting, coming from the editors connected with that paper and those papers, so bitterly that sometimes I cannot refrain from uttering sentiments that would not be very pleasant to their ears. I have nothing to say against the paper generally. I say the *Salt Lake Tribune* is a paper of great value to the people; it is a newsy sheet and many articles have been written and published in that paper that I heartily endorse and suppose I shall continue to endorse, but not when it comes to vilifying and falsifying members of this convention. I hope that in the future it will not be continued.

Mr. POE. Mr. President, I come from that section of this territory where we have not been cursed with the evil of Mormonism. We in our section of the country have not experienced the evils emanating from that church and the priests of that church, of so much interest in that section of the country. I have been educated to believe that the institution of Mormonism was inimical to our institutions; that it was a curse to our land, and therefore I have been opposed to the institution, and now all that I ask in behalf of my party in this convention is that we be dealt with fairly. We came here for the purpose of constructing a constitution which will redound, not only to our credit but to the interests of the state of Idaho. And as I say, all that we ask is fair-play. Whatever position we may take as a party, we are willing that not only the members of this convention, but that the world should criti-

cise. But whenever we extend the courtesy of this convention, in common with our republican members, to correspondents to report the proceedings of this convention, we desire that whatever we may say shall be stated, and we are willing to stand by it; but we do not accord to the press or any one else the right to falsify, and whenever they misrepresent this convention, through the courtesy of this convention, and publish to the world falsehoods that place us in a light that is not true and that is calculated to bring reproach and shame upon us as a party, I say that we have a right to demand an absolute retraction with the same publicity that the falsehood was circulated. I am not disposed to ask this convention to expel the correspondent of that paper from this convention, but I believe it is a right we have to have such retraction made as would be sufficient to contradict the falsehood that he has uttered. As far as I am concerned, I rest content with my own rectitude and the rectitude of my party. And whatever we do as a party, whatever measure we may take as a party, let the world criticise it. But I hope that this convention will not permit any gentleman the courtesy of this floor who will continuously through the medium of his paper, circulate to the world a falsehood. I maintain, gentlemen of this convention, that we as a party are entitled to the retraction in that paper of those false assertions, and that retraction I think we are entitled to have at the hands of this convention. I think it should be made, not in the kind of language that has been presented in what is purported to be an apology or retraction in the past, but that it should be so plain and unequivocal that the world must see that they mean the correspondent of that paper, sitting here in a position to know what he utters to be either true or false,—that it must be in such plain, unequivocal terms that the world must at once concede the fact that that man has either wilfully misrepresented the facts or stated those which he knew to be untrue.

A gentleman of his erudition, of his learning, of his

knowledge of language, I can't conceive it possible that he can get up before this convention and assert to the world that he was mistaken in the language uttered by Mr. Ainslie—I can't conceive that the language uttered by Mr. Ainslie when he introduced that resolution could by any possibility be construed into a statement that he withdraws from the democratic party. It cannot be; therefore I say that the gentleman must have wilfully asserted that which he knew to be untrue when he penned those words. And I do not believe there is a man in this convention but knew the falsity of the words, but he thought that as he has been in the habit of falsifying and vilifying the democratic party as to their position upon this Mormon question, he would be upheld by the adherence of his party in the utterance of this falsehood, but I do not believe, gentlemen, that you will uphold any man in falsifying your brethren in this convention. As I said before, let the truth go to the world, but, gentlemen, save us from the false pen,—from a gentleman who wields with such venom a slanderous pen.

Mr. BATTEN. Mr. President, this question of privilege which has been moved by the gentleman from Boise is one that affects equally every democratic member on this floor.

Mr. McCONNELL. Mr. President, I would like to ask the unanimous consent of the convention to have a resolution read.

The CHAIR. Does the gentleman from Alturas yield?

Mr. BATTEN. I will yield.

SECRETARY reads:

"*Resolved* that the correspondent of the *Salt Lake Tribune* be requested to publish a retraction of the charges against the Honorable George Ainslie or be denied the future privileges of the floor." (Applause.)

Mr. McCONNELL. And I move its adoption.

The CHAIR. It is moved and seconded that the

resolution be adopted. The question is now before the convention.

Mr. McCONNELL. Mr. President, we are here as the repesentatives of an honest and honorable constituency, and let us represent them fairly on this floor. If any charges have been made against any member here, democrat or republican, by a member of this house or correspondent of any paper, he should, if an honorable gentleman, make the amende honorable, and it is my opinion as a republican that there should be no false charges, no lies disseminated against any democrat or any republican. (Applause.) The honorable gentleman from Boise I have known a great many years. We have been political opponents when to be political opponents meant war to the knife, but I have never known him to stoop to a dishonorable act, and I stand here today to ask that the convention do the fair thing by Mr. Ainslie. (Applause.)

Mr. BATTEN. Mr. President, the resolution as drawn seems to me indefinite. I do not know to what charge it refers, nor have I in my mind all that was read at the clerk's desk. It seems to me from my recollection now that there were several matters charged, and I would like to have the resolution reformed to read definitely what charges are referred to, so that we may vote or discuss it intelligently. It simply says the charge made by the correspondent of the *Salt Lake Tribune*. I would like to know to what charge reference is made. As I understood the reading of the newspaper articles a moment ago, there were several referred to.

A MEMBER. Mr. President, if the resolution that has just been offered prevails, and I am sure the good judgment and spirit of fairness that prevails in this body will see that it is carried, then I have nothing more to say. I simply rise in my place to refute the charge which has been made against every democratic member in the article read by the clerk. I must say, and I know I will be borne out by every democratic member here, that Mr. Hoge's name, whoever he may be, was not for

one moment or one instant mentioned in our caucus; the spirit that dominated that caucus was a spirit of patriotism. Nothing but a unanimous sentiment prevailed in our caucus by all lawful and constitutional methods to stamp out polygamy, and I am sure our republican friends will see that we are not left to rest under that stigma of the charges so unjustly heaped upon us, and I am glad it has emanated from a republican member to see that we have ample justification in this matter.

Mr. BATTEN. Mr. President, I called for information but have not received it yet. I don't know whether I am in order or not as to this question. I had not intended when the gentleman from Boise rose to a question of personal privilege, to interfere in the matter whatever. But there have been some references made upon that question here that I, as a republican, do not feel like letting go unchallenged, at least without answering. However, that question of personal privilege is before the house and also the resolution of the member from Latah. I don't know which we are discussing, but I have something to say upon both of them.

Now with reference to the suggestion made upon the question of personal privilege, the gentleman from Boise has referred to the man who, from all accounts, must be an infamous character, as having been identified with the republican party. I have been in the territory of Idaho ten years prior to the time the gentleman refers to that this person was a member of the republican party. He may have been, for aught I know, a member of the territorial republican committee, but if so, I have no knowledge of it, and I will not take issue with gentleman upon that point, for he probably has information that I know not of. I have this, however, to say, that if he ever was a member of the republican party, we long since repudiated him and he has left us and gone to some other party; but it is not fair now to charge us with having harbored a man like that. Of course, the republican party cannot be responsible

for every member that may choose from some improper motive to join its ranks. But men of that kind do not find a congenial home in the republican party, and generally find their way out of it and go to some other party. I do not know where Bishop Hoge belongs today and do not care, but he does not belong to us and it is not right in a non-partisan convention like this to attempt to shoulder him upon us. In fact, Mr. President, I have understood this to be a non-partisan convention, and I have understood that my friend from Boise goes so far as to only drink non-partisan drinks. I have understood that when he takes his drink, instead of taking straight old democratic Bourbon, he pours a little republican soda-water into it, or if it is not accessible, then he puts a little more of the Bourbon into it than he does the soda-water. However, we will pass that. It is not fair, Mr. President, to charge upon us that we are responsible for the actions of Bishop Hoge, or that we are in sympathy with him. Now I, for one, have not charged upon our democratic brothers that they are in sympathy with the Mormon element. I have been from the start in hopes that we would all stand solid upon this one question, and so far as I have had anything to do upon that matter, I have done my level best to be in accord with them or get them to be in accord with us, that we may act harmoniously upon that question. I hope before this convention adjourns it will publish to the world that the republican party and the democratic party stand side by side upon that question as one solid alliance.

Another member also referred, I thought, in reflecting terms upon the republican party. Now I rise to defend the republican party against any charges of the kind. We are not here to utter any slanders or cast any reflection upon our friends of the democratic party. But I will not allow this moment to pass without saying a word, at least, in defense of my old friend, the polished and able editor of the *Salt Lake Tribune*. And I would be sorry to see the power of that man or the

influence of that paper torn down. I do not believe, however, if this whole convention acted as one man it could tear down the influence of Judge Goodwin or detract from his pure character or break down the influence of that paper. I admit, Mr. President, that a mistake has crawled into the columns of that paper. I admit that Mr. Ainslie has been misrepresented, but the question with me is this: whether that was intentional misrepresentation,—whether the correspondent of the *Tribune* intentionally sent the dispatch to misrepresent Mr. Ainslie. Now it is very easy in the course of a debate, when a correspondent is sitting by and listening, to misunderstand and by that means to misrepresent in the columns of a paper. I understand from Mr. Ainslie himself that the correspondent of that paper has been to him and has apologized for the mistake he made and will correct it. Now upon that point I say that if that resolution offered by the member from Latah is on the mistake referred to by Mr. Ainslie, action upon that resolution should for the present be deferred, for the reason that if the correspondent of the *Salt Lake Tribune* has already apologized to the gentleman from Boise, I have no doubt he will make that apology public and have it so published in the paper.

Mr. AINSLIE. That was only in regard to the statement that I was ready to withraw from the Democratic party.

Mr. BATTEN. I do not know what that resolution refers to. It is indefinite and it seems now from the statements of my friend Ainslie that there is more than one doubt. But I will go as far as any one to censure a paper or a correspondent who wilfully publishes a misrepresentation of any member on this floor, although I think if we are in the business of correcting all correspondents and all newspapers, we probably will have a summer's undertaking before us. But I propose this as to the correspondent of the *Tribune* or of any other paper, that if he has made a mistake, give him time to publish a correction of that mistake, and not by at once

passing a resolution censuring him and placing him before the world in an improper light. Let him have a few days in which to correct that mistake. If he doesn't do it, then I think is the proper time to adopt a resolution of that kind. And I am not in favor of the resolution until we find whether this correspondent, upon learning of the mistake he has made, is unwilling to correct it. If he is willing to correct it—admits the mistake—then I think we should not allow it to go further. If we do, if we pass resolutions on the spur of the moment, a wrong impression may be sent out to the community. I don't want any one to think for a moment that I am personally at any time unwilling to do justice to an able political opponent. There is one gentleman upon this floor who can bear testimony that two years ago I rose in the council chamber of this building to come to his defense upon a matter in which I thought I was justified, and came to his defense and stated matters which I thought were true. For that I was most ungraciously lashed by the *Statesman* in this city here. I let the matter pass. I did not rise to any question of personal privilege, but I am at all times willing to be just to any political opponent as well as to political friends. I ask at no time any unjust advantage of any political opponent, and I am willing now to do justice to Mr. Ainslie or to any other Democratic member of this house, but I do ask that we shall not be rash and pass resolutions here condemning a correspondent in a matter in which he may have innocently erred. Give him the time to do the honorable thing and if he refuses to do it, there will be time to pass the resolution. I say here, I will not, for one, vote for that resolution at this session and this time. If that correspondent is given time to do the right thing and does not do it, then it is a matter for proper consideration.

The gentleman from Shoshone asks me as to whether he may not do that until this convention adjourns. He can do this within a day or two. If he does not do it within that time then we can adopt the resolution. I

do not propose to wait a week or two weeks or anything of the kind. I simply ask that that correspondent shall have the same opportunity that any other gentleman shall have to correct an error.

Mr. CAVANAH. I would like to hear that resolution read again.

Mr. MAYHEW. Will the gentleman permit me; I will say to my friend that the same matter appeared in the *Statesman* here. The next issue came out and that paper very kindly and gentlemanly stated that they were mistaken—humbly apologized in the first issue. The *Tribune*—the same thing appeared in that paper—and there has never been any apology, and that has been a week ago.

Mr. BEATTY. When did this matter appear.

Mr. MAYHEW. I don't know—I never read it.

Mr. BEATTY. I understood this morning from Mr. Ainslie that the correspondent had been to him and recalled a matter stated yesterday, and I don't know what we are talking about scarcely.

Mr. MAYHEW. Don't you recollect the editorial in that paper read this morning that they would not make any corrections and that it was not a mistake?

The CHAIR. You will please proceed in order, gentlemen.

Mr. BEATTY. I understand this resolution is not directed to the *Tribune,* but to the correspondent of the *Tribune* and the *Statesman,*—I don't know which—if the resolution is indefinite, that that correspondent is meant. Now I will say I understood the member from Boise that the correspondent had made some apology to him concerning some one of these matters referred to—I don't know which now. Now, all I ask is that that correspondent have a reasonable time in which to correct the error.

The CHAIR. The secretary will read the resolution for the information of the convention.

SECRETARY reads:

"*Resolved* that the correspondent of the *Salt Lake*

Tribune be required to publish a retraction of the charge published against Hon. George Ainslie, or be denied the privileges of the floor."

Mr. CAVANAH. I move, Mr. President—

Mr. McCONNELL. I desire to explain concerning that resolution—I mean in respect to the charge, that greatest of all charges which could be published against a democrat of Mr. Ainslie's standing, that he was about to go over to the republican party. (Laughter).

Mr. HAGAN. I agree with the gentleman who last spoke, that it is a grievous and serious charge to say that any democrat at this time would leave that party and go to the republican party. (Laughter.) The democratic party here needs no defense on the question of Mormonism, and from the sentiment expressed in the caucus of that party, I think the members need not and will not be put upon their defense. I think this thing should have passed over by a simple question of privilege from Mr. Ainslie. There will be a time in this convention when the republicans can show how patriotic they are, and probably when the crop of senators increases we will have more excuses and probably more speeches upon questions of privilege than we have now, and we therefore set a precedent at the present time that all the various candidates after statehood for senators shall now come up and lay the foundation for future greatness upon questions of privilege, or that we shall pass resolutions for clap-trap or buncombe, and I do not refer to this only, because I believe that ought to be a standing rule. I say taking all things into consideration, I have no apology to make for my party upon this question of Mormonism. Early in life I commenced my fight against it and have always had my sentiments crystalized very young in opposition to its practices. Polygamy and bigamy is not the crime of Mormonism, but above and beyond it all there is a theocracy that rules and controls its destinies. This is more dangerous to this country than any of its parties, because in its theocracy it centralizes its power for bad and never

exercises it for good. There is the question, and we democrats and republicans here in this convention should so frame the organic law of this land as to strike down theocracy first, and then fall all the other evils of the institution. To do that we must attack, of course, those practices, and we will do it at the proper time, and I say that so far as I know, the republicans of this convention and democrats, too, are in one harmonious accord upon the proposition and it requires no member here, I take it, to get up to express himself upon the question of Mormonism. I congratulate us all that we have reached one question upon which we seem to unite. I remember that in the fight referred to by the *Tribune* against Mormonism in Utah, it stood shoulder to shoulder with the democratic party there, and advocated together with the democrats in Utah every principle that went to strike down this theocracy of which I spoke. It has made a long, a manly and honorable fight, and those attacks it now makes upon the democrats and the democratic party I think are made through correspondents thoughtlessly; if not thoughtlessly, then certainly maliciously, because the editor of the *Tribune* knows that at home there were no more active men that rallied around the labor party in that territory than he found in the democrats living there, to fight that. They went to our party to select their candidate for Congress; they had to come to the democratic party of that territory to protect the laborers against the corruptions of republican office-holders in the territory over and over, who went there and became Jack-Mormons. I do not apply that here because in this young state we shall hear no uncertain sound in its constitution. In all the political parties of this territory we shall never lack any disposition to do right in this matter, and therefore I say for one that I am proud to say my party has but one voice upon this question, and I congratulate them upon that and also congratulate the convention itself. I am in favor of the resolution because I think the bravest man in the world is the man that apologizes when he is

wrong. And I hope that he is as brave as the gentleman from Alturas says he is, and will accord to Mr. Ainslie the apology or retraction that is due him—and I think he will—there will be no difficulty about that and should be none about the resolution. It is a misrepresentation to my knowledge. I have nothing further to delay this convention for, and I hope the resolution will pass.

Mr. CAVANAH. I wish to make an amendment to that resolution and I would like to hear it read again.

SECRETARY reads.

Mr. CAVANAH. I move that all be stricken out after the words, "Hon. George Ainslie."

Mr. McCONNELL. I will accept the amendment.

Mr. CAVANAH. I make it for this reason; I don't want this convention to place themselves in as ridiculous a position as the last legislature here did and be laughed at all over the country.

Mr. HAGAN. I think the amendment is a good one and hope it will be accepted.

Mr. McCONNELL. I have accepted it.

The CHAIR. I would suggest that the word "required" be changed to "request" and then it be left to him to make such amende as he sees fit.

Mr. McCONNELL. I will accept the amendment.

The CHAIR. It is moved and seconded that all that portion of the resolution after the name of Mr. Ainslie shall be stricken out.

Carried.

The question now recurs upon the adoption of the resolution as amended.

Mr. SHOUP. Mr. President, I wish to offer a substitute to the motion now pending.

SECRETARY reads: "That the resolution be left to a select committee of ten, five democrats and five republicans, and that the said committee shall be required to report tomorrow. James M. Shoup." (Seconded.)

The CHAIR. Gentlemen, it is moved and seconded that a committee of ten be appointed, five republicans

and five democrats, to report tomorrow. (Vote.) Motion lost.

The question now recurs on the adoption of the original resolution as amended. (Vote.) Carried without a dissenting vote.

Mr. REID. I call for the regular order of business.

The CHAIR. Presentation of petitions and memorials. None. Reports of standing committees.

COMMITTEE REPORTS.

Mr. McCONNELL. The committee on Education desires to report.

SECRETARY reads report:

"To the President and Members of the Idaho Constitutional Convention, Gentlemen: We your committee on Education, Schools, School and University Lands, beg leave to submit the following report. W. J. McConnell, Chairman."

The CHAIR. The report will lay upon the table and be printed.

Mr. CAVANAH. The committee on Manufactures, Agriculture and Irrigation desires to report.

SECRETARY reads:

"Mr. President and Members of the Constitutional Convention: The committee on Manufactures, Agriculture and Irrigation submit the accompanying report. Frank P. Cavanah, Chairman."

The CHAIR. The report will lie upon the table and be printed.

Mr. BEATTY. The majority of the committee on Elections and Suffrage desires to report.

SECRETARY reads:

"Mr. President, your committee on Elections and Right of Suffrage have performed the duties thus far assigned to them, and as a result the majority of your committee respectfully submit the report found herewith. Beatty, Chairman, Salisbury, Hays, Heyburn.

Mr. AINSLIE. In explanation of my views, I ask leave to submit the voice of the minority.

SECRETARY reads:

"Mr. President, the undersigned members of the committee on Elections and Right of Suffrage, being unwilling to concur in the report of the majority of said committee, respectfully beg leave to submit their minority report.[1]

While we fully realize the importance of harmonious action as tending to recommend to the favorable consideration of Congress the constitution which may be adopted by this convention, we are conscious of the fact that the general government has ever been jealous of the rights of its citizens, and has thrown around the right of suffrage every safeguard consistent with the constitution of our country.

We believe that the right of suffrage and of holding office should be firmly fixed in the organic law of the state, and thus rendered secure from liability to frequent and constant changes at the whim of a legislative body too often governed by passion and prejudice; that one of the main objects of a constitution is to place restrictions and limitations upon the legislative power and not open the door to uncertainty and oppression which too often follow the ill-considered legislation of partisan bodies.

To put it in the power of the legislative assembly to place at their will additional qualifications, restrictions and limitations upon the qualifications of electors is to us a hitherto unheard of and monstrous doctrine, dangerous alike to the peace, good order and stability of a state government, un-American in its theory and unrepublican and undemocratic in its practice and tendency.

The incorporation of such a provision in the constitution as recommended by the majority of this committee, we cannot endorse, and we candidly believe it would receive the prompt rejection by Congress of the Constitution.

In the report of the minority, we have amply provided the qualifications and disqualifications of electors and have fully empowered the legislative assembly to enforce such provisions by all adequate and appropriate legislation.

We therefore recommend the adoption of the minority report as a substitute for that of the majority of the committee.

Respectfully submitted,
GEORGE AINSLIE,
F. W. BEANE,
A. E. MAYHEW."

The CHAIR. Both reports will lie upon the table

1—The remainder of this report is taken from the Journal of the proceedings of this convention. (p. 117.)

and be printed. Any further reports? None. Final readings?

Gentlemen of the convention, we have finished the regular order of business for the day. What is your pleasure?

COMMITTEE CHANGES.

Mr. AINSLIE. I am requested by Mr. Beane to ask indefinite leave of absence for him, and that Judge Hagan be substituted as a member of the committee on Elections and Suffrage in his place, and Mr. King be substituted in Mr. Beane's place in the committee on Schedule.

The CHAIR. If there is no objection to the request made by Mr. Beane, as presented by the gentleman from Boise, it will be so ordered.

AMENDMENT OF RULE 11.

Mr BATTEN. I desire to offer a motion.

Secretary reads: "I move to amend Rule 11 of the standing rules, as follows: Amend by adding after the word "convention" at the end of the second line in said rule, the following: 'and in no case shall he be allowed to occupy more than fifteen minutes at any one time except by unanimous consent of the convention.' Batten."

Mr. AINSLIE. I move its adoption. (Seconded.)

Mr. REID. It lies over under the rule, one day.

Mr. BATTEN. I gave due notice of it on yesterday.

The CHAIR. Yes; notice was given. As I understand it, notice was given, but it has to lie over one day after it is offered.

The rule relating to amendments is as follows: "These rules shall not be altered except after at least one day's notice of the intended alteration, and then only by a vote of the majority of those present in convention."

Notice of intention seems to sufficiently specify the nature and character of the alteration. The chair holds the notice is sufficient and the matter is now before the convention. If the gentleman from Alturas will allow the gentleman to make one suggestion, he could move

that after the words "by unanimous consent" the words "by a vote of the majority of the convention" be inserted.

Mr. REID. M. President, I oppose the resolution. As I understand it, its purport is to cut off debate and not allow but fifteen minutes. We have a standing rule that members shall not speak more than once or twice. Every gentleman who is attending this convention came here with a view to work expeditiously and faithfully, which we have done, and also to consider these matters properly. We discuss most of them in the committee and report them here, but when we are laying the foundation for a great state, making fundamental law, I am sure, while I want to shorten the session as much as anybody, and am as anxious to go home as anybody, and made as many sacrifices perhaps as any other member of the convention in order to attend to it and do my duty here, yet I think members ought to be allowed to discuss these matters thoroughly. Every man of us often has some new idea, some new phase to present, and if there be any one place in which there is safety in a multitude of counsellors, it seems to me it is when we are making organic law. Members are not disposed to speak too long. Speeches have been terse, brief and to the point, and I think members ought to be allowed discretion in that. If we find the privilege is abused, we can hereafter take this matter up, and I move an amendment that the matter lie on the table.

Mr. BEATTY. I second the motion of the gentleman from Nez Perce and object to the adoption of this proposition of the gentleman from Alturas.

Mr. REID. I don't wish to cut off debate and I ask unanimous consent that that motion may be debatable. I didn't make it for the purpose of cutting off debate, but in order that it may lay upon the table if hereafter we find the privilege is abused. The gentleman can at any time interpose a motion and I will vote with him.

The CHAIR. The matter may be proceeded with then.

Mr. MAYHEW. I move it be laid on the table to be taken up tomorrow evening.

The CHAIR. Does the gentleman from Nez Perce accept the amendment?

Mr. BATTEN. I do not wish to debate the motion offered by the gentleman from Nez Perce, but give in a few words my reasons for introducing this amendment to the rule. I have done it at the request of a number of the members of the convention whose business is pressing and requires their attention at home. If the gentlemen will notice the rule, it will still give them an opportunity to speak twice on a subject, and probably fifteen minutes at each time. Now if an argument has been well considered before being made, it can be condensed into fifteen minutes. I disclaim any desire whatever of choking off members or limiting them. I, for one, would be much pleased and highly edified to listen to some of the eloquent and persuasive arguments we will have here upon the various subjects up for discussion; but at the same time we are here under great disadvantages; we are here all, or most of us at a sacrifice, pressing business calling us home. Now, why not require one and all to condense our arguments into short speeches, or to reduce what we have to say to something that is simply argumentative and not a mere lot of gush and twaddle and such as that, and it is only in this spirit I offer the rule, but it is liberal in its scope. If there are any gentlemen here who desire to use this as a nursery for political bottle-washers or desire to ventilate some high moral ideas, let them hire a hall and we will all go and listen to them. (Laughter and Applause.)

Mr. BEATTY. It is largely out of consideration for my friend from Alturas that I oppose his motion, for I know how often and what great flights he takes into the empyrean when he gets into a discussion even of a proposition, and I don't want to see him cut off from debate. If debate is cut off in this way we will be deprived of listening to my friend's eloquence. I have

heard him often in the past and know how eloquent he can become. And, Mr. Chairman, this strikes further; it will affect even the chairmen of the committees upon whose shoulders devolve often explanations of the measures which are introduced, and would cut off the chairman from thus framing the proper explanation. Now I think as is suggested by the distinguished member from Nez Perce, (Mr. REID,) that this matter better lay over for a few days and see whether we are all disposed here to make orators of ourselves and bore the other members with long speeches. For one, I don't propose to do so, but I don't think it is time to cut off debate, and I do especially put in a plea for my friend from Alturas.

Mr. MORGAN. I rise to a point of order. This motion is not debatable under the rule.

The CHAIR. The chair sustains the point of order.

(Question! Question!)

The CHAIR. It is moved and seconded that Rule 11 of the standing rules of this convention be amended as contained in the resolution offered by the gentleman from Alturas, (Mr. BATTEN). Pending the motion of the gentleman from Alturas, the motion is made that the same lie upon the table. (Vote). The noes have it.

Mr. SHOUP. I move to amend the motion by striking out the word "fifteen" and inserting the word "ten." (Seconded.)

Mr. REID. I move to amend that and insert "five" as the limit of the speeches.

Mr. MAYHEW. I move that the amendment to the amendment be declared out of order.

The CHAIR. The amendment to the rules is offered that the word "fifteen" be stricken out and "ten" inserted. To that amendment is offered the amendment to strike out "fifteen" and insert "five." All those in favor of the second amendment. (Vote.) The noes have it.

The question now recurs upon the adoption of the amendment of the gentleman from Custer, to strike out

the word "fifteen" and insert "ten." (Vote.) The ayes seem to have it. (Division.)

The CHAIR. Division is called for. (Rising vote shows ayes 28, nays 25.)

Mr. MAYHEW. I want the ayes and nays, Mr. President.

The CHAIR. The question now recurs upon the adoption of the original resolution as amended. Upon that the gentleman from Shoshone calls for the ayes and nays.

Mr. MORGAN. I move that the resolution be referred to the committee on Rules. We are spending too much time on this thing. (Seconded.)

The CHAIR. It has been moved and seconded that the resolution now before the convention be referred to the committee on Rules. (Vote.) The noes have it. The question now recurs upon the original resolution as amended. All in favor of the motion say aye; contrary, no. (Vote.) The ayes seem to have it. The resolution of the gentleman from Alturas is adopted.

Mr. MAYHEW. Mr. President, I called for the ayes and nays. It is a right, I believe, when it is supported, and it was supported.

The CHAIR. The gentleman is correct, but after that call another motion was offered, which I put, and as I understand it, the call for ayes and nays was not renewed.

Mr. MAYHEW. I didn't have time between the putting of the motions by the chair. (Laughter.)

Mr. REID. Mr. President, I rise to a point of order. After the gentleman moved to refer it to the committee on Rules, the matter stood to vote upon the original motion as put, subject to whatever had been done and attached to that, as I understand, was a call for the ayes and nays as a second.

The CHAIR. The reason why the matter was disregarded was because it had passed out of the mind of the chair with regard to the call for ayes and nays. If there is no objection, the call will now be ordered.

A MEMBER. I object.

Mr. REID. Mr. President, I make a point of order, if the gentleman is entitled to it and subject to the objection. It was a matter of right he had, and the gentleman, I maintain, under the rules cannot be cut off by mistake or oversight.

A MEMBER. I rise to a point of order.

The CHAIR. If the objection is made, I will have to sustain the point of order made, namely, that the gentleman from Shoshone is entitled to his call.

A MEMBER. Point of order must be taken by appeal from the ruling of the chair.

The CHAIR. The chair has seen fit to reverse its ruling. The secretary will call the roll.

Mr. BEATTY. Are we voting now upon the fifteen or ten minute rule?

The CHAIR. We are voting now upon the adoption of the resolution as amended, substituting ten minutes for fifteen minutes, as it was originally.

ROLL CALL. Ayes: Ainslie, Allen, Anderson, Andrews, Batten, Beatty, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Hagan, Hammell, Hampton, Harkness, Harris, Hayes, Hogan, Howe, Lewis, Maxey, Melder, Myer, Moss, Parker, Pefley, Pierce, Pritchard, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Taylor, Whitton, Woods, Mr. President,—38.

Nays: Armstrong, Bevan, Crutcher, Gray, Hasbrouck, Heyburn, Jewell, King, Kinport, Lamoreaux, Lemp, Mayhew, Morgan, Pinkham, Poe, Reid, Salisbury, Sweet.—18.

Mr. AINSLIE. I ask leave to change my vote from no to aye before the vote is announced, Mr. President.

The CHAIR. It is granted.

The CHAIR. The resolution is adopted.

Mr. AINSLIE. I give notice on tomorrow at the opening of this convention, I will move to reconsider the vote by which this motion was adopted.

SPECIAL FINANCE COMMITTEE.

Mr. SWEET. I desire to make a motion for the appointment of a special committee of three, namely, a committee on Finance, it being the business of this committee to provide, if possible, for the necessary expenses of conducting the affairs of this convention, and further, to pay for items of per diem and mileage, and I ask in making this appointment to waive the usual courtesy, and upon the passage of the motion, place upon that committee men who have made a success of raising money generally, as well for themselves as others. (Seconded).

The CHAIR. It is moved and seconded that a special committee of three on Finance be appointed. (Carried).

Mr. REID. I move the convention resolve itself into a committee of the Whole and proceed with the orders of the day.

The CHAIR. The chair will appoint as that committee, McConnell of Latah, Mr. Harkness of Oneida, and Mr. Lemp of Ada county.

Mr. MAYHEW. I move we take a recess until 2 o'clock. (Seconded). (Vote.) Motion is lost.

Mr. REID. I now make the motion that the convention resolve itself into a committee of the Whole for the purpose of proceeding with the order of the day. (Seconded). Carried.

The CHAIR. Will the gentleman from Shoshone, Mr. Mayhew, take the chair?

ARTICLE I., SECTION 7.

COMMITTEE OF THE WHOLE.

Mr. MAYHEW in the chair.

Mr. REID. Mr. Chairman, when the committee adjourned on its last sitting, there was under consideration Section 7 on the right of trial by jury. The gentleman from Shoshone (Mr. CLAGGETT,) gave notice that when we reached the last line, he would ask that

the same principle involved in the first line control, and therefore this should be applied to criminal cases, only that he would make the majority larger—three-fourths. This first substitute offered by the gentleman from Shoshone, (Mr. HEYBURN,) provoked considerable discussion and is liable to provoke more. When we reach the other, apply this principle to criminal cases, this is likely to produce more discussion. Principally in more speaking by members of the legal profession. Now in order to save time and that this may be disposed of before it comes into the convention, and save time here, I move that Section 7 be referred to the committee on Judiciary. (Seconded).

Mr. SWEET. Mr. Chairman, I am opposed to that motion. I believe in this convention adopting every section in the Bill of Rights and dispose of it as it comes to it and be done with it. (Applause). And in all probability, from the little experience I have had in the Judiciary committee, we are no more likely to agree there than we do here. But I believe in taking it up and settling it right now.

Mr. REID. Mr. President, one other reason I will give for moving to send it there. It is usual and you will find it in most constitutions, to make a declaration in the Bill of Rights—that is the way it is—that is the title of this report, "Declaration of Rights." Here we have not only a declaration of rights in the first line, but we have also a statement of fundamental law announced in the Bill of Rights which properly belongs in that article which is denominated "Judiciary Department." Now in order that it may save the time—that is the main idea, to save the time of the committee—they can recommend back what usually goes in this article, Bill of Rights, and also what part shall be cut out and put in the Judiciary Department proper, and they can agree to it there in the Judiciay committee; at least, we will not come into the convention with a much longer discussion than we had the other day. But all the gentlemen that want to discuss this are lawyers—we have

fifteen or twenty of them—and all the lawyers have endeavored to come in there and appear before the committee, and any laymen will be heard afterwards there, so in order to save the time of the convention on the discussion, all these matters upon recall to that committee come back, and when it comes back, it will hardly be discussed again after they agree on the report. This is the reason I make the motion.

Mr. SHOUP. Mr. Chairman, if this motion prevails, and this section is referred to the Judiciary committee, it will have a contrary effect from what the gentleman intimates it will have of saving time. The Judiciary committee have not yet reported the matter assigned to them, and I do not believe they are any nearer reporting now than they were three or four days ago, and I think we had better decide the matter that first arises in the convention before anything else is referred to it.

Mr. MORGAN. I rise to a point of order. The motion of the gentleman from Nez Perce is not in order. I think we cannot refer the article from this committee to another committee.

The CHAIR. The motion is to report back to the convention with the recommendation that it be referred to the committee on Judiciary.

Mr. REID. Yes; that is the purport of it.

Mr. CLAGGETT. Mr. Chairman. I hope the motion which has been made by the gentleman from Nez Perce will not prevail. All these things in the end have got to come before and be settled by this convention. And this matter with regard to the preservation of the trial by jury, with or without any limits whatever, is a matter that properly belongs in the Bill of Rights. It has nothing whatever to do with the Judiciary committee or its duties and constitutes no portion of the Judiciary Department of the government. And I heartily agree with what has been said by the gentleman from Custer, Mr. Shoup, that if it ever goes back in the Judiciary committee, it will be paralyzed as we are paralyzing

almost every proposition, on account of having too many lawyers on that committee. (Laughter and applause).

The CHAIR. Gentlemen will keep order. This thing of applause in convention does not go down very well. Are you ready for the question? (Question! Question!). The question is that when this committee rise, it report Section 7 back to the convention and recommend that it be referred to the committee on Judiciary. (Vote). The motion is lost. What is the pleasure of the committee? I understand that when the committee of the House adjourned the other day, there was a motion pending to substitute, I believe it was Mr. Clark. Will you read the amendment?

SECRETARY reads: "To amend Section 7 by striking out all after the word 'inviolate' in the first line."

Mr. MORGAN. I offer the following substitute for the amendment: To amend Section 7 by inserting after the word "but" in the first line, the following words: "the legislature may provide that."

The CHAIR. It is moved and seconded that the substitute for the original amendment of Section 7 be adopted.

Mr. MORGAN. The section will read if this amendment is adopted as follows: "Section 7. The right of trial by jury shall remain inviolate, but the legislature may provide that in civil cases three-fourths of the jury may render a verdict." Mr. Chairman, this is an innovation—it is an experiment. If we put it into the fundamental law of this state, we put it in a position where it cannot be changed until we have a new constitutional convention. If you permit the legislature to pass a law making this change in the law of this territory, if it wears well, the people will retain it; if it does not wear well, they can repeal it. If it is put into the organic law so that it must be—so that three-fourths of the jury may give in all cases a verdict—then we can give it validity until we get a new constitution. I am opposed to very radical changes in the laws. It was said here

when this matter was under discussion the other day that the legal profession were conservative. Mr. Chairman, I believe they ought to be conservative. I believe it is right to be conservative, and I believe it is necessary that we should all be conservative in this convention in order to preserve the rights of the people. The gentleman will understand that I am not opposed to this provision; I am in favor of adopting it, but adopt it in such a manner that if it does not work well, we can get rid of it, but if we put it in the constitution, we must keep it there. It cannot be changed. We will have all the benefits of this change if we permit the legislature to enact it. And therefore I am in favor of this amendment.

Mr. BEATTY. I would like to know just how the section will read with that amendment. As I understand it, it will limit the legislature to making it exactly nine.

The CHAIR. Does the gentleman desire it read?

Mr. BEATTY. Yes, Sir.

SECRETARY reads: "The right of trial by jury shall remain inviolate; but the legislature may provide that in civil actions three-fourths of the jury may render a verdict."

Mr. BEATTY. Mr. Chairman, I would like to ask the mover of this last amendment if in his opinion it will require the legislature to make any change, to make it exactly nine.

Mr. MORGAN. I think so.

Mr. BEATTY. I prefer it in some different shape; they might want to make it ten.

Mr. MORGAN. Inserting it in the constitution as it is would confine it to nine, and I did not desire to change it.

Mr. SHOUP. I hope the amendment will not prevail. There has been a great deal of discussion on this question, and if the motion is now put, we will be cut off from answering some of the arguments that the gentlemen made yesterday or the day before. Now I propose

and I think this should be in the constitution so that the legislature cannot change it every two years one way or the other, just as they see fit. We have tried the other system for at least twenty-five years. In all probability we will have the opportunity to amend this constitution in the next twenty-five years. But I am willing to try it for at least ten or fifteen years. I hope the amendment will not prevail. (Question).

Mr. CLAGGETT. Mr. Chairman, I hope the convention will stand by the report, so far as it is reported on this subject, of the committee on Bill of Rights. So far as the application of this theory of the verdict of nine out of twelve is concerned, in civil cases, it is no longer an experiment. It was an experiment twenty-five years ago when it was first adopted in a neighboring state. It has since then been adopted by the empire state of the Pacific coast, California. It has been in force for nearly fifteen years and has worked in the right direction. For that reason——

Mr. REID. May I interrupt the gentleman? I want to ask him if it was not adopted in '79 in the California constitution?

In California it was, but in Nevada it was adopted in '65.[1] They never had an opportunity in California[2] until '79 to pass upon the question, for they had no convention for the revision of their constitution. As soon as the people got an opportunity to have a chance at this thing by revising their constitution, they put it in, and as stated upon yesterday, it is now in and reported in the Montana[3] constitution and in the Dakota[4] constitution, so that it is no longer an experiment as applied to civil cases. On the question of its application to criminal cases, it would be an experiment, and I, for one, would object to putting into the constitution a provision of this kind with regard to criminal cases, but I

1—Art. 1, Sec. 3, Nevada Const. 1864.
2—Art. 1, Sec. 7, Cal. Const. 1879.
3—Art. 3, Sec. 23, Montana Const. 1889.
4—Art. 6, Sec. 6, South Dakota Const. 1889.

do propose when this matter is disposed of, to offer an amendment allowing the legislature to apply it even in criminal cases short of capital offenses.

Mr. HEYBURN. Mr. Chairman, some gentlemen seem to have a great deal of confidence in their theories and in experiments. I believe sometimes it is wise to try experiments, and I believe in a man having a reasonable amount of confidence in his theories, but still it would seem to me that a conservative course would dictate that we should not go further than proposed by the gentleman from Bingham county, (Judge MORGAN); that we should not go further than to allow the legislature to make this provision if in their wisdom they see fit. If the legislature is called upon to act in this matter, the question will have been before the people and they will come up to the hall of legislation advised in a measure of the sentiment of the people. This convention, of course, is a representative body and presumed to voice the sentiment of the people in a general way, but not upon these particular matters, especially matters which are radical changes upon a system that has prevailed in the territory. It has never been deemed of sufficient importance by the people of this territory heretofore, speaking through their legislature, to attempt to change this matter or to express any sentiment with regard to it. And it is fair to presume that the matter has not been very seriously considered by the great mass of the people, so that, if we empower the legislature, which will express the wishes of the people, to do this thng, the people will be free to exercise their own will in the matter. If we tie them down by an arbitrary provision in the constitution, that will prevent the legislature from expressing the will of the people, even though it may be found to be different from the sentiment they have heard expressed by this convention, we will have done the people an injustice. The system is too old to be lightly changed. I am not opposed to putting it within the power of the people to change it, but I am opposed to a body that was selected here with-

out any particular reference to this matter, taking it in their hands to speak for the whole people on this subject. Very much has been said about its application in our neighboring states—in the state of Nevada. I think if I have not read the times wrongly in Nevada that it is not a very safe precedent for us to follow in matters of this kind. The change that was made at the time of the adoption of the constitution in that state was not made in response to any demand of the people, but as the gentleman expressed it on the day before yesterday when discussing this matter, there had been a difficulty in securing verdicts in the courts of that state, and it was to obviate that difficulty. Well, sometimes it is difficult to secure a verdict because there are conscientious men on the jury who do not believe that a verdict should be rendered as a majority believe it should. I do not propose to reopen the discussion of that feature of this matter, because the substitute that is offered by the gentleman from Bingham will obviate the objection of the gentleman of Shoshone county, as he urged it—that was suggested by him, and leave it where it belongs, right with the people. Leave the people to do as they see fit, and not tie the matter up so that neither the people nor the legislature can express their wish, which may be different from that of this convention.

Mr. GRAY. I am rather inclined to think, Mr. Chairman, that it would be better policy for us to adopt this amendment. As has been said here and argued at length, it is a radical change. In our system of juries, and even if it is now in this convention brought fairly to the views of each, still if our legislators when they meet would be advised by their constituency of their desire to have this enactment passed, it would be easy enough to have it done, and as has been said here, then when we try it, we can within a reasonable time, should it prove not to be as expected or as some expect, should it not prove to be a desirable method of practice, we certainly can do away with it; but as has been said by

the mover of this amendment, if we get it in here and it does not prove to be a desirable change, we are here bound by it until we can have another constitution or an amendment to this, and we can all see how hard it would be, should it not prove to be what is expected by some, to get rid of it; and if it is desirable, we want to keep it, and it is easy enough to keep it then, for it is or in no sense can be a political question, and if once tried and proved desirable, I know we could keep it by a legislative enactment.

Mr. SHOUP. I have listened very quietly to the gentlemen offering amendments to the Bill of Rights. I have made no strenuous objection to it so far because I believe that the amendments that have already been adopted are of very little importance. I do not consider that they have added any strength to the section or that they have taken anything from it. Yet I believe the gentlemen offered them in good faith, believing that they are necessary. I do not believe they felt like the venerable lady that went out after the British soldier with a broom, who said she only wanted the pleasure of showing whch side she was on—she had not expected to do any good or any harm. I don't think they offered them with any such object. Now, the gentleman from Nez Perce, Mr. Reid, when he offered his first amendment to this section, displayed great diplomatic skill, for I believe that the majority of the members of this convention believe that Mr. Reid was friendly to the section taken as a whole, but merely wished to make some amendment that perhaps would make it a little more practical or sound a little better, but would not vitally affect the whole amendment. But it did destroy all the utility there was in the amendment. It took the very life-blood out of it, for we all know that the wrongs we are trying to correct by this amendment could never be corrected if the gentleman's amendment prevailed. But the amendment of the gentleman from Shoshone placed the question squarely before the convention. There can be no question as to its intention

and purpose to annihilate the entire section. Now the gentlemen have come to the conclusion that their amendment is going to be voted down and they come in now with another amendment to say, "Why, we don't know just how this section is going to work. Perhaps we had better leave it to the legislature; let them change it around one way or another as they see fit; or perhaps have a majority two years and then three-fourths the next two years, or something of that kind." Now, I don't think there is any danger in incorporating this section in the constitution just as it is embodied by the committee. The committee gave this section, with but one exception, more attention than any other section in the entire report and they were unanimous in reporting it to the convention as it now appears. The committee does not represent that the report is by any means perfect, for we shall offer an amendment or two ourselves before we are through, but we do represent and believe that it is as nearly perfect as any section will be that will probably be adopted by this convention.

Now as regards this question of leaving it to the legislature. Is it probable that we will have a legislature in this territory for the next twenty years that will be superior to this body? Have we had a legislature yet in this territory that could in any way compare with it? The territory has never been represented as it is represented here today, and the reason why this should be in our constitution is so plain that I believe every business man upon this floor, notwithstanding what Judge Claggett said yesterday—that the majority of the lawyers themselves will vote for it and vote down this amendment. The gentleman made a great many allusions to things past—seemed to have a great deal of veneration for the old landmarks. Why, gentlemen, it would not surprise me to see them before this convention adjourns, defend the torture rack of the Spanish Inquisition. Now they have called our attention to this, that it has been in vogue in England a long time and that it has done so much good there. Is that any reas-

on why we should accept it without challenge? For let us remember that all the time this jury system has been in force in England, Parliament has had the damnable power of taking a man's life and confiscating his estate without accusation or trial. Gentlemen, it does not necesarily follow that because a thing is English that it is not susceptible of reform or amendment.

Now the allusions the gentlemen have made have been almost entirely to criminal matters. The committee did not propose to make any changes as regards criminal matters. They only referred it to civil matters entirely, or to business matters I care nothing for all these platitudes at all; they are not speaking to the question, but I do not believe in the whole history of disputation we have heard or read of such lengthy and eloquent arguments being made that so little referred to the question under discussion. Let us suppose a case. Let us bring it right down to a business proposition. We will suppose that for some reason the machinery of the courts is not in operation. You have a dispute with your neighbor about a piece of property or you have an account with him of long standing and are not able to settle. You have repeatedly met and tried to settle the difficulties between you and are finally forced to come to the conclusion you can never agree. Some friend says, I would advise you to select three of your neighbors—good men—and let them select twelve of your peers and neighbors who have no business connection with you whatever and are honorable, law-abiding citizens and let these twelve men take your case into consideration; let them allow you to appear before them with counsel and witnesses. They will consider all that you have said and after giving the matter due consideration, then let three-fourths of them decide the case. Now, wouldn't any fair-minded or sensible business man that wanted to do what was right agree to such a proposition? But if a man was dishonest and wanted to take advantage of his neighbor, he would say, "No, sir. I want the whole twelve to decide this thing."

The gentleman yesterday said a great deal about the jury system being intended to support the weak against the strong.

The CHAIR. I desire to state to the gentleman, we will have to have some regard for the motion that prevailed this morning on the ten-minute rule.

Mr. SHOUP. Has the ten minutes expired?

The CHAIR. Yes, sir.

Mr. REID. One moment—I am glad to hear from the gentleman from Custer. I will admit those of us who addressed this convention on this question may not have the wisdom that may have incited the committee when they brought in this Bill of Rights, and we did approach it with diffidence and so expressed ourselves. I will admit further, so far as he was concerned, that my remarks may have been misapprehended, but I will not admit it to the two distinguished gentlemen who addressed the committee before him. I have never listened or read in any books on the question of the jury system, remarks that were more interesting and more to the point than especially those from the distinguished gentleman who opposed the position which we took. But I will say further, Mr. President, that any allusion we made to the origin of this system or to the jurisprudence by which it has been governed, was at least correct as a statement of history and fact. The gentleman argues this question and states that the jury system had its origin in England and forgets that even in the Dicasteria of Athens this system prevailed.

Mr. SHOUP. Allow me to correct the gentleman. I said the gentleman referred to it as being so long in vogue in England.

Mr. REID. It was in vogue in England, and not only there, but 'way back even to the time Cadmus invented letters, almost; because in Athens we had it; we had it in the Comitia of Rome, by the Dane, through the Scandanavian the system has been improved as experience and use suggested it, thence on down, all through the nations, before the Conqueror came to Eng-

land; Edward the Third had it—in the states of Germany they had it; our American colonies inherited that great system of jurisprudence which the old world had adopted and which remained unchanged even when the people of the United States at fifteen different times amended their constitution. Today you cannot go into a federal court and try a case with a jury of less than twelve, because the hand that traced that constitution and the men who adopted it—that instrument which the people praise on every Fourth of July—says trial by jury shall remain inviolate; so you cannot try a case in the federal court with less than twelve unless you amend the constitution of the United States. The gentlemen have said here, and also asserted in the committee that when this system was established, their important cases would no longer go to the federal jury and federal courts, as they go in other states. But the system of jurisprudence in federal courts is better than it is in any state court, as I have tried by experience, and they will have to carry their important cases there, so that in this territory you will have one system of jurisprudence, but in these jury cases, when you have any juries, in the mining cases, for instance, they will have to be tried, I believe, by this very same procedure you are trying to get rid of. I say, and the gentlemen admit, that the amendment I first offered would seem to make no objectionable alteration. I take it that the members of this convention are intelligent. My original amendment was, "by consent of the parties." That was not necessary, inasmuch as the act of the legislature could have provided that, as I stated to the convention, the parties might agree to it. The gentleman's amendment just simply struck out all that and left it right where my amendment would.

I thought there was a disposition here to adopt a compromise. I think the amendment of the gentleman from Bingham properly leaves it to the legislature. We did not discuss it when we were elected to come here. We have never had any discussion of it in this territory,

as well remarked by the gentleman. Now when we go back to our constituents and when we place before them this constitution for adoption, this great question, this great principle of constitutional liberty will come up. For when you submit this constitution to them and discuss it before them, this question comes up, this innovation, this departure from the principles laid down by our fathers and preserved in the constitution of the United States. Let that issue be made when they send their representatives to the legislature; let that be made an issue in the campaign; then let them change it, and if it does not wear well, send another set of representatives and let them repeal it. But when you put it in the fundamental law, it is unalterable until you call this constitutional convention together again. I think it is by discussion and debate that we arrive at the best method of putting this matter before the people.

Mr. BEATTY. Mr. Chairman, I am in favor, if we have a constitution, of putting something in it or leave it blank. Now the amendment of the member from Bingham amounts to nothing. It simply leaves it where it would be if we had nothing upon this subject. It leaves it, in my opinion, to the legislature. My opinion is that if we leave that section entirely out, it would still be left to the legislature. In other words, the amendment amounts to this—a sort of suggestion to the legislature what they ought to do. Now I am not in favor of a constitution of that kind. I understand the aim of the constitution is that we shall say there what we mean—that we shall not drop any suggestions to the legislature what they may or ought to do, but say what they are and what they are not to do. That is my idea of the constitution. Now with that view, I ask what is the validity, of what force is the amendment proposed by the gentleman of Bingham? Simply none at all, in my opinion. If that is the sentiment of this convention, this amendment should be adopted. This amendment would be to strike the section out entirely and leave it to the legislature, for that is what it amounts to. But,

Mr. Chairman, I go further than that. I did not intend when this question came up to take any part in this debate, but my worthy friend from Shoshone intimated or insinuated that the members probably are in favor of this question. Well, I am, for one, not informed upon it, but I have an opinion and I seldom have opinions that I am afraid to express. I have the opinion that this is not exactly an innovation as has been said here. It is a matter which has been tried and successfully tried, and I am in favor of engrafting it in the constitution so that the legislatures cannot tamper with it from time to time—make it one session one thing and the next session another thing. I believe that principle has been so thoroughly tried that we are safe in adopting it. I am in favor of saying in this constitution that in civil cases the verdict of the jury shall be by nine men, or that the agreement of nine men shall constitute the verdict. Now, Mr. President, about the only argument I have so far heard against this position is simply the fact that this system has existed for a great many hundred years; that it existed in England a hundred or two hundred years ago; that we have lived and prospered under it and therefore you must never change it. Mr. President, I do not concur that because a thing is old and venerable that therefore it is right. If our forefathers lived in log cabins, that is no reason why we should not live in palatial homes; or if our ancestors a great many hundred years ago, as naturalists tell us, were monkeys, that is no reason why we should persist in being monkeys still. If we can be men, if we can improve upon the past, I am in favor of doing it, and this question has been tried; it has been found successful.

Now I know my time is short, Mr. Chairman, and I shall not go into the merits of the case, for I haven't the time, but I want to say right here, gentlemen, that this is a matter that is of more interest to the layman, to the business men of the country than it is to the lawyers. It is the lawyers who benefit by this heathen-

ish system. It is by this system that we have repeated trials and new trials, because juries often fail to agree. Now then, that is an advantage to the lawyers. It is the people who have the litigation who are benefited by this change, because you get verdicts, and as has been before remarked, the first impulse of the jury is most likely to be the right one. Now gentlemen, consider a moment that this is not a matter of interest to attorneys to have this system engrafted. I say it is a matter of special interest to the laymen, to the men who have a case in court, to the men who have to pay the attorneys' fees, who have to pay the costs of litigation; but there are many reasons I might adduce why I think this system should be engrafted. I presume my time is up.

The CHAIR. The gentleman has three minutes yet.

Mr. BEATTY. Then I desire to say in those three minutes that I do not believe this is a matter that the people will oppose. A great deal has been said here by different gentlemen that we are taking away a right of the people—a right which the people desire. If I thought, Mr. President, that the people did not want this change, and we were not satisfied it was for their interest to have this change, I would not advocate it, but I believe the people—and I believe from my conversation with them from time to time, from the expression of their opinions, they are all tired of the jury system as we have it. The jury system is a good one if properly protected, but I tell you, sir, if we allow it to degenerate as it has, if we allow justice to be delayed as it has been by the jury trials, the jury system will go down. It is the common remark of all the people that the trial by jury is an unsafe thing. Now I am convinced that it is not the lawyers who are interested in this, it is the mass of the people who want the change, and I believe nine-tenths of the people of Idaho territory will vote to engraft just such a provision as this in the constitution, and I hope, therefore, that the report of the committee upon this section will be sustained.

Mr. GRAY. We have departed considerably from the main question. The question is: Shall we allow the people, through the legislature, to recommend the passage of a law like this, or shall we engraft it where we have got to endure it, let it be good or bad. The gentleman from Alturas would seem to think that we must put it there. My idea of the constitution is not that the constitutional convention shall engraft all the laws in the constitution.

Mr. BEATTY. Let me ask you a question.

The CHAIR. Does the gentleman give way?

Mr. GRAY. Yes, sir.

Mr. BEATTY. Let me ask you, Judge Gray, what is the necessity of putting in these directions to the legislature as to what they may do? If you simply want to leave it to them, why not leave it entirely and make no reference to it?

Mr. GRAY. Within the Bill of Rights there are a dozen things that are not yet left entirely to the legislature, and the only thing we want a Bill of Rights for is a little admonishment to them. It is nothing more than that. It is contained in all constitutions and as a general thing it might just as well be left out. But the idea is, it is to give them permission and fix it as to what and how much a legislature should do; if not, then I say, let us do away with legislatures and let constitutional conventions that meet for that one purpose to do all work of that kind. I am sorry I am interfering with the measure or the section of the chairman of the committee which reported upon this bill, but I am not saying that I am opposed to the proposition at all; I am not saying I am opposed to the trial of it, for I am certainly not; but I am opposed that you shall engraft it in this constitution in such a manner that we must endure it, even after trial, and suffer under it until we can get rid of it—several years, perhaps, before we can do it. And as I say, if it is good, we can keep it; but the idea that we must enact a code of laws here—if that is what we have come for, I have certainly mis-

taken the position to which I have been called to represent the people here. We came here, I supposed, to draft a constitution; that is, to make general rules and general laws; that is, to give general directions and lay a foundation that is broad enough for legislative enactment, and when the legislative enactments are enacted from that, that they may be changed from time to time. Do not circumscribe them by this constitution that we are now attempting to frame. There is no reason, I say, Mr. Chairman—and if there is reason in this, we might just as well say how the sheriff shall serve a paper; how an attachment shall be issued, how they shall be served and how executions and judgments be enforced, and we might as well, gentlemen, not leave that to the legislature, because, as the gentleman from Custer would say, you can't get such a body of men as this. I will chance it, then, that we will get from the people sent here—I will chance it that they will enact such laws as are beneficial today. I hope the amendment will pass.

Mr. HAGAN. Mr. Chairman, I am opposed to any interference with this section, so far as I have read it, as it stands. It is a singular fact that in the arguments of the gentlemen in favor of the retention of a jury of twelve that not one single reason has yet been given by any of them why a jury should remain twelve. Not one reason has been given. The reason of the opposition to the change is only based upon the ground of its antiquity. Now let us consider this in the light of the fact that we are seeking to change a rule for some reason. There is no sacredness that hangs around or that hedges itself around a jury of twelve, any more than a jury of twenty or twenty-five. If there are reasons why a unanimous verdict of twelve should be given, let us hear them. Is there a constitutional right? Only the right of trial by jury. We have been referred to the fact of the English jury. We have no jury system as it exists in England, only in one respect, and that was the reference the gentleman unfortunately made to the practice in the United

States courts. There, sir, he says that he took his important cases; when the Judge upon the bench can do that to which he refers—instruct the jury to arise, and tell them what to decide or tell them how to find their verdict—that is not a trial by jury. We have in the United States practically kept, I say, (the gentleman is correct about it) many of the old abrogated features of the common law jury, which I do not propose, so far as I am concerned, will be contained in the constitution of this state. But no reasons have been given why the system of twelve as it has grown up around us should be retained and that the unanimous verdict should be the rule. But they argue that it is old. Coming back to the same proposition upon which the friends of this measure stand, and that is that three-fourths should render a verdict and that trial by jury should be inviolate, and we meet them on that proposition and agree with them. It would be useless to put that word in because the right of trial by jury is guaranteed by a constitution that is higher than the one which we shall make, and upon which we cannot infringe. But the reason is this: That the friends of this measure believe that we observe in our every-day practice as lawyers—and merchants and business men have no doubt observed more keenly, that it is not as has been claimed by the honorable gentlemen upon the other side, a protection of the weak; but it is used, Sir, as a measure to oppress the weak. Why, Sir, if the weak is in litigation against the strong, how usual it is for the strong one to get one man out of the twelve. But I believe that in the ordinary twelve jurymen, when you have it so that three-fourths may render a verdict, there is no man rich enough to buy one-half of an American jury. They are too numerous. And the poor man and the weak woman in the courts say, "You may oppress me by getting one, but you cannot rob me of the nine; under the present system you may rob me of one, but leave me eleven, and hang the jury and there is no trial. I am oppressed; I am in litigation, and the expenses are

heaped upon me until I wish I was out of court and give you all for which I am contending." I have seen that too often, Sir. I have seen it too often, where men save themselves in cases by being able to hang the jury by getting one man. I want that man, if he is in the business of hanging juries, to be compelled to get four, and I don't believe they can do it. I believe the ends substantially of justice will be meted out to litigants, and that is the only reason why I advocate this in civil cases. Because my observation teaches me that I ought to give this law to the people, in its organic sense, too, and not tell the people to go to the legislature and ask them. But what is the use to tell the legslature that they can do this in the future? The constitution we are making is mandatory and prohibitory. We will compel them to observe, as we do in this Bill of Rights, the inalienable rights we give them. Legislatures cannot take it away. Nor do we propose, nor do I propose, so far as I am concerned, to consent and allow legislative bodies to pass upon something I consider of such vast importance to the people that it should be engrafted in the organic law of the land.

Now the English judges have their juries; at the same time they can compel a verdict. They have a right, when a man is tried for his life or liberty, to tell them how to decide. Of course, he can't make them, but we know how they operate. We haven't it here. The judge has no right here to instruct a jury how to decide. He instructs them upon the law and lets the facts stay with them. The facts being with them, I think in civil cases that the jury should have the right—three-fourths of them—to determine between man and man the rights at issue, their property rights, the rights of every-day litigation, so that litigation can go on, if men want to litigate, and be decided. We have the course of the wheels of justice in this territory, it appears, clogged. We have the calendars over-burdened with cases, most of which are jury cases, because our very code provides we shall have trial by jury in all

law cases, and those law cases, my experience has been, can be treated more promptly, equally as successfully and equally productive of justice to the parties by having three-fourths of that jury decide the cases. I am not in love with any part of the system—the jury system; I am not in love with the system that has come down to me from hoary antiquity, that would allow a peer or a baron of England to shoot down a man and then upon a trial by his peers be secure, at the same time living under a law that would brand a starving woman for stealing a loaf of bread to give to her children. I don't believe in these old antiquities—I don't believe much in the old hoary antiquities of common law, either. I know that the right of trial by jury, for habeas corpus, was wrung from an unwilling king away back on the Plains of Runnymede. I know the kings of England have been trying ever since to thwart the will of the people as far as they can, so far as liberty under the constitution is concerned. I do not believe in this system which was a portion of that system that caused our forefathers to rebel, as is the case with a good many other landmarks hoary antiquity brought down to us. Many are the crimes under the guise of common law that were perpetrated upon a people that were helpless under the rules of its necessities. Nor is this the reason that I am against the twelve; but my only reason is that my experience has taught me that justice would be meted out more unerringly, more promptly and in a better manner in civil cases if two-thirds of the jury should decide the issues and render their verdict on that vote.

Mr. POE. When we say "The right of trial by jury shall be held inviolate," I take it that we mean something, and that is that every person whose life, liberty and property are about to be taken away from him, before that is done, he shall be entitled to a trial by jury. Now what is a trial by jury, is the question, under the constitution of the United States and the precedents that we have—is what this convention is to de-

termine. I am not like the gentleman who has just addressed you; I have a great deal of respect for the wisdom of our fathers, but I think in the consideration of this matter that we ought to give some consideration in relation to that matter, and should here consider what was intended by the framers of the constitution of the United States when they said that every person should be entitled to a trial by jury. Now, the only way we can determine that and as to what the very spirit and letter was, is to see what their practice has been under that law. We find that the jury trial is a system hoary with age. Mr. Claggett referred to the fact that at one time it was composed of 23 men; that a bare majority was all that was required to render a verdict. Now the gentleman will at once see that that was a cumbersome body and larger than was necessary, but that notwithstanding the largeness of that body it could be agreed that the majority should consist of twelve men all the time. It required twelve to make a majority of that jury as it then existed, and in the wisdom of our fathers they saw proper to do away with the surplusage of eleven, and leave to twelve intelligent men the decision of the question before the court, and therefore they adopted the number of twelve under the old common law. So it came down to you under their practice; that system of jurisprudence was adopted in the United States; the common law of England was the law of the land. We knew no other law, and under that law all of our proceedings were had. We were governed by that law, and even today, by the statute of this territory, in the absence of any legislation upon any particular question, the legislature has declared that the common law of England is today the law of the land.

Mr. HAGAN. Will the gentleman allow me to ask him a question?

Mr. POE. Yes.

Mr. HAGAN. I understood the gentleman to say that the United States statutes fixed the jury at twelve.

Mr. POE. No sir, I never said it.

Mr. HAGAN. What law then did?

Mr. POE. The law of custom and the common law, and the practice of the people under that law. We find that under the practice of every state, or nearly so, until within a few years, the rule has been that when a man demanded a jury, it was considered a right that he had to a jury trial by twelve men. I say that that was the spirit and intention of the framers of the constitution of the United States, when they said that every man whose life, liberty or property was to be interfered with or taken away from him—before that could be done he should be entitled to a trial by jury. I say that having adopted twelve as the number which constituted a jury, that therefore by custom, by long-continued acquiescence, they intended that the jury should be composed of twelve men. Now I do not desire to take up the time of this convention at any length, but I cannot conceive of any reason why the gentlemen who are in favor of this innovation, who are in favor of this change—they say they are here to represent the people, that the people are the rulers of the country, and that they are ready to bow to whatever the people may demand. Now they do not come here with any instruction. They come here simply for the purpose of framing a constitution that is republican in form, and putting the necessary safeguards around it so as to give it the proper force and effect. They come here not to make an innovation; they come here to make that kind of a constitution and no other, not to make a change; and I say if the gentlemen are sincere as to the matter, in their expression of willingness to leave this to the people, then let them simply say that the legislature shall, as this amendment directs, have the power at any time to declare that in civil cases a jury shall be a less number than twelve. We will go before the people with that slight innovation, and we will say to them: "Gentlemen, elect your men upon that issue; if you want that change made, make it when you go to the legislature; if you do not want it made, then instruct us; but we will not engraft it into

the constitution. I say it is nothing but right and it is nothing but just; if the system is good then we can retain it for a time; if it is bad we have an opportunity to change it. It will require a long time, trouble and expense to hold another constitutional convention or an election for the purpose of changing the constitution itself.

I have a great deal of regard for the wisdom of the past, notwithstanding the remarks of the gentleman to the contrary. When I behold the wisdom that has been manifested by our statesmen of the past I bow with humble reverence to that wisdom. But I am not one of those who is of the opinion that the world is growing physically weaker but mentally stronger. I find giants in the days of the past that equal anything I find in the days of the present. And I say that we should not with lightness pass over or by that wisdom that has been displayed in the past. I will wind up by saying that we should not be ashamed today of what our fathers have done, nor to tread the paths our fathers have trod.

Question.

Mr. MORGAN. I will not take the time of the convention but a few minutes. I wish to say this: That Nevada has been held up to us as having adopted this system. I have only to say that since she adopted this system she has run down until she is so weak that she cannot stand alone. She has been trying for four years to steal a large part of this territory to——

Mr. CLAGGETT. Does the gentleman claim that she has run down because of this system?

Mr. MORGAN. I don't know (Laughter), I don't know, Mr. Chairman, whether she has run down because of this system or not, but I know this, that since she has adopted this system she has run down until she has only ten thousand voters, and has been trying for four years to steal two-thirds of this territory. Now she is not able to stand alone, and has not population today sufficient to make half a state. If she were a territory

she could not be admitted. They point us to the California constitution that was adopted by the Dennis Kearney and sand-lot fools. Mr. Chairman, I don't want to follow the lead of such constitutions as those nor such men as those. They tell us there is a difference, that the laymen ought to be in favor of this. Mr. Chairman, this convention don't know any difference between the interests of laymen and the interests of lawyers; we all have interests to protect. If we submit to one innovation today, we may have another proposed tomorrow. For myself, gentlemen, I think we ought to be careful. I think we ought to be careful and not throw away the old landmarks that have come down to us. They tell us we should not keep these things because they are old. Why is it that we have this library, Sir, here in this building? Simply that we may have the crystalized genius of the past, of the greatest men the world has ever produced, before us, so that we can follow in the precedents they have laid down for us. It is safe to follow precedents that are good. I hope gentlemen, inasmuch as you have everything we want or any of us stand for in this amendment—I hope it will be adopted, to leave it to the legislature to provide that a three-fourths verdict may be received. Gentlemen, I thank you.

Mr. AINSLIE. I move thtat the committee rise, report progress and ask leave to sit again. (Seconded). Motion is put and declared lost.

Cries of "Question!"

Mr. REID. I want to give notice that I desire to call the ayes and nays in the convention on this amendment.

The CHAIR. You can give notice there, but we cannot entertain any notice here.

Mr. REID. Notice has got to be given, unless you want to be cut off.

The CHAIR. Perhaps it has, but I am no parliamentarian. (Laughter).

SECRETARY reads Morgan's amendment: "To

amend Sec. 7 by inserting after the word "but" in the first line the following words: 'the legislature may provide that,' so as to read, 'The right of trial by jury shall remain inviolate, but the legislature may provide that in civil cases three-fourths of the jury may render a verdict.' "

Cries of "Question!" (Vote.)

The CHAIR. The noes have it. (Cries of "Division!"). A division is called for. (Rising vote). Eleven in the affirmative. Those opposed rise. The motion is lost.

Mr. CLAGGETT. Mr. Chairman, I move that the committee do now take a recess until two o'clock.

The CHAIR. The motion is out of order, unless put that the committee rise.

Mr. CLAGGETT. That the committee now rise and take a recess.

The CHAIR. The house does rise if the committee goes into convention.

Mr. CLAGGETT. Any way to make it.

The CHAIR. (Vote). The ayes have it. The committee will now rise.

CONVENTION IN SESSION.

Mr. PRESIDENT in the chair.

Mr. MAYHEW. Mr. President, the committee of the Whole having had under consideration the Bill of Rights, hereby reports progress and asks leave to sit again.

The CHAIR. The motion is, shall the committee be given leave to sit again. (Vote). It is carried.

A MEMBER. I move a recess until three o'clock.

(Calls of "Two o'clock.")

A MEMBER. I move an amendment to two o'clock. (Seconded).

Mr. HARRIS. I move to amend that by making it half past two.

The CHAIR. (Vote). The chair is in doubt. All those in favor of taking a recess until half past two will rise.

The SECRETARY. Thirty-eight, Mr. President.

The CHAIR. Gentlemen, the motion prevails; the convention takes a recess until 2:30.

AFTERNOON SESSION.

Convention called to order at half past two by the president.

The CHAIR. What is the pleasure of the convention?

Mr. HARRIS. I move that the convention go into committee of the Whole for the purpose of further considering the Bill of Rights. (Seconded).

Mr. BEATTY. I suggest that the motion be extended also to any other reports that have been made, if we get through the Bill of Rights.

Mr. HAGAN. In the general order.

The CHAIR. For the purpose of considering the general orders upon the calendar. (Motion put and carried).

The CHAIR. Will the gentleman from Shoshone take the chair?

COMMITTEE OF THE WHOLE IN SESSION.

Mr. MAYHEW in the chair.

ARTICLE I., SECTION 7.

Mr. CLAGGETT. Mr. Chairman, I offer the following amendment to Section 7.

SECRETARY reads: Insert after word "verdict" in the second line of Section 7, the following: "And the legislature may provide that in all criminal actions, except for capital offenses, five-sixths of the jury may render a verdict."

Mr. BEATTY. I second the motion, Mr. Chairman.

Mr. CLAGGETT. Mr. Chairman, I do not propose to add much to what has been said in this discussion with regard to civil cases in this connection. The reason which moved the consideration of the convention by so large a vote to leave this clause with reference to a verdict of three-fourths in civil cases, I take it applies with equal if not greater force to criminal actions. Nevertheless, I would have been unwilling, inasmuch as

this matter has never been tried, although my own judgment as to how it will operate is entirely clear—I would be unwilling to incorporate in the constitution as a part of the organic law of the state a compulsory provision to this effect, and therefore in offering this amendment, I have limited it to the discretion of the legislature. And limited it also to ordinary cases of misdemeanor and felony, excluding from the operation of it, and placing it beyond the control of the legislature itself—only capital cases where the punishment is death. We all know as a matter of public history that it is upon the criminal side of our courts where the administration of the law as a rule is the most defective—where justice is most uncertain, not only as against the party charged with crime, but also in his favor very frequently. We all are aware of cases within our own knowledge where men who clearly had committed no crime whatever have been reduced to poverty by having one or more jurors drawn upon the panel which tried them, who would insist upon hanging the jury in favor of guilt, out of some personal spite either to the defendant himself or to some particular cause which he represents, or to some particular party to which he belongs or order of which he is a member. Generally, however, the difficulty arises in consequence of the hanging of the jury by one or two (scarcely ever by three) for improper motives where there has been some kind of influence bought to bear. The law, out of tenderness to liberty and life, gives to the accused double the number of peremptory challenges it gives to the prosecution. No one finds fault with that. It also gives to him the benefit of every presumption arising upon the facts of the case with reference to a reasonable doubt—not only with reference to a reasonable doubt as applied to the entire case, but with reference to reasonable doubt upon any one fact which is necessary as a link in the chain of evidence to secure conviction. And many advantages upon the introduction of evidence are given to the defendant in case of wrong

interpretation of the law by the court, resulting in judgment of acquittal. Nevertheless, although the court may have compelled a particular construction of the law (I prefer to use that term) nevertheless, when once the verdict of acquittal has been rendered, he may not again be placed in jeopardy of life or limb or liberty. I might enumerate here a dozen other advantages which the criminal or alleged criminal has, and if on top of that you give him the further advantage, if you double the number of peremptory challenges allowed to him over and above the prosecution, you give to the defendant such a series of advantages as practically to destroy the administration of justice. For that reason I think repeatedly juries will be hung by one juror or by two jurors, and then comes a second trial and an enormous expense to the treasury, the same result nearly always following the prosecution where the man placed upon trial is a prominent man or one who has a large number of friends or one who can largely influence public opinion, either through the press in or any other way. And on a third trial and a hung jury, the practice almost having the force and effect of law, is that the district attorney must enter a *nolle pros* and dismiss the prosecution, and yet, counting all these jury trials, there may not have been one atom of doubt as to the question of the man's guilt, not seldom wearing out the state by reason of these repeated trials and repeated failures. Not for the purpose of calling attention to the necessity of something of this kind being done, because that matter of necessity is known to all, and not because there is anything new in the whole matter which I shall read to the convention, because daily when you take up your public prints over all parts of the United States, you see the same thing—there is nothing new about it, but for one other purpose which I will disclose hereafter, I will read the following extract taken from the Shoshone county newspaper which takes it from a Portland, Oregon, paper. The Portland pa-

pers are giving the jury system as it now stands severe blows because justice was thwarted in the Olds case by the usual insignificant minority. The *Portland Journal of Commerce* comments as follows:

"The non-conviction of Olds for the gory murder of one of his gambling fraternity, after the most convincing evidence on the part of the prosecution, has caused many to question the motives which prevented the minority of the jury from securing justice for the foul crime. It is suggested that the system requiring unanimous verdict of the jurors be suspended for the more sensible method—the Scotch method—a majority alone being necessary to decide a trial. If this qualification were adopted, so many re-trials would not take place, corruption would not so easily influence jurors without conscience. The Olds trial has set many respectable men pondering over the laxity that exists in some branches of our municipal government, and the sooner reform sets in, the better."

I have read that extract, Mr. Chairman, not for the purpose of, as I said before, pointing out an exceptional case at all, because these cases are so common, happening so every day, and the newspapers are so filthy that our ears have become so accustomed to them that it makes no impression upon us any more. But for the purpose of calling attention to the fact which is here specified and which was omitted to be spoken of upon the debates on this question when it was up before. In Scotland where the administration of justice is as good as can be found anywhere upon the face of the earth, even in capital cases the majority of the jury decide. This idea with regard to the sanctity of the trial by jury is the old English system. They have never had it in Scotland. Scotch law still prevails as it existed at the time of the final union of Scotland with the British crown in the reign of James the First wherein the bare majority decides, but to show the sagacity of the Scotch law, they provide not only for a verdict of guilty or not guilty, but they have a third

verdict which ought to be incorporated in the statutes of every state, and that is a verdict of "not proven." If the man is shown to be innocent, he goes entirely acquitted of any moral blame; if he is guilty, he is punished; but if in consequence of checks of the law in any way or the failure to produce legal evidence, although there may be a moral certainty of his guilt, he is not allowed to go out in the community and say, "I have had this accusation swept entirely away from me," but he stands there with the stigma attached upon him. To cover a case of that kind they have another species of procedure by which in case of subsequently discovered evidence that taint may be removed upon application of the party upon whom it has been left. This is what I call the most advanced system known anywhere among civilized men in which the institution of the trial by jury has been preserved. I do not in this amendment ask to have a majority. I would be unwilling myself to do so. I wish to make haste and progress. We each wish to do it slowly, safely and securely. I don't want to stand still and do nothing; neither do I want to run too fast. I want to put it in the power of the legislature in cases non-capital to require or to provide that a verdict of five-sixths or ten-twelfths may be sufficient either to convict or to acquit.

Mr. HAGAN. While I am in favor, Sir, in civil actions of allowing three-fourths of the jury to settle questions at issue, I am not prepared to say that the liberty of a party shall be jeopardized by a vote of five-sixths or three-fourths of any jury. It is a question most serious, and I have my doubts about the power of this convention to put this in the constitution. It has never been denied under the constitution of the United States and in a capital offense or offense where the punishment is imprisonment for life, that you cannot take away from the party the unanimous verdict of the jury. And I oppose this amendment for the same reason that I am in favor of a three-fourths rule in civil cases, and I appeal to the convention for the same

reason—I appeal upon the ground of the weak against the strong. I appeal in the face of the fact that in civil cases we can protect the weak against the strong by a three-fourths verdict, but in criminal cases we cannot protect the weak against prosecution unless by unanimous verdict. Every man who is arraigned under this amendment for a crime the punishment of which is imprisonment for life, which is worse than death—five-sixths of the jury or less than the whole number can consign that man to imprisonment for life. I do not believe in a criminal case we should touch one single hair of his head, around whom the safeguards of the constitution have always been placed—that he should be convicted without a unanimous verdict of his countrymen. I draw the line when it comes to criminal prosecution. The state has so many challenges—every state gives to the defendant challenges, but he cannot be protected except by unanimous verdict. For the same reason that I am in favor unqualifiedly of a clause in this constitution allowing three-fourths in civil cases to protect the weak against the strong, for that very reason I am in favor of unanimous verdict in criminal cases. I do not propose that the prosecution against the weak, defenseless man shall be heard in any court without every safeguard which the constitution can give him being thrown around him. I do not go upon the question of antiquity or anything of that kind, but upon the broad proposition that it is the policy of the law, the policy of each jury to whom that question is submitted, that they as a jury in a body unanimously shall determine this man's guilt or innocence. Under this amendment you can consign a man to the penitentiary for life for murder in the second degree—consign him with five-sixths of the jury on any prosecution. It will apply all the way down to criminal offenses. I wish this afternoon, so far as I am concerned, to draw the line in this age of progress and intelligence, between civil and criminal cases. I do not believe in the waiver. The supreme court of the United States has decided that a

man cannot waive a jury in criminal cases even if he wishes to do it. The state of New York in the case of Cancemi v. People[1] decided he could not waive a jury in a misdemeanor, and over two years ago the Supreme Court of the United States decided in a case from Tennessee that you could not waive a jury. If you cannot waive a jury even in a misdemeanor, which I think is right, I do not believe in applying this rule to criminal cases of the country. I do not believe in trying a man for a crime unless he is protected by every safeguard the law can throw around him—every challenge, every investigation by which we can arrive at the conclusion of his guilt or innocence. We cannot arrive at it unless we claim the unanimous verdict of the jury. I am opposed to it Mr. Chairman. I am in favor of three-fourths in civil cases, but I am opposed to it in all criminal cases of whatever kind or nature.

Mr. POE. Mr. Chairman, I think it is about time that we called a halt in this matter of innovations. The gentleman advocating the three-fourths verdict in civil cases, had some precedent, true, with some states that had adopted that rule, but I defy the gentleman to point out to this convention one solitary state which had dared to go to the extent that he has asked this convention to do. Mr. Chairman, are we to jeopardize this constitution by getting something into it which no other constitution has ever dreamed or dared to do, and present it to Congress among those old common law attorneys who are wedded by education to the old-time practice which has been in vogue from time immemorial, that no man shall be deprived of his life, liberty or property without a trial by twelve of his peers? We admit that states have changed that in civil cases; we have seen proper to follow in their footsteps and make the innovation on the old principle that they have made, but now the learned member asks us to go further and to absolutely jeopardize the prob-

[1]—18 N. Y. 128.

ability and, in my opinion, I believe the possibility of the adoption of this constitution by Congress. And therefore upon policy, upon expediency I do not think it is wise for us to assume a greater knowledge than those who have gone before us have displayed. I am unalterably opposed to taking away that safeguard from any living human being, to-wit, a trial by twelve of his peers when he is accused of a crime the penalty of which will incarcerate him in a prison cell. I say, we should pause and consider well a matter of this kind which takes any safeguard away from the citizen. It is a maxim of law that it is better that ninety-nine guilty men should go unpunished than that one should suffer for a crime of which he is not guilty. Under the present safeguard of unanimous verdict of twelve men, Mr. Speaker and gentlemen, I appeal to you in your magnanimity to consider the many thousands who have suffered ignominious death upon the scaffold or who have eked out a miserable existence in the prison cell. Notwithstanding that fact, yet innocent men have suffered. Now, shall we put it within the pale of possibilities or of the reach of the court or any process of law that will make it more likely for the innocent to suffer than already exists? I think this convention will not go to that extent. And I most emphatically protest against it—upon the principle of its being wrong, and upon the further principle that it is not expedient for us to assume a greater knowledge than all the statesmen who have preceded us.

Mr. BEATTY. I shall not make a lengthy speech nor attempt to make a speech, but I have a few suggestions to make. We still hear the old cry that this is an innovation. Now if the committee will look at that amendment, it is not incorporatng anything in the constitution that is binding us; it is simply leaving it to the legislature in their wisdom of the future to make this change if it shall be deemed wise. And I think it is wise to leave that door open that the legislature may enact the law that it thinks best. Now, if it is impor-

tant to allow three-fourths of the jury in a civil case to find a verdict, I think it is equally important to have the same in criminal cases. The best of jurists say this, that the way to prevent crime is to make punishment certain. We all know that punishment is uncertain, by the practice we have had. Now all good citizens simply want the guilty punished; they do not ask anything else than that, but that much they do ask, and I think that if we have the punishment made certan, that it would restrain crime much more certainly than a severe punishment. The result of our present system is, as we all know—it is not necessary to cite examples—we all know that in half the cases criminals go unpunished simply by the jury failing to agree. Now let us make some provision by which that punishment can be certain, and I claim that the amount of crime will be greatly reduced. But there is one other suggestion and then I leave the matter. It is said that this will greatly injure the safety of the citizen. Why, gentlemen, we forget one item. Suppose this jury shall make a mistake; suppose that it is left to ten jurymen and that a mistake should be made; there is still a resort for the innocent man. That matter still is subject to the ruling of the judge; that verdict may be set aside upon proper motion if the evidence is insufficient. Now there is a bulwark that the citizen can always fall back upon, and there is little danger of the judge allowing an innocent man to be punished when the evidence shows he is innocent. The danger is not great. We are not taking away the safety of the citizen by any means in allowing the legislature to adopt such a measure as this. Of course, if the amendment of Judge Claggett was to absolutely adopt this into the constitution, it would be a different matter. I prefer it left open so that future legislatures may, if in their wisdom it is deemed best and it becomes the sense of the community, have the power to incorporate it, and that is all this provision claims. It does not provide absolute insertion of that principle in the constitution.

Mr. HAGAN. May I ask the gentleman a question before he sits down? Hasn't the Supreme Court of the United States decided you could not be limited upon a criminal case, where the accusation is for an infamous crime, to less than a unanimous verdict?

Mr. BEATTY. How is that?

Mr. HAGAN. Hasn't the Supreme Court of the United States decided that no state law can be passed where the verdict is rendered in a case where the party is charged with an infamous crime without unanimous verdict?

Mr. BEATTY. I don't remember a decision of that kind, and if there be such a decision, future legislatures will have the opportunity of examining that, and if that is the law, if there is such a decision as that, they need not enact this law; but I remember no such decision.

Mr. HAGAN. Do you know of any provision in the constitution of the United States that gives the right of trial by jury by less than unanimous verdict in any state of the Union for an infamous crime?

Mr. BEATTY. I know of no special provision in the constitution of the United States making a different rule applicable to criminal cases than civil cases, and if there is a provision which prevents anything than an unanimous verdict, then we cannot adopt the provision which my friend votes for to allow three-fourths verdict in civil cases. I know of no distinction between the two, from my recollection of the constitution now.

Mr. GRAY. I certainly fail to see the consistency of the gentleman of Alturas. He was not willing to allow the legislature to pass upon matters of property and consider what would be a correct jury in civil actions. But now he seems willing that in criminal cases,—a much more serious matter—he is willing that the legislature may have control of matters of that kind. If they know what is a competent jury in a criminal case, they certainly should be competent to know what was in a civil case. But that seems not to

be his opinion, and I say, and say emphatically that such an innovation as this I hate to go out from this convention, for I think it is unexampled in any country or any state. I never knew of such a thing and I hope we will not go to Congress with a constitution which the constitution of the United States itself would not warrant. I hope the United States will not have to come to us to learn what should be a proper law or a proper jury in a criminal action. He says we trust to judges, that we may have that resort. I say that perhaps may be better and it may not be better. It is almost taking away from the criminal that charity which is extended to him by the law of presumption of innocence. I have seen communities when a poor, unfortunate man has been indicted and brought before the court, and from the reading of the indictment five-sixths of that community would have hung him then without a bit of evidence further than reading the indictment, and I say when we let loose of one single thing in the present system, we do that. We have no right to do it under the law and, I claim it, of the United States, and I do believe it is such an innovation that I should dreadfully hate to see it go out. I am not finding fault with what was done this morning; I am in favor of trying a three-fourths jury in civil actions, but the method of geting at it, I do not approve of, as it was done by the convention this morning. I want that tried by legislative enactment, but I cannot see the consistency of saying let the legislature do it in criminal cases—which are far more important to the life and liberty of the citizen—and in civil cases we won't trust them. They say that this is a better, a nobler, and an abler body than can be got together in the legislature. If so, pass upon this important thing now,—not let them go to the legislature. I cannot see the consistency of that, Mr. Chairman, and I hope that we will consider this candidly enough and think quietly enough on it to vote it down; it is such an innovation that it is not warrantable anywhere.

Mr. REID. I desire to make one statement. Mr. Merriam, the jurist, in collecting a line of authorities on this subject, announces this statement as expressing what he has discovered in his researches, and he cites at least twenty or thirty decisions; "Such legislation," —that is, for the trial of a criminal case with less than twelve,—"is obnoxious to the familiar constitutional provision preserving the right of trial by jury inviolate.[1] That has been decided in a number of cases, among others in the case mentioned by Mr. Hagan.

Mr. CLAGGETT. I do not want our friends on the other side of this question to befog this question on legal or constitutional propositions, and they shall not do it, if I can help it. It is said that as matters now stand Congress cannot pass a law, because it is forbidden to do so by its constitution—or the constitution of the United States—which guarantees a verdict of twelve

Mr. POE. Let me ask you a question.

Mr. CLAGGETT. In a moment. But it is true that there is not another state in the Union, so far as I know, which has got this provision in it, and hence the legislature cannot provide for it; for they all contain provisions guaranteeing trial by jury as known to the common law. But our friends on the other side seem to forget that we are now proposing to acquire the local sovereignty of a state, and are not stopping in the territorial status, where the constitution of the United States is not only our national but our local constitution, and where it is not only our national but our local sovereign, and where the constitution of the United States has not only a national but a local action upon our courts, but we are proposing to wrest, as it were, from the national government the full character of local sovereignty which belongs to a state, and where it has complete and absolute control over the

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[1]—Thompson & Merriam on Juries, Sec. 10. (1882 Ed.)

whole question of juries and anything and everything which it may see fit to control that is not in conflict with the constitution of the United States. Does my friend from Kootenai County or from Ada County, or from Nez Perce County, undertake to say that the constitution of the United States undertakes to regulate the judicial systems of the states?

Mr. REID. Will the gentleman allow me?

Mr. CLAGGETT. Certainly; provided you don't take it out of my little ten minutes.

Mr. Reid. No sir; take it out of mine; I won't speak two minutes. Does the gentleman's amendment embrace any higher grade of crime than misdemeanor?

Mr. CLAGGETT. Yes sir.

Mr. REID. I will ask the gentleman if he does not know, that on account of the constitutional provision that even the nation has, the government never allows the district attorney to prefer an information without trial by jury for a crime higher than a misdemeanor, because it trenches on the right of trial by jury?

Mr. CLAGGETT. What government?

Mr. REID. The government of the United States.

Mr. CLAGGETT. Why, of course, in all matters which relate to the laws of the United States, the national constitution is the constitution for the people of the whole nation. But every power, *every power,* is lodged in the states and remains in the states, is inherent to the people of the states, except such powers as are delegated by the national constitution to the national government.

Mr. REID. And I would like to ask the gentleman if he does not know that under the decisions cited, that in states where their constitutions had the very same form you propose to engraft on ours—

Mr. CLAGGETT. I beg your pardon, sir, but I say that counsel cannot produce any such.

Mr. HAGAN. Will you allow me to ask you a question?

Mr. CLAGGETT. Yes sir, a dozen of them, if you want to.

Mr. HAGAN. Has not the Supreme Court of the United States decided over five cases to the effect that where the crime is infamous you cannot dispense with a jury trial in defiance of the constitution?

Mr. CLAGGETT. Under what law, United States law?

Mr. HAGAN. No sir, where the constitutions of the states allowed it.

Mr. CLAGGETT. No sir, it has not, and I defy counsel to produce the authorities here and read them to the convention.

Mr. HAGAN. And furthermore, has it not given us opinions to the effect that misdemeanors cannot be tried without a jury under state laws?

Mr. CLAGGETT. Whenever you come down to the question, whenever a case comes to the Supreme Court of the United States, and the question of its sovereignty is raised under a state constitution, you go back to the state constitution, and the Supreme Court will enforce the state constitution; and if you ever adopt a constitution here which provides that trial by jury as known to the common law shall remain inviolate, the Supreme Court of the United States will hold, whenever that question properly comes up, that a trial by twelve men is meant, and that a unanimous verdict must be rendered; but if our constitution provides that a verdict of ten-twelfths may be rendered, then that is as far beyond the power of the Supreme Court of the United States to interfere with as it is for the Shah of Persia to undertake to interfere with the Pope's decree.

Now then, Mr. Chairman, I want to say a few words more on this question. I will ask again; what is the difference beween misdemeanor and felony in legal practice? The only difference between the former and the latter is the greater punishment, or amount of punishment. Each is a crime, and under any constitution which provides for a unanimous verdict in crim-

inal cases, a misdemeanor is practically just as much a crime as a felony case. But in misdemeanors the punishment is small, and therefore they will dispense with juries under the laws of the United States, altogether in some cases, and do not allow a jury at all, although it is a crime,—so-known.

Now one question was raised by Mr. Gray that I think should be referred to, and that is, about those cases where very nearly the whole community is determined to convict. I have seen cases in court, at the beginning of terms of court, in which it was true, as stated by him, that whenever the list of criminal cases was reached upon the calendar, the jury that would be called into the jury box was determined apparently to convict, in spite of the evidence, and to directly reverse the old common law rule of requiring the defendant to be proved guilty beyond a reasonable doubt, and hold the defendant guilty in advance and call upon him to prove his innocence beyond a reasonable doubt. I have seen that, but how does it come? The reason of it, Mr. Chairman, is very simple; it is this, that under your requirement of a unanimous verdict, term after term and year after year goes by without any practical enforcement of the criminal law, until crime multiplies and criminals increase to such an extent that the whole people rise up, as it were, in a revolutionary movement, and then for the one or two terms that next follow that condition of things they will convict,—almost going to the point of convicting innocent men. But if you will provide a system of jury trial by which the law can be enforced under ordinary circumstances and against ordinary offenses, you will get rid entirely of this proposition, and that is, the difficulty which is suggested here. Up in my county, for instance, for the last five years we have had the most lax administration of the criminal law. Juries would not do their duty,—hang, hang, or else acquit defendant after defendant, until at the last term of court a jury was impaneled there under a revolutionary situation, fol-

lowing which it was exceedingly difficult for many men proved innocent to obtain justice at their hands. But the whole of the great evil is the direct effect of this old system of requiring a unanimous verdict. I think I can refer safely to the experience of every old legal practitioner in corroboration of this statement. It is conceded it is the result of laxity; it is considered almost impossible to enforce the law as it is, and so we have these revolutionary methods applied at last by an indignant populace by and through the action of the jury.

Another thing was suggested by my friend Judge Gray, and that is this; he opposes this clause because he says it is necessary there should be a unanimous verdict in all criminal cases for the purpose of protecting the weak. Let me ask this question at the hands of this convention, who is the weak in the execution of the criminal law? The state or the defendant? Does not every member upon this floor know that the weaker party is the state, under the restrictions, the limitations, the benefits,—the unreasonable benefits which are given to the defendant? It used to be the case in England, where the jury was summoned by the high sheriff of the county, and where the sheriff was appointed directly by the crown, and where,—as was said so ably this morning by the gentleman from Kootenai—where the judge had the power of charging the jury upon the facts as well as upon the law,—which we have done away with, and where the court not only influenced but absolutely directed the verdicts of juries,—which was true,—you see that the crown was the stronger, and all the safeguards which grew up under the common law were designed for the express purpose of mitigating this strength so that it should not be exercised tyranically. How it is under the ordinary administration of the law in the United States, on the other hand? We all know that the whole thing is reversed. We all know that our sheriff has no power except to go out and summon the men who

are drawn by law from the lists prepared by the county commissioners. We all know the defendant has every benefit from reasonable doubt. We all know he has a double advantage in impaneling the jury. We all know that when there has once been a verdict of acquittal he cannot be called in question again, no matter how wrong the verdict may be. And we all know in addition that the court has power to suspend judgment on the verdict after conviction, in order that application may be made to the governor for pardon in any case which may arise now and then, where the conviction is wrong, or where, if not wrong, the punishment is too severe, so that there is ample opportunity given before the execution of the judgment of the court for a review of the case by the governor or board of pardons. Now I ask whether all these things taken together, one and all, do not constitute too much advantage on the part of the defendant, and whether the strong arm of the state, which is stretched out and whose function is to protect the people, is not paralyzed by this system of a unanimous verdict.

Mr. BATTEN. I will ask you, why make an exception in capital cases?

Mr. CLAGGETT. Out of mere tenderness to human life, and because if the death penalty is once inflicted you can never rectify the error, but on the question of imprisonment you have the entire term of his imprisonment to correct it.

Mr. BATTEN. Don't criminals value their liberty as much as their lives?

Mr. CLAGGETT. No sir; I think my friend would prefer to go to the penitentiary to being hung. (Laughter.)

Mr. REID. I do not desire to obtrude myself upon this convention, but I want to call the attention of the convention to some facts in the history of this jury subject, which I will do briefly, and in the first place I will say that I feel some diffidence in getting up here, one of the youngest members, and seeing around me

staid old men and old lawyers; but we are making experiments in this constitution, and doing away with vital safeguards incorporated in the American constitution. The gentleman said they were making it so we could get into Congress; but you have got to frame it so it will pass the people too, and they esteem this right dearly. Does the gentleman remember that in 1787, when our fathers met in Philadelphia and framed the constitution of the United States, they left out the right of trial by jury in a civil case, and did not guard the right of trial by jury in criminal cases particularly? What was the result? An appeal could be taken to the Supreme Court on matters of law and fact,—could be brought even into the Supreme Court. What did they do? Convention after convention met; public meeting after public meeting was held; resolution after resolution was adopted, and the people cried out that this great right, which came down to them sacred and hallowed through the centuries, wrung from King John on the plains of Runnymede, and which was declared one of the reasons why they separated from the mother country, and sealed their declaration with their blood for eight long years, should be put in the fundamental law, the constitution of the land. What was the result? You see it today in your constitution among the first ten amendments adopted, two years after it was put in operation, in the sixth and the seventh article, guaranteeing to the people of this nation the right of trial by jury. What do we find further down in this connection? When we came into this convention and took our oaths, we said that we would support the constitution of the United States; and yet in this seventh amendment it shows that it preserved to the people the right of trial by jury. Under the fifth, in any case of felony or infamous crime a man should never be tried unless on presentment or indictment of a grand jury, and yet this committee have actually put in this report that even in infamous crimes men may be prosecuted on the information of

the prosecuting officer only, when the constitution, by the light of the Declaration, says it shall not be done. Gentlemen, the people value these rights. You have made one innovation, and I raise my voice in warning now. Gentlemen may say: Here, you want to make a political record." I want to make none; I intend to make none; I want no office in the gift of the people. I intend to pursue my occupation as an ordinary citizen; as an ordinary citizen I value these rights, and I intend to raise my voice against it.

When you go to Congress—and you have had warning, as the gentlemen know—you go there with values of property far less than any other state went into the Union; you go there with a population perhaps less than any others have gone in; you go there in an attitude of supplication, but now when you go asking in that way, with an innovation that I believe strikes at the very foundation of the constitution, will it be strange if they refuse you admission? Gentlemen, follow the paths of your fathers; they trod them successfully. The constitution they framed is the heritage of our American Nation. We are glad it is ours, we rejoice in it, we enjoy its liberty; we should be chary of changing it in the interest of untried experiments, and not strike this liberty down that has been preserved and transmitted to us by our revolutionary forefathers.

Question, Question.

The CHAIR. Gentlemen, you have heard the question proposed. Mr. Claggett, the gentleman from Shoshone, proposes the following amendment. (Secretary reads) "Insert after the word 'verdict' in the second line of Section 7, the following: 'and the legislature may provide that in all criminal actions, except for capital offenses, five-sixths of the jury may render a verdict.'" (Vote). The noes seem to have it—the noes have it.

Mr. CLAGGETT. Mr. Chairman, I offer the following amendment. After the word "verdict," in the second line of Section 7, I move to add: "and the legis-

lature may provide that in all criminal actions, except where the punishment is death or may extend to imprisonment for life, five-sixths of the jury may render a verdict." (Seconded).

Mr. CLAGGETT. I offer the amendment for the purpose of meeting the objection, which had in my judgment considerable force, that was made—although I do not think it was in order—by the gentleman from Kootenai. Under our statute, on an indictment for murder—and probably the statute will never be changed; it will in all probability remain the same—under such an indictment the defendant may be convicted of murder in the first degree, the punishment of which is death; or murder in the second degree, the punishment of which is imprisonment in the territorial prison not less than ten years, and may extend to life; or manslaughter. In other words, the amendment that I offer now excludes all those higher and graver offenses from the operation of the amendment, and confines it to cases of misdemeanor and ordinary felonies, which are not punishable by death or imprisonment for life. I presume this vote that has just been taken has been influenced to some extent by views with regard to the question as to whether the constitution of the United States has any bearing upon this question. It certainly has not. But if I had time, I could read here to show, as I said before——

The CHAIR. The chair is sorry to say that we have not; we cannot violate the rules.

Mr. CLAGGETT. I do not understand that I am violating any rule, however.

The CHAIR. No, only that the time cannot be extended.

Mr. CLAGGETT. No, sir, and I do not intend to ask it. As I said before the constitution of the United States is the organic law of the nation in a national capacity, and these amendments to the federal constitution which have been referred to here are mere limitations upon the powers to be exercised by Congress, but

every power which is not specifically delegated to Congress by the national constitution, or which in the national constitution is not specifically prohibited to the states, is reserved to the states respectively or to the people, by the language of that instrument itself. There is in the constitution of the United States no prohibition against a state having any such legislation as this, but there is a prohibition against Congress passing any law—not for the states but for the nation—enabling the government to do away with trial by jury; and it is utterly impossible for Congress to pass a law today, that in any federal court, or in any matter arising under the constitution and laws of the United States, less than a unanimous verdict may be allowed, in any action at law where the amount in controversy amounts to as much as twenty dollars. Nevertheless, this morning we went ahead and prescribed the other rule here. I offer that amendment without further remarks.

Mr. HEYBURN. Mr. Chairman, without taking up the time of this convention, I just simply want to suggest a word of warning to this convention, and that is, if we consider one crime after another, it will take a week to dispose of this section with this kind of amendments that have been offered. I suppose the next bite will be to except those crimes the punishment for which is ten years' imprisonment, then those for five years, and so on down. For one, I propose to oppose any measure that takes away the right of a unanimous verdict in defense of a man's liberty for any crime or misdemeanor whatever. I believe if the fight is lost in this convention it will be carried out into the public field by their vote this fall, and be carried further into the Congress of the United States, where it will come before a body of men three-fourths of whom have been distinguished members in constitutional conventions of their states, over periods extending for the last fifty years, and who have heard and considered these questions; and when these conservative, able, wise men of the country dally with this question, will

they recognize a constitution where a new people, yet untried in the science of government themselves, demand such an innovation as this upon the doctrines they have considered and passed upon before half of us were born? So I say, if we are going to take it up, bite by bite, crime after crime, we will exhaust the whole afternoon. I, for one, propose to vote against any innovation on the unanimous verdict in criminal cases.

Mr. HAGAN. I would like to inquire if this new amendment has been tried in Nevada?

A MEMBER. I would like to ask the gentleman who proposed this amendment, if he said the Congress of the United States could provide for the conviction of offenses less than felonies by the verdict of a less number than twelve.

Mr. CLAGGETT. What is the question?

MEMBER. Did I understand you to say that the Congress of the United States—that it was within the province of the Congress of the United States to provide for the punishment of persons convicted of any crime against the laws of the United States by the verdict of a less number than twelve?

Mr. CLAGGETT. I have expressly stated that under the constitution of the United States, the limit of the authority of Congress, that they cannot do it; nor can they do it in civil actions where the amount in controversy amounts to more than twenty dollars.

Mr. AINSLIE. Does not the constitution of the United States provide for the number constituting it?

Mr. CLAGGETT. No, sir, it does not, but it has been decided repeatedly, in the absence of a statute or constitution which says it may be less than twelve, that where trial by jury is not definitely mentioned, it means twelve unless it says something else.

Mr. AINSLIE. As I understand it, the common law of England has never been adopted by the Congress of the United States, but the understanding has been that trial by jury under the constitution of the United

States comprehends the common law doctrine of a trial by jury. Now if that is the meaning of the constitution, the law-makers and law-givers who have presided over the inception of the laws of this nation for a century have not seen proper to adopt any amendment or legislation looking to convicting persons by a jury of less than twelve, or five-sixths, as proposed by the gentleman here; and that is a very worthy example for us minor statesmen to imitate. That is, I adhere to the doctrine that where a man's liberty is at stake he shall be tried by a jury of twelve and entitled to every reasonable doubt, and therefore should not be convicted except by a unanimous verdict of the twelve. You do away with the whole doctrine of reasonable doubt if you reduce the number capable of finding a verdict to less than twelve, and every law writer in all our American jurisprudence anywhere in our own country, and forget that the party is entitled to the benefit of every reasonable doubt; and what a reasonable doubt is, is specifically set forth by the law writers. Now I am opposed to this doctrine; I am in favor of the report of this committee, but I took no part in this debate on the question of civil actions. I believe a verdict of the jury by three-fourths of their number in civil cases proper, but I would not have gone so far. I was more in favor of trying the amendment of the gentleman from Bingham in leaving that experiment to the legislature, and not perpetuating what they call an experiment by placing it in the constitution and making it perpetual. Now, sir, the gentleman from Alturas, with a zeal that is probably unequalled by any member in this body, seems to use the same argument upon the one side of the question in civil actions, and tries to take up that on the opposite side when it comes to criminal proceedings. I jotted down a remark or two that he made in advocating the right of three-fourths of a jury to find a verdict in criminal cases, and in placing it within the province of the legislature to say as to whether that shall be done

or not. He said he was not in favor of dropping hints to the legislature how they should do, but he says that we must say positively that the legislature must do so and so—say what the legislature must do and what they must not do. That is, in civil cases, when the matter of dollars and cents is involved, he was in favor of not allowing the legislature to have anything to do about it, but put it in the constitution that three-fourths of a jury were capable of finding a verdict. That is, that you cannot trust the legislature when it comes to dollars and cents, but when it comes to the question of a man's liberty, you may do so. Now, as an *argumentum ad hominem,* if his position was good in the other case where it comes to civil proceedings, this position is sound in criminal proceedings. But I do not pursue the course of this argument further. I say it is legitimate in civil proceedings that a jury of three-fourths should find a verdict. I believe it will facilitate litigation and dispatch many suits a great deal quicker than by having a unanimous verdict. But when we come to the life and liberty of the citizen, whether it means imprisonment in the county jail or ninety and nine years in the penitentiary, I say we should pause and be governed to a large extent by the experience of those who have gone before us. Take the ablest men in the country, such men as we have in Congress today, such men as Judge Edmunds of Vermont, one of the ablest lawyers of the United States in that body, and you will find that they have never yet undertaken to advocate the doctrine that five-sixths of a jury should find a verdict in a criminal case. Therefore I oppose the motion made by the gentleman from Shoshone, and I hope this body will not adopt it. I must say, as stated by one or two gentlemen already, and by the gentleman from Shoshone, Mr. Heyburn, that we have innovations enough in here now to make it a little risky for this constitution to run the gauntlet of Congress, and if we attempt to change the whole jury system in regard to criminal proceedings, I say, gentlemen, that you will

find that constitution laid upon the table of the senators and representatives until it meets the approbation of the next session of Congress.

Cries of "Question!" (Vote).

The CHAIR. The noes seem to have it; the noes have it.

Mr. CLAGGETT. Mr. Chairman, I offer the following amendment: Add after the word "verdict," in the second line of Section 7, "and the legislature may provide that in all cases of misdemeanor, five-sixths of the jury may render a verdict." (Seconded).

Mr. CLAGGETT. I simply offer that. I have not debated these questions after the first general proposition, and simply wish to suggest in connection with this, that I am trying to save the counties expense, as well as to secure a better administration of the law. In these minor offenses, in police courts and in justices' courts, juries hung by one or two men cause the counties a great deal of expense. I do not apprehend that any gentleman here will seek to invoke the ancient practice in the protection of a man who is charged with stealing a few dollars' worth of property of any kind whatever.

Cries of "Question." (Vote).

The CHAIR. The noes seem to have it.

Cries of "Division." Rising vote shows ayes 31, nays 21.

The CHAIR. The motion prevails.

Mr. CLAGGETT. I move the adoption of the section, Mr. Chairman. (Seconded).

Mr. GRAY. I would like to have it read now as amended.

SECRETARY reads: The right of trial by jury shall remain inviolate; but in civil actions three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanor five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony by the consent of both parties, expressed in open court,

and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

Cries of "Question!" (Vote).

The CHAIR. The ayes seem to have it; the ayes have it.

SECTION 8.

The question is now upon the consideration of Section 8. The clerk will please read it.

The CLERK reads Section 8 as reported.

Mr. REID. I offer the following amendment: In Section 8, line 2, strike out the following: "or information by the public prosecutor." (Seconded).

Mr. REID. In the section it says: "No person shall be held to answer for a criminal offense." That includes all degrees of murder. When we were sworn in we took an oath to support the constitution of the United States. Article 5 says: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentation or indictment of a grand jury, except in cases arising in the land or naval forces," etc., etc. Now, here a public prosecutor may prefer information against a man for murder or felony; in other words, it is a plain, open, direct violation of the constitution of the United States. It can only apply to misdemeanors. I would be opposed to informations even for misdemeanors. It provides elsewhere in the Bill of Rights, no man shall be put to answer except on a warrant duly issued upon an affidavit as to the charge, and so on, or indictment of his neighbors, the grand jury. Here is another innovation. This as it stands now is a plain violation of the United States constitution as clear as it can be, but even if you limit it to misdemeanors, I am opposed to it then. I am opposed to any one man having it in his power to prefer informations and prosecutions against his fellow

citizens for any crime. We have often heard that the courts are open. When you want to prosecute a man, go up, file your affidavit, meet him in open court, confront him with your witnesses. If he is held or bound over, then let his neighbors, *pro corpore comitatus,* as it used to be called in the ancient law, meet in grand jury assembled and there consider whether or not he should be indicted. After they have considered it, let him be put upon his trial, if they find a true bill; but I am opposed to lodging in the hands of a prosecutor this power to use their malice or prejudice or any other motive that might actuate them in the prosecution of their fellow citizens.

Mr. GRAY. I don't think that we exactly understand the point of this amendment. "No person shall be held for a criminal offense unless on presentment or indictment of a grand jury or information of a public prosecutor."

Mr. REID. I understand that language to mean, if the gentleman will pardon me, that a man may be held to answer by an information filed by a district attorney.

Mr. GRAY. That is, if the district attorney knows of the offense, he goes before a magistrate?

Mr. REID. No, sir, that is not what this intends. If he goes before a magistrate, he does not file an information; he files an affidavit and warrant issues direct. This is intended to act as necessary evidence in misdemeanors—file informations and try a man on it. Instead of an indictment or presentment, he simply files an information and you try him upon that. It will become——

Mr. GRAY. Or, that is when he knows the crime is committed.

Mr. MORGAN. Oh, no; it is——

Mr. GRAY. Held for a criminal offense—he is not being punished.

Mr. MORGAN. They can try it.

Mr. GRAY. Well, I don't know what they mean.

That is what I want—simply to study out what they mean.

Mr. AINSLIE. I would suggest to make that more definite—that the first line be amended to read, "held to answer."

The CHAIR. The amendment now before the committee is to strike out this portion of the section "or on information by the public prosecutor." Do you desire to make an amendment to that amendment?

Mr. AINSLIE. No, sir; it doesn't come in there.

The CHAIR. Any further remarks upon the amendment?

Mr. STANDROD. As a member of the committee on the Bill of Rights, I desire to say that this matter was discussed among that committee and it was submitted to a great many members of this convention coming from different parts of the country. We thought it was better that this clause in this section should be placed there. In many of the counties of this territory, there is but little crime committed. In the county from which I come, there are perhaps one or two criminal actions during the year, and I believe for the last two years there has only been one criminal prosecution in the county upon the indictment of the grand jury. There is sometimes a case that a slight felony has been committed in the county—not a heinous offense—not an offense of any great moment, yet it requires, in order to prosecute the criminal that he should be presented by indictment, and in order to do that, it will require, before that matter can be brought before a court and tried, an expenditure, in order to obtain the grand jury to indict him, of at least five or six hundred and from that to a thousand dollars. All this talk about this section being unconstitutional is bosh, and gentlemen here say that this committee dared to come here and confront this convention with a section of this kind directly in contravention of the constitution of the United States, and are attempting to bring before this convention an innovation that was never heard of

before. I say this is not true. This clause has been adopted by several states of this Union. The constitution of Illinois provides that the grand jury system may be absolutely abolished,[1] and in California, that great state, where the survival of the fittest is a maxim that has been put into practical use, instead of theory, they have adopted this plan and the prosecutions of this state have been successful and they are conducted under a section of this kind. And when he talks about its unconstitutionality, I desire to ask the gentleman if the section that he read applies to criminal prosecutions brought under the laws of a state?

Mr. REID. Yes, sir, "No person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury, except in cases arising in the land and naval forces or in the militia," and so on. You have put it in your constitution, but why did you add that "land and naval forces," when the United States clause is just the same; that follows. I admit that a public prosecutor could lodge an information on a misdemeanor, but you have criminal offenses, which includes the whole law—all of the criminal law.

Mr. STANDROD. That is a matter no longer in debate among lawyers. It is so thoroughly expounded by the decisions of the courts where this matter has gone up, and by the Supreme Court of the United States, that it no longer remains in doubt, and that was thoroughly considered before this clause was adopted by the committee. All this talk about giving the public prosecutor so much power—I want to ask the gentleman if it is not the experience, as I believe, of the majority of attorneys in this convention, that most generally the grand jury is governed by the directions or requests of the district attorney when he submits cases to them? It is very rarely the case that when he desires a person prosecuted the grand jury will refuse; indeed, most

[1] Sec. 8, Art. 1, Ill. Const. of 1870.

generally they are governed by his advice upon the law and facts that pertain to the law. And furthermore——

Mr. REID. Will the gentleman allow me to interrupt him a moment?

Mr. STANDROD. Yes, sir.

Mr. REID. Allow me to read the clause from the California constitution. "Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law."[1] That is, he cannot lodge an information until he has been committed by indictment or indicted by a grand jury.

Mr. STANDROD. That is not to be tried at all; it is to be committed. Furthermore, this clause does not abolish the grand jury system. If the district attorney of the county or the district should get to play too high a hand, if he should undertake to prosecute men where there was no evidence against them, and for the mere purpose of prosecuting them, most assuredly the judge of that district under this section has control of all that matter. He can at any time he thinks the district attorney is not performing his duty, call a grand jury under this section, and it is very likely the grand jury would be called once a year, or once in two years, as it became necessary. But I believe this will save the money of the counties of this territory, hundreds and hundreds of dollars a year in the prosecution of such crimes as horse stealing and cattle stealing and things of that nature that require to be presented by indictment. I believe there is no innovation in it that will be disastrous to the laws of this territory or to the enforcement of them, or whereby any party will be injured. And, coming from the section of country I do, and having seen this matter tested, I believe that it

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1—Art. 1, Sec. 8, Cal. Const. 1879.

will save to my county alone hundreds of dollars a year. I trust this convention will adopt the section as it has been reported by this committee.

Mr. CLAGGETT. I offer the following amendment, by adding after the word "prosecutor" the words "after a commitment by a magistrate." (Seconded).

The CHAIR. Does the gentleman accept the amendment?

Mr. REID. No sir, I do not accept it.

Mr. CLAGGETT. I think, Mr. Chairman and gentlemen of the convention, the amendment will obviate any possible objection to the adoption of the section as it now stands, so far as this clause is concerned. We are getting back to the same old proposition that the constitution of the United States, the limit upon congressional power, is to be taken and construed as the limitation upon state power, which is a proposition I utterly deny, and upon which I say the gentleman cannot find any text-book on the constitution giving judicial authority to that effect. I throw that out broadly as an axiom, and I would like to see my friend Reid or anybody else produce an authority to sustain that proposition they advocate. I know that in Michigan they have abolished grand juries altogether. If the constitution of the United States secured grand juries in all cases in the states, how were they able to abolish it, and send people to the gallows and penitentiary for years without it? I did not know until it was stated by the gentleman from Cassia, Mr. Standrod, that Illinois had made any change in it.

Mr. HAGAN. It has not; it was a mistake.

Mr. CLAGGETT. What is that, Illinois has not?

Mr. HAGAN. Illinois has not.

Mr. CLAGGETT. I understand now that it has, that Illinois has made a change in it, authorized a change to be made by the action of the district attorney, as stated by the gentleman. I had no knowledge of that before. The section as it now stands with the amendment which I have offered, is substantially the system

that prevails in the state of Wisconsin, where they have reached in my judgment the true rule in regard to the matter. There, as also in California, they do not abolish the grand jury altogether. They leave the grand jury system in existence, and allow the district attorney after commitment to prepare his presentments on all those cases which are sent in preparatory to the sitting of the court, and he has plenty of time to prepare his indictments in advance on all cases where the magistrate has bound anybody over to appear before a grand jury. But in cases where the district has a good district attorney, the expense of the grand jury system, which is great, is dispensed with. But wherever for any reason the district attorney does not perform his duty under the law, the grand jury system is retained and the judge may by special order at any time call a grand jury, and that is the substance of the provision as reported here. It will save thousands of dollars every year to the counties of this territory, and nobody can be injured by the insertion of this amendment. The committing magistrate has already passed upon the question. There is a presumption that there is probable cause, or rather, it has been adjudicated that there is probable cause for holding the party over, and that is all the grand jury is entitled to do, to say that there is probable cause to believe the man is guilty, and after the committing magistrate has passed upon it, there is no reason why the district attorney should not draw up the presentment and present it to the court without the intervention of a grand jury.

Mr. REID. The only objection I see to that, Mr. President, we don't need it until after the magistrate has bound him over. My short experience in the territory has been that with most magistrates it seems that the dictum of the district attorney is the end of the law. In other words, he will direct this magistrate, file his information or keep his prosecution before the magistrate and have the man bound over; that is what he wants. But if the man has been bound over to the

grand jury, his neighbors can come in. Just consider how many bills are thrown out, go and examine the court records, and you will find that two thirds of the bills presented are returned not true bills. Yet you will allow one man, who dictates to the magistrate what he wants in regard to the prosecution of the accused, to have him bound over. This may be all right with a district attorney where a lawyer on the other side happens to be defending him. But I say, stick to the old rules. The courts are open to any man's affidavit. If you want to make a charge against a neighbor, walk up like a man and swear out and have a warrant issued and bring him before a grand jury. The gentleman says it costs so much; but cheap justice don't sometimes pay; under such rules as are just it does cost something. If there are few cases for the grand jury, then it is not going to cost much. If there are a great many cases it is going to cost a good deal even for the public prosecutor to prosecute them. My friend throws out a challenge—he heard me call for time to show authorities, and I can show authorities that you have trenched upon the criminal jurisdiction—or that the courts of the United States in their jurisdiction do not allow district attorneys to file an information, only in cases of misdemeanors; they stick to the old rules more in their courts, and that is the reason lawyers like to try cases in those courts.

Mr. SWEET. I think the time has come to draw the line on the gentleman from Nez Perce. I think he is reflecting upon the justices of the peace in Idaho. (Laughter). He said that in his short experience in practicing law in this territory he has found that justices of the peace are not to be relied upon. Now I want——

Mr. REID. I want my friend to state my language correctly.

Mr. SWEET. Just a moment. I want to know if the gentleman from Nez Perce has practiced law in any

country where he could tell a justice of the peace what the law is. (Laughter).

Mr. REID. I want him to state me correctly, and I will stand by the record as made by the reporters. I did not say they are not reliable; I said I had found that the dictum of the district attorney was with them the end of the law, and I think my brother, if he recalls his experience, will say the same thing. And I have found no difference between them here and in the east, and therefore I want to take that power from those fellows that can use that dictum in that way.

Mr. SWEET. Well, I will further remark that while a great many indictments or informations are thrown out by the grand jury as not being true bills, is it not also true that about as many indictments that are handed in by the grand jury are also thrown out? It will average, I think, without any question, that nine out of ten indictments that are found are quashed.

Mr. GRAY. I don't think there will be a great deal of danger from a prosecuting officer under a salary. I don't complain that we are taking a long time in all these arguments, because I like to hear them, but I do hate to have our constitution get in such a fix that Congress in considering it will have to have such an argument every day as we are having. I think we are putting too much in this all the time; we are trying all the time to lay the foundation too wide, to leave nothing for the legislature. I would conclude, when we get through here, from the way we have commenced on our first bill, that we will not need a legislature again for twenty years. (Laughter). It rather seems that way to me—that we are going to do it all in this convention, and I want as much of this marked out as can easily be done.

Mr. HAGAN. I would like to say this, Mr. Chairman. I do think that the gentlemen from Latah and Nez Perce leave the justices of the peace in an awkward position. I would like to say that my opinion is that there is not any of them to be relied upon. I don't

wish to have these gentlemen dodge the question, if they pretend a justice of the peace knows how to file an information. If the gentleman from Nez Perce understands that I announced that doctrine that none of them can be relied on, I have no amendment to make. If Mr. Sweet's criticism goes to the effect that some of them can, I want to amend; that's all. I don't want the convention to offend the gentleman from Ada any more. (Cries of "Question").

SECRETARY. The amendment is, to add after the words "public prosecutor," the words "after a commitment by a magistrate." (Vote).

The CHAIR. The ayes seem to have it. (Division called for). Rising vote shows ayes 34, nays 18.

The CHAIR. The amendment is adopted. This disposes of the amendment of the gentleman from Nez Perce to strike out those words, is my understanding.

Mr. REID. No sir.

The CHAIR. Then the question is upon the motion to strike out.

SECRETARY reads: The amendment offered by Mr. Reid is to strike out in Section 8, line 2, the following: "or information of the public prosecutor." Mr. Claggett moved to amend by adding the words, after the word "prosecutor," after a commitment by a magistrate."

Mr. REID. Now, as I understand it, and in order that we may vote intelligently, a vote for that now is to the effect that after a man is bound over for murder by a magistrate, on information of the public prosecutor he may be tried.

Mr. CLAGGETT. I understand the motion to be now to strike out the clause as amended.

Mr. REID. I say that your amendment, as applied to criminal offenses, means that after a man is bound over for murder, on the information of the prosecuting officer he can be tried.

Mr. CLAGGETT. In other words a vote in the

negative is to leave that power to the prosecuting attorney.

Mr. BEATTY. I don't understand very well back here, gentlemen. If you strike out those words, "or information of the public prosecutor," then leave it so that an indictment can only be found after he is bound over, or, if Mr. Claggett's amendment is adopted, then a party cannot come before a grand jury and have an indictment found—he must first be committed by a magistrate?

Mr. CLAGGETT. Oh, no.

Mr. BEATTY. We have now adopted the amendment which Mr. Claggett offered. Now is it proposed to strike out the words "or information of the public prosecutor?"

The CHAIR. Yes, that is the motion.

Mr. BEATTY. So that it will then read in this way: "No person shall be held for a criminal offense, unless on presentment or indictment of a grand jury, after a commitment by a magistrate."

Mr. CLAGGETT. "Or information of the public prosecutor."

Mr. REID. "After a commitment by a magistrate" is the new amendment.

The CHAIR. The question is now before the committee to strike out the words "or on information of the public prosecutor." Are you ready for the question? (Vote. Division called for). Rising vote shows ayes 21, nays 33.

The CHAIR. The motion is lost.

Mr. CLAGGETT. Mr. Chairman, I move to strike out the words in line 4, "in the army or navy." We can't have an army or navy under the constitution of the United States.

Mr. AINSLIE. The word "or" should be stricken out.

Mr. CLAGGETT. Leave it in the motion.

The CHAIR. The motion is to strike out the words

"in the army or navy or." (Vote). The motion is carried.

Mr. MORGAN. I am afraid in the adoption of this amendment hastily we will get this section so that it reads badly, and it seems to me that it reads badly now. It says no person shall be held for a criminal offense. I presume that is not what is meant. The correction I wish made is: "No person shall be held to answer for a criminal offense." I offer this amendment in order to correct that. This would prevent a criminal being held after he was tried and convicted, it occurs to me; I only suggest it should be done in a certain way. I will make this amendment to read, to insert after the word "held" the words "for trial" in the first line.

Mr. AINSLIE. My opinion is that the word should be "answer," instead of "trial."

Mr. MORGAN. I had it first "answer," but I believe "be held for trial" is a better term. It is rather uncertain, the meaning of the clause, if you say "shall be held to answer," although those are the old words in all the constitutions. What he is held for really is for trial. (Seconded. Vote).

The CHAIR. The ayes have it, the amendment is adopted. Are there other amendments to section 8?

Mr. BEATTY. I call for the reading of the section as amended.

SECRETARY reads: No person shall be held for trial for a criminal offense, unless on the presentment or indictment of a grand jury or information of the public prosecutor after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by the probate courts or by the justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger; *Provided,* That a grand jury may be summoned upon the order of the judge of the district court in the manner provided by law.

Mr. BEATTY. I move the adoption of this section as now read.

Mr. HAGAN. I desire to move an amendment, Mr. Chairman.

SECRETARY reads: After the word "held" in the first line, add "to answer for a capital or otherwise infamous crime." (Seconded).

Mr. HAGAN. I have merely put that in, because we are getting at this now in a strange manner. This section is attempted to be a copy of Article 5 of the constitution of the United States; it says: "No person shall be held for trial for a criminal offense, unless on the presentment, etc., or information of the public prosecutor." The words suggested are better. The constitution of the United States provides that he shall never be held to answer for a capital or otherwise infamous crime. Of course they may present an information for misdemeanors, but if the attempt is made to copy that from the constitution of the United States, there is a very material variance, if you compare the United States constitution with this Section 8.

Mr. GRAY. I really do not understand this, Mr. Chairman. It seems a person cannot be held to answer for a criminal offense described to be an infamous crime unless on the presentment or indictment of the grand jury or information of the public prosecutor after commitment by a magistrate.

The CHAIR. That matter is disposed of.

Mr. GRAY. Well, I don't understand it. You had better send an interpreter along with this clause when you get through with it—somebody that knows more about it than I do. I can't understand it now. Information of the public prosecutor after examination by a magistrate. He is held on the commitment of the magistrate, and now can he not be held for lesser offenses than those mentioned in the amendment of the gentleman from Shoshone?

Mr. HAGAN. I don't come from Shoshone. (Laughter).

Mr. GRAY. Well, excuse me; I am glad you don't. It seems to me that this is something that ought to be

allowed for. Under our law you can indict or hold for a misdemeanor, or for anything that is triable. They are to be held for any criminal offense, except such offenses as therein enumerated. Really, I don't understand it.

Mr. CLAGGETT. Mr. Chairman, the section as it was originally, in the respect to which I have called attention, and as it has been amended also—for the amendment does not touch it—is not intended, I think, by the convention to be adopted. The way we have it now; no person shall be held for trial for a criminal offense, unless on presentment or indictment or information, after commitment. That excludes, the way it is now, all petty cases in justices' courts, where the parties are held without presentment, indictment or commitment; in other words, all cases of petty larceny in probate courts and justices' courts. The whole matter can be covered by one amendment, which I will suggest to my friend from Kootenai. I therefore move as an amendment to his amendment, that the words "a criminal offense" be stricken out, and the word "felony" inserted. It will then read: "No person shall be held for trial for felony, unless on presentment or indictment of a grand jury," leaving the justices' courts to proceed with their minor offenses.

Mr. HAGAN. I had stricken those words out. I will accept that, only I want that in my motion—strike those words out.

Mr. CLAGGETT. Now you have it; "capital or otherwise infamous crime."

Mr. HAGAN. Well, those are the words of the constitution of the United States.

Mr. CLAGGETT. Well, I suggested a term better than the words "infamous crime." That term covers felony, perjury and such, but "felony" covers all capital cases, and all other cases except misdemeanors.

Mr. HAGAN. Well, I will accept that amendment.

Mr. SWEET. I would like to ask the gentleman

from Shoshone if in his amendment it reads "shall be held for trial" or "held for answer."

Mr. CLAGGETT. That has been adopted; "held for trial for felony."

Mr. SWEET. Well, that was "held for answer" before.

Mr. CLAGGETT. Well, I don't care anything about that. I think the words are synonymous, "trial" or "answer."

Mr. SWEET. I think Mr. Hagan's amendment was to the effect that he should be held to answer. It occurs to me that it is best to draw the line between being held to answer and being held for trial. A man might answer and still be held for trial.

Mr. HAGAN. Yes, and our statutes go to the extent that he may not answer before taking it before the courts whether he may or may not be held for trial, but he is held to answer that charge.

Mr. CLAGGETT. Well, I thought that was disposed of.

Mr. HAGAN. No, my motion strikes that out, and the other word too.

The CHAIR. You have heard the amendment proposed by the gentleman from Kootenai; are you ready for the question?

Mr. MORGAN. Let me ask the gentleman who offers this amendment how it will read with the balance of the section, which will then read: "No person shall be held to answer for a felony except in——"

Mr. HAGAN. "for any capital offense or otherwise infamous crime."

Mr. MORGAN. Well, I understood the gentleman from Shoshone's amendment——

The CHAIR. That was accepted.

Mr. CLAGGETT. Yes.

Mr. MORGAN. "Held to answer for a felony?"

Mr. HAGAN. Yes, any felony.

Mr. MORGAN. Then we will have it in the following words—it reads as follows: "No person shall be

held to answer for a felony, except in cases cognizable by the probate or justice courts."

Mr. HAGAN. "unless on presentment or indictment."

The CHAIR. "presentment or indictment."

Mr. MORGAN. Yes, but I read it to show the connection—I left out those words: "No person shall be held to answer for a felony, except in cases of impeachment, and cases cognizable by the probate and justice courts."

Mr. REID. I would like the secretary to read the section as amended, showing the amendment as offered by Mr. Hagan.

The CHAIR. The clerk will read the amendment.

SECRETARY reads: After the word "held" in the first line, insert "to answer for a capital or otherwise infamous crime." The amendment of Mr. Claggett is, to strike out the words "capital or otherwise infamous crime," and insert the words "a felony," so that it will read, "answer for a felony."

Cries of "Question." The amendment is put to a vote and adopted.

The CHAIR. Are there any further amendments to the section? It is moved and seconded that Section 8 as amended be adopted.

Mr. MORGAN. I would like to inquire if our rules are such that the committee on Revision can change the language of this section. If that committee cannot do it, I think we had better not amend these sections; we had better strike them out or adopt them as they are, because we will get them all mixed up, in my opinion; the language will be bad.

The CHAIR. The chair understands that the committee on Revision is simply to change the phraseology, so as to put the sections in grammatical form, but not to change the sense.

Mr. MORGAN. If they are allowed to put it in grammatical form, I think it will do.

The CHAIR. The question now recurs on the

adoption of the section as amended; what is the pleasure of the committee?

Mr. BEATTY. I move its adoption. (Seconded).

A MEMBER. I ask for the reading of the section as it stands.

SECRETARY reads: No person shall be held for trial to answer for a felony——

Mr. HAGAN. That was stricken out.

SECRETARY. Well, that is the way it reads according to the secretary's notes. Mr. Morgan sent up this amendment, to add the words "for trial," which was adopted, and Mr. Hagan had an amendment to add after the word "held," "to answer for a capital or otherwise infamous crime," amended by Mr. Claggett by changing the words "capital or otherwise infamous crime" to "felony," which leaves it to read, with the amendment of Mr. Claggett as accepted by Mr. Hagan, "to answer for a felony," with Mr. Morgan's amendment adopted prior to that, adding the words "for trial," which makes it read: "No person shall be held for trial to answer for a felony."

Mr. CLAGGETT. After the first amendment that was made the second amendment became incorporated with the other, and dispensed with the one I offered.

Mr. MORGAN. The motion of the gentleman from Kootenai would have been out of order, because the amendment had already been adopted to insert the words "for trial." Of course that amendment should have been voted down.

The CHAIR. Well, you didn't claim the gentleman was out of order. You can offer as many amendments as you please, but it would simply change the sense of the article. I think the gentleman can understand it right. The clerk will read it now.

SECRETARY reads: No person shall be held for trial to answer for a felony, unless on presentment or indictment of a grand jury or information of the public prosecutor, after commitment by a magistrate, except in cases of impeachment, in cases cognizable by

probate courts, by justices of the peace, and in cases arising in the——

Mr. HAGAN. I embraced in my motion the words "for trial" to be stricken out.

The CHAIR. It does not so appear in your minutes you sent up here.

Mr. HAGAN. No sir, but I incorporate it now. The amendment was to strike out the words "capital offense or otherwise infamous crime," and that strikes out the word "trial."

The CHAIR. The chair don't understand it in that way.

Mr. HAGAN. If the rule allows, I propose to put it in that language.

Mr. BEATTY. I move to strike out the words "to answer."

Mr. SWEET. I think I can explain it, Mr. Chairman; Judge Morgan's amendment "be held for trial" was adopted. A motion was then made to adopt the section as amended, and then Mr. Hagan moved this amendment.

Mr. REID. It will then read: "No person shall be held to answer for a felony unless upon presentment," etc.

The CHAIR. That is correct. Now there is another amendment by Mr. Beatty.

Mr. BEATTY. I withdraw that; that was to cut out one of those phrases, and you have stricken out "for trial" already by amendment.

The CHAIR. The question is now upon the adoption of the section.

Mr. AINSLIE. Do I understand that the motion of Judge Beatty is to insert after the word——

Mr. BEATTY. No, my amendment was withdrawn.

Mr. BATTEN. I desire to offer a substitute which I think embodies most of these amendments, and will be a revision of the section without the amendments.

SECRETARY reads: Section 8. No person shall be held to answer for any felony or criminal offense of any

grade, unless on the presentment or indictment of a grand jury or information of the public prosecutor after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger; *Provided,* That a grand jury may be summoned upon the order of the judge of the district court in the manner provided by law.

Mr. CLAGGETT. That brings us right back to the old proposition where the difficulty arose—"or any criminal offense"—and the effect of it, if that was adopted by the convention, would be, that you could not try a man nor hold a man for any little petty larceny or anything of that kind cognizable by justices of the peace until he had first been presented by the grand jury or had been indicted.

The CHAIR. We are getting these amendments in so frequently, I imagine the clerk cannot copy them in order to make his record. I think the chair will have to cut off amendments pretty soon.

Mr. SHOUP. I will move to strike out the entire section. (Seconded).

The CHAIR. The motion before the committee is to strike out the entire section. (Vote). The motion is lost.

Mr. MORGAN. I second the adoption of Mr. Batten's substitute.

Mr. STANDROD. Will the secretary please read the first sentence of the substitute.

SECRETARY reads: Section 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on the presentment or indictment of a grand jury.

Mr. GRAY. That is what I have been fighting about a good while. You had the words stricken out, and now put them back in. These offenses—felony and those criminal offenses, won't ever get into probate or justices' courts. That is one thing I shall never

understand about this, information of the public prosecutor; I don't believe anybody else will, and it certainly would not under our practice be known; but that has been passed upon, and I am not going to say anything about it. Certainly criminal offenses should be stricken out of that section.

Mr. BATTEN. Criminal offenses, properly cognizable by the probate courts, under the reservation of the section are still provided for, and so with justices of the peace. A criminal offense that will be outside of the jurisdiction of the probate courts or justices of the peace would be reached by the section. I think practice falling within that jurisdiction will still fall under the jurisdiction of the probate court.

Mr. GRAY. The trouble is in both courts. Relative to just misdemeanors, they are indictable under our present law, and all criminal offenses unless presented; it will throw out all misdemeanors, and they have got to be presented by indictment. It will shut out the probate and justice courts entirely.

Mr. CLAGGETT. The subordinate portion of the section covers that. I made the same suggestion my friend does: "after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts, by justices of the peace, and those arising in the militia." They are excepted in the section.

The CHAIR. The question is now upon the adoption of the substitute for Section 8. (Vote). The ayes seem to have it—the ayes have it. The substitute is adopted for Section 8. What is the further pleasure of the committee?

Section 9.

SECRETARY reads Section 9 as reported.

Mr. HEYBURN. I desire to send up an amendment.

SECRETARY reads: Amend Section 9 by striking out all after the word "liberty" in the second line, and

insert: "provided, that no person shall be free to violate the law of decency or morality." (Seconded).

Mr. HEYBURN. The object in presenting that amendment is this: The latter portion of this section simply establishes a rule of evidence. It is not the province of this constitution to do that thing—to establish a rule of evidence. The courts will provide for that, under the acts of the legislature. The part sought to be inserted is to get at the class of publications that are sometimes indulged in which are not conducive to good morals; and it is rather sweeping language to say that "every person may freely speak, write and publish on all subjects" whatsoever he will. There should be some reservation; there should be some way of holding a man who publishes immoral or indecent publications in the state.

Mr. PRITCHARD. It appears to me that the gentleman is very much mistaken in regard to the province of this convention. It seems to me that they are able to do almost anything—have the right to do almost anything.

Mr. HAGAN. I offer a substitute for the amendment.

SECRETARY reads: Strike out all after the word "liberty" in the second line.

Mr. HAGAN. The rest, I think, belongs to the legislature and and not to the constitution. It does not belong to the Bill of Rights, and I think after the word "liberty" this section should all be stricken out. It is almost virtually the same as Mr. Heyburn's amendment. In my opinion his amendment leaves the language a little chaotic. I would rather have it all stricken out.

The CHAIR. The question is on the adoption of the substitute. (Vote). The ayes seem to have it—the ayes have it. All after the word "liberty" is stricken out of the section. The question is now upon its adoption as amended.

Mr. CLAGGETT. I move its adoption. (Seconded.) Carried: Section 9 adopted.

SECTION 10.

The secretary reads section 10; it is moved and seconded that it be adopted. Carried.

SECTION 11.

The secretary reads section 11; it is moved and seconded that it be adopted. Carried.

SECTION 12.

The secretary reads section 12; it is moved and seconded that it be adopted. Carried.

SECTION 13.

The secretary reads section 13.

Mr. HEYBURN. I desire to offer on amendment.

SECRETARY reads: Strike out all after the word "himself" in the sixth line. (Seconded.)

Mr. SHOUP. I desire to offer an amendment.

The CHAIR. Wait, gentlemen. It is moved and seconded to strike out all that portion of the section after the word "himself" in the sixth line.

Mr. HEYBURN. Mr. Chairman, the object of striking this out is, it is not properly a part of the constitution. It simply provides a method of executing this section; "the legislature may provide for" etc. That belongs to the legislature; it is not a proper provision for the constitution.

Mr. CLAGGETT. I think we had better pass it for a minute or two at least, to get the views of the committee that reported this and explain the object of it. It strikes me that it is a very valuable provision. I presume there is some provision in here with regard to a party being protected at all events by the process of the common law, which will no doubt be adopted by the side of the rules of the common law. It is one of those rules that a party defendant is entitled to have the

witnesses against him produced in person, and this would make a change in that rule, in order to cover cases where witnesses for the prosecution or for the defendant are sick, expected to die, or where they are going to leave the country and cannot be got, that their testimony may be preserved and may be used in the shape of depositions.

The CHAIR. Does this provision go to the extent that a deposition may be taken on the part of the prosecution?

Mr. CLAGGETT. (reading) "The legislature may provide for the taking, in the presence of the party accused and his counsel of depositions of witnesses in criminal cases, other than in cases of misdemeanor or treason, where there is reason to believe that the witnesses" etc. "at the trial." I don't think we ought to rush over it hastily. I don't know—I would like to hear from the committee.

Mr. STANDROD. Mr. Chairman, the object of this section is, not to conflict with the constitutional right that a defendant may have in a criminal prosecution, that we hear urged all the time in the courts under the statute we now have. Permit me to say that it is nothing new, inasmuch as almost all the states provide for the taking of depositions conditionally, and this is intended, in a case where the party is held for trial, and one witness, a very important witness, either for the defendant or for the prosecution, might be lost by continued delay, and the people or the defendant might be deprived of his testimony on that account. There might be an instance where a man was charged with a capital offense, where his defense depended upon one witness, and this section is intended to provide for the taking of the evidence of that witness. It is the practice now under our statutes to do that conditionally, and it is no innovation or new practice. That is the reason this section so provided; that is the object of it. It sometimes occurs that a party will be permitted to go unpunished on account of the absence or death of one witness,—the main witness in the case.

I want to say here that there is no objection to it at all. As a matter of course, unless in case of his inability, sickness, death, or something of that kind, it is best to produce the witness at the trial, and as a matter of course he would be produced if possible; this is only in instances where it is impossible. It is every-day practice, done frequently all over the country, where depositions are taken conditionally in the presence of him and his counsel.

Mr. MORGAN. Not for the prosecution, Mr. Standrod?

Mr. STANDROD. I think so. I know some instances where depositions have been read, where they were taken in the presence of the defendant and his counsel,—have been read on the trial against him. I think our statute provides that a deposition may be taken by the prosecution.

Mr. CLAGGETT. I will offer an amendment to the amendment, that the words "or other cause" be stricken out, in the line next to the last. This authorizes a deposition to be taken for any reason, or lack of reason, in criminal cases. I don't think it should go that far. Then it will read; when there is reason to believe that the witness from inability will not attend at the trial, or be able to attend.

The CHAIR. Do I understand that you offer that as an amendment to the amendment?

Mr. CLAGGETT. Yes.

The CHAIR. Hand it to the clerk.

Mr. CLAGGETT. I will withdraw the amendment until I can write it.

Mr. HEYBURN. I desire to suggest this. I agree with the gentleman, (Mr. STANDROD,) that this is a general and proper provision. Nearly all the states at one time or other have enacted a provision for the preservation of testimony, and it is right there should be such a provision. This only provides to give the legislature the right to enact such a provision. The legislature has that power now and hereafter under any con-

dition of affairs, unless it is specifically taken from them, and for that reason it seems to me that this would only be a suggestion to the legislature that the legislature may do this, but it having the inherent power to do it in any event, it is useless to put it in the constitution, and necessarily place it open to this criticism, that after this, where there is reason to believe that a witness, from inability or other cause,—it may be because it was a wet day and he didn't want to come,—that in that case a man should go to trial without being confronted by this witness, or confronted by him on paper, when he is under all law entitled to be confronted by his accuser or the witness face to face; so that it is a violation of that principle, as it stands now, that the defendant or other accused is entitled to take advantage of. Now the legislature is left under its inherent power to provide for that thing. They will provide for it undoubtedly, and will say under just what circumstances this testimony of this witness may be used, but we cannot go into details sufficiently in the constitution to provide for these little things, and say that in case of inability to procure the attendance of a witness because he is beyond seas, and all those details usual in such cases,—the constitution I say, cannot go into these details, so we had better leave it to a field where they can, and that is the legislature; they will make provision such as is usual in such cases to preserve testimony in cases of this kind. I think the whole thing can be stricken out, because it is invading the legislative domain first, and second, because in its present form it is objectionable.

Mr. HAGAN. I agree with the gentleman from Shoshone that it belongs to the code of laws to be passed by the legislature. They have authority to pass that, as he says; it is their duty to pass it, and it is not the province of the constitutional convention to put it in the constitution. It is a part of the code of statutes of the state, and I am therefore in favor of the amendment.

Mr. MORGAN. I call the attention of the gentleman from Shoshone and of the convention to the fact that those words are left out which are usually inserted in constitutions, "to be confronted with the witnesses against him." As I understand it, under constitutions as they ordinarily read, no deposition can be taken in criminal prosecutions in favor of the prosecution. It provides in our statute, and various other statutes provide, that the defendant may have the testimony of a witness taken by deposition, but I do not think there is any provision provided which gives the state power to take a deposition against the defendant, for the reason that nearly all constitutions have this clause, that the defendant shall have the right to be confronted by the witnesses against him. Those words are left out of this clause, and intentionally, in order that the legislature may provide, or that the constitution itself here may provide that the depositions of witnesses may be taken in criminal cases on the part of the state. I desire this convention to understand this thing perfectly. It is a departure, as I understand it, from the ordinary law in that regard. I do not think other constitutions allow taking depositions on the part of the state against the defendant.

Mr. HEYBURN. Would it not be competent for the legislature to enact a provision for taking depositions against the defendant, in the absence of any power conferred upon it by the constitution, if there was no prohibition?

Mr. MORGAN. Yes, but not if those words were in the constitution; "have the right to be confronted by the witnesses against him." This would prevent the passage of a law of that kind, as I understand it, and those words are left out.

Mr. HEYBURN. I would not care about their being left out, if there is no question that they have this power.

Mr. MORGAN. Yes, the legislature will have the power. And I desire to say in explanation that that is

a departure from ordinary constitutions, but I think it is a good one.

Mr. STANDROD. The object in drawing this part of the section was intended to avoid any controversy, when these matters come up in court, as they do every day. There are some attorneys that never understand the difference between the delegation of power by the constitution of the United States to the national legislature, and by the constitution of a state to a state legislature. In order to settle this question, and have it settled in the constitution, is the reason why this section was drawn. It seems to me it is very necessary, and will very frequently arise in our criminal practice, so as to enable either side to produce their witnesses and have their testimony submitted to the jury. It was intended to avoid this discussion as to the constitutional right of being confronted by their witnesses.

Mr. HAGAN. Do I understand the committee claim the right of the state to take depositions in a criminal case?

Mr. STANDROD. I have not examined that, but I think the state has just as much right as the defendant has.

Mr. HAGAN. Why, that is prohibited by the constitution of the United States. How is a man going to be confronted by his witnesses when he is in jail? Are you going to hold him against his will and take depositions all over the country? Unqualifiedly, you can't do it. If the object is to take depositions for the defendant, I say, as the gentleman from Shoshone's amendment says, strike that out and allow the legislature to provide the machinery for it. It will take more than this to provide for that machinery. But as to taking depositions on the part of the state, of course I utterly oppose that.

Mr. GRAY. As I have been saying before, I am opposed to so much being put in this article that we are called upon to meet. We see the effect of our labors right now,—right at the door. Now I say that this is

really the province of the legislature. For conscience' sake let us,—as the legislative committee have made provision for the creation of a legislature, let us leave them a little something to do, and I think it would be much better to leave these matters, which are really matters of detail, of practice, to the legislature. I think the amendment should be adopted and that portion stricken out.

Cries of "Question." (Vote.)

The CHAIR. The ayes have it; it is carried.

Mr. SHOUP. I move to amend by inserting after the word "himself" the words "nor be deprived of life, liberty or property without due process of law."

Mr. HEYBURN. I ask to have the section read as amended,—that portion of it.

SECRETARY reads: No person shall be twice put in jeopardy for the same offence; nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Mr. SWEET. I would like to call the attention of Mr. Shoup to the next section, whether or not the taking of property is not covered by that section.

Mr. SHOUP. The committee proposes to offer a substitute for the next section.

Mr. GRAY. I understand that to be a purely constitutional provision of the United States. I don't suppose it will do any hurt; I don't see any particular good of it.

Mr. HEYBURN. It seems to me the first section in the Declaration of Rights,—section 1, covers that point exactly; because it is a declaration of rights, and says; "All men are by nature free and equal and have certain inalienable rights, among which are enjoying and defending life and liberty, acquiring, possessing and protecting property, pursuing happiness and securing safety." That covers all these propositions.

Mr. MORGAN. Mr. Chairman, the amendment offered by the gentleman from Custer is the same as the

words that are inserted in nearly all constitutions at this very place, and it is in the constitution of California at this place;[1] "nor to be deprived of life, liberty or property without due process of law." I think it is proper. (Vote and carried.)

The CHAIR. What is the further pleasure of the committee?

Mr. CLAGGETT. I move the adoption of the section as amended. (Seconded.) Vote and carried.

SECTION 14.

The secretary reads section 14, as reported to the committee.

Mr. HAGAN. I have an amendment.

SECRETARY reads: Strike out all that part of Section 14 which reads as follows: "Private property shall not be taken for private use, unless by consent of the owner, except for private ways of necessity and for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes." Also, strike out the words "or private" in line 5 of Secetion 14.

Mr. HAGAN. Now, Mr. Chairman this is, in this country a very important provision. The idea is certainly new,—to allow private property to be taken for private use. I do not know any state in the Union that has any such provision, that private property,—my property, shall be taken for the benefit of my neighbor against my will, confiscated or even forfeited. It is something unusual, uncalled for, to put into a constitution. The application of the doctrine of eminent domain itself is a harsh measure, even for public uses. Now so far as water rights are concerned, there is a report of the committee here upon the table now which makes the use of water a public use. That is very proper, when it comes up in its order, but the idea of allowing private property to be used, to be condemned,

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1—Art. 1, Sec. 13, Cal. Const. 1879.

to be bought, to be sold at the instance of a private proprietor adjoining me, or anywhere near me, is in my opinion wrong and should not be tolerated, especially as it is with us in a mining country. Any gentleman here that is from a mining country knows the force and effect of that provision; where private property can be taken for private use, for agricultural, mining, milling, domestic or sanitary purposes; they know how the mining interests of this country would be damaged by it and embarrassed in every regard. California attempted to pass a law of that kind, and it was recently held unconstitutional by their supreme court.[1] We have the same statute now in this territory,[2] and copied from the California statute which was held unconstitutional. It has been obviated in two states, I believe by making the use of the waters of the country a public use under the supervision of the state, where it should be, and therefore obviate the necessity of this statute. Outside of that question, I know of no class of property that should be subject to private use or private confiscation. The land proprietor or mine owner, of owner of a mill, has no right to run his ditches and tunnels through my works and destroy them against my will, or even at any price, because he can never fully compensate me for my property or my work. I speak of this coming from a mining country, protesting that no such law should exist, either in the organic or in the statutory law—with which we have no dealings now —that private property should in no instance in this country be subject to the will or dominion of another party who seeks to confiscate it. I say I have a right to hold my land, to hold my mine or my works against the adjoining proprietor, though he give me millions of dollars for it; that I should not be compelled to sell my property to him in such a manner, nor should I be com-

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1—See Consolidated Channel Co. v. Central Pac. R. Co., 57 Cal. 269.

2—Subd. 4, Sec. 5210, Rev. Stat. 1887 (Same Sec. and Subd. in Rev. Codes.)

pelled to stand idle and see my property or my work destroyed. That is all important in a country like this, and I think that statute is wrong; it should not go either into the constitution or upon the statute books.

Mr. MORGAN. To the honorable gentleman who was last upon the floor, I would say this, that in the part of the country where we live it is necessary to provide for irrigating lands. It is impossible to do it unless we provide some means of getting across the land of the proprietor above you. How shall we do it? It is certainly an innovation, it is something we have not had in the constitutions heretofore. It is true that California attempted to do this by a law, and so have we, by putting a law upon the statute book, but this law has been held to be unconstitutional in California, because the constitution did not provide for it. Now we desire to provide for it in our constitution so that we can do it. I do not think our statute is good for anything unless we have something in the constitution supporting it, and this clause is inserted in the constitution so that we may provide by law for taking the ditches of persons who hold lands below across the lands of proprietors above. Where the streams have but little fall, it will be seen with a moment's thought, that if a man gets high up on a stream and takes up 160 or 640 acres of land, as he may do under the desert act, that those acres of land must remain forever unimproved below that section, unless there is a provision in the law permitting a person or persons living below to cut a ditch across his land. If they can provide for it in any other way, I am perfectly willing they should do so; I am not very tenacious about that. It is not a public use where a man desires to take his ditch across the land of another for his own advantage, —that is not public use, it is a private use, and we think it must be provided for in the constitution. If it is not done, it is impossible to cultivate and improve the arid lands of this part of the territory.

Mr. STANDROD. I have prepared an amendment

and sent it to the secretary, and I offer this as a substitute.

The CHAIR. The chair cannot entertain this unless the attention of the chair is called to the fact——

Mr. STANDROD. I am now calling the attention of the chair to the amendment.

The CHAIR. What is the matter before the house?

SECRETARY. It is on the amendment of Mr. Hagan.

Mr. REID. What is that?

(The secretary reads Hagan's amendment, as above given.)

The CHAIR. There is an amendment sent up here to Sec. 14 of the Bill of Rights; I think you will have to take a vote on this. There is another amendment, sent up by another person,—I don't know who offered it, that private property shall not be taken or damaged, for public or private use, unless by consent of the owner.

Mr. PARKER. I have submitted my substitute with the idea of preserving the individual rights of every citizen of this territory. In Sec. 1 of this Declaration of Rights which you have now adopted, I find that "all men are by nature free and equal and have certain inalienable rights, among which are enjoying and defending life and liberty, acquiring, possessing and protecting property, pursuing happiness and securing safety." Now in this Sec. 1 you give us, the individuals of this community, the right to acquire and possess property, but in this Section 14, as it is drafted now, these rights are taken away. This convention, in submitting this section in its present form, is in the position of a cow which gives a bucket of good milk and then kicks it over. I only arrived here this morning, Mr. President, and have not had time to collect my ideas on the subject, but I will read to you a few extracts from a book, one of the latest authorities bearing on this subject of the rights of individual members of the community.

Mr. MORGAN. I wish to ask the gentleman a question.

Mr. PARKER. (reading) "What is a 'public use,' within the meaning of this constitutional provision? Is it anything that the legislature may please to specify? If land and water be required for a canal, the private owner must surrender his estate at the bidding of the legislature, and yet the state may have no proper authority to construct that canal. For if the work in question be not the proper creature of the sovereign authority,—if it be not necessary to the public defense, but only a matter of convenience to private business, the state is departing from its true sphere of action, and transcending its lawful authority in setting about the work." And I deny the right of this convention to place in this constitution which we are now framing any provision which shall take away, without his individual consent, what he has earned by his own labor. I claim that the individual in such an instance is not the subject of legislative authority. (continuing reading) "It is difficult to reverse the old order of sovereignty, to set up the individual man and to curb the omnipotence of the state. But nothing appears more reasonable to my own mind that a humble man in possession of a well earned estate, may call in question the right of any legislature to take away his property, either in virtue of the much abused power of eminent domain, or by way of taxation. He may of right demand that the purpose to which his property is to be devoted by the public shall be of such a character as subserves the true ends of state authority. He is not the subject of arbitrary power, nor ought he to be the victim of a majority."

I will read now one extract from Mr. Blackstone:[1] The doctrine is thus laid down: "So great, moreover, is the regard of the law for private property, that it will not authorize the least violation of it; no, not even

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*—Cooley's Blackstone's Commentaries, 4th Ed. Sec. 139.

for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men to do this without consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. Besides the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modeled by the municipal law. In this and similar cases the legislature alone can, and indeed frequently does interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained." I submit my substitute.

The CHAIR. The question is upon the adoption of the substitute of the gentleman from Kootenai. Mr. Standrod, do you present this as a substitute for that of Mr. Hagan?

Mr. STANDROD. Yes.

SECRETARY reads: To amend Sec. 14 by striking out all of said section to the words "private property" in line 4, and insert the following: "Private property shall not be taken or damaged except for a public use nor without just compensation therefor. The taking of private property for public or private ways of necessity, or for reservoirs, drains, flumes, ditches, pipes, dumps, tunnels, shafts or other easements, on, through or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes, shall be deemed a taking for public use," continuing said section from the word "such" in line 5 to the close thereof.

The CHAIR. You have heard the reading of the

substitute offered by the gentleman from Oneida; what is the pleasure of the committee?

Mr. MORGAN. I second the substitute.

Mr. AINSLIE. I do not see that this substitute offered by the gentleman from Oneida differs materially from that incorporated in the printed bill. It endeavors to leave the impression that the taking of private property for these purposes specified, for private ways of necessity, for drains, flumes, etc., is defined so that it shall be a taking of private property for public use, instead of taking private property for private use. It is like two and two make two, instead of two and two make four. You cannot take private property for private use. You may take private property for public use by a mere declaration to that effect, but it is absurd, under that amendment, or even under this bill, to say that if I own a lot in this city, that is a lot higher than another man's lot below me, he can come in under this bill and make a reservoir in my front yard to supply his house with water; but still under the specious statement of the gentleman from Oneida it would be taking my private property for a public use, when it could not be used by anybody but the fellow that owns the lot. Under that any neighbor can be harrassed against his will. It would be a bill fraught with more litigation, with a bigger harvest for lawyers, than any section that could be incorporated in the statutes of Idaho, to say nothing of your constitution, and I know of no law or constitution in the United States where you can take private property for private use. You can't compel me to sell my property, if it isn't worth $50, even for $500, if I don't see fit, and I say it is opening a field for litigation, and unnecessary, and productive of more or less injustice against others, under the supposition that it is for a public use, when by no fair reason or logic can you make it a public use.

Mr. MORGAN. Let me ask the gentleman a question. The gentleman must certainly recognize the difficulty under which men labor under such circumstances.

If he can suggest any remedy for it let him do so, or we must allow the lands which are below others to lie idle forever.

Mr. AINSLIE. I don't propose to put the property of every citizen in Idaho Territory to the hazard of being taken for the benefit of a lot of scattering settlers who are engaged in farming. It may work a hardship in some cases, but we propose to legislate for the public good of the people of the whole territory, and not for one class of individuals.

Mr. STANDROD. I fear the gentleman from Boise does not understand what is intended by this section, or else he would not be so broad in his allegations. There is no attempt here to create litigation, or to take private property for private uses where it is unnecessary In fact the object of this section is to avoid litigation, to settle this question, that has come up in the courts, and is now continually coming up in court almost every term throughout this country,—that is, to be argued. I will read this a little more carefully: "Private property shall not be taken or damaged, except for a public use, nor without just compensation therefor. The taking of private property for public or private ways of necessity, or for reservoirs, drains, flumes, ditches, pipes, dumps, tunnels, shafts or other easements, on, through or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes, shall be deemed a taking for public use." The word "necessity" is used there as a matter of course. There would have to exist a necessity before private property could be taken at all. "Or for reservoirs, etc. —shall be deemed a taking for public use." The object of this section is to declare what a public use is, in order to settle it in the courts. It has always been contended in the courts that the taking of water for the irrigation of lands, where there are one, two or three men desiring to take it across their neighbor above them, is a private use, and consequenty cannot be done, and it has given rise to more litigation and more trouble in

trying to irrigate lands in sections of the country such as this, than anything else. Now I have contended that this convention has the power to say what a public use is. It it true that it is limited, we all agree, to these matters of necessity. This country has got to be irrigated. A man has to have his ditches and flumes in order to procure water. I do not believe there is a gentleman here but would willingly admit that there must be some law providing for this necessity. This merely defines what a public use is; that is what it is intended for, limited as a matter of course to those instances where we all say and all admit that the necessity exists.

It will prevent this question coming up hereafter, because it positively defines what a public use is,—that is the intention of it.

Mr. CLAGGETT. I will not trespass on the time of the committee long. It seems to me we are arguing a good many of these propositions from a wrong standpoint. It seems to be considered by some of the members of the convention that it is a sufficient reason why a power should not be given to the state, to point out that in some particular way that power may be abused. That is not a logical argument in the science of government. There never was a power conferred upon any government upon the face of the earth that was not subject and capable of being abused. The only thing that wise statesmanship is ever directed to is, to guard those particular instances wherein power is most likely to be abused, and to build around them bulwarks of limitation and restriction. It does not follow that because this power is conferred upon the state, that the state is going to work to scalp its inhabitants, or perpetrate frauds, or authorize men to go and take possession of other people's houses, because that won't do. This provision, as it is provided for in the substitute offered by the gentleman from Oneida is absolutely necessary, unless we want to leave the whole domain of this new state practically undeveloped; and I will ex-

plain the reason why. It appears that Congress, as I have said before, is our local sovereign, and as such local sovereign it has seen fit to provide in the mineral acts of 1866[1] and 1872 that so far as the public lands are concerned, a free right of way is given to any person to build across the public lands ditches and irrigating canals to use for mining, milling and agricultural purposes; and it also provides that in the territory private property may be taken upon just compensation being made therefor. Now when we cease to be a territory that state of things under which we are now proceeding and by means of which we are now condemning the property that is absolutely necessary to be taken for these purposes, will cease; and if we simply put in our constitution the broad proposition that private property shall not be taken except for public use, and say nothing more, why, then the legislature will be hampered, and cannot declare anything a public use except such uses as at the time the constitution was adopted were known and recognized in law as being public uses; and therefore your state government will not have the power to provide in any way, shape or form for the condemnation of rights of way for irrigating ditches, mining ditches, mining easements of any kind whatever. We get all of that, it appears, under congressional legislation, which will cease to operate upon the territory, except in the matter of the public lands; and if some other provision of this kind is not put in this constitution, it will simply be tying up the whole resources of the country. It seems to me the substitute which is offered—I have heard it read twice by the gentleman from Oneida,—covers the case. It simply goes on and provides that for those specific purposes, the building of irrigating ditches, canals, flumes, pipes, reservoirs, for agricultural or sanitary purposes, for agriculture, mining,—or whatever the provisions may be there; I don't remember them all,—that those shall

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[1]—Sec. 9, 14 U. S. Stat. at Large, 253.

be deemed and taken to be a public use. We reported here this morning,—the committee on Agriculture,—with regard to water, in which we declare that all the waters of the state which are to be distributed,—of course it has not been before the convention except by being read,—that all the waters in the state heretofore appropriated, or which may be hereafter appropriated for agricultural purposes in the way of sale, rental or distribution, may be declared a public use. It requires the action of this convention to make it a public use. It will require the action of the convention to make these other uses public uses, and therefore the absolute necessity of the incorporation in this constitution of some such provision as this suggested by the gentleman from Oneida. Now my friend from Boise seems to think that in case there is any such provision as this in the law it is going to give rise to all kinds of litigation. I would respectfully refer my friend to the fact that we have got it under our territorial statutes, and where is the litigation that has grown up in consequence of it? It was passed two years ago.[1] Condemnation may be made for the purpose merely of any necessary easement, a dump, or the location of hoisting works, or running a tunnel, and no man should be permitted to stand like a dog in a manger, simply because he happens to have possession of adjoining property, practically of small value, and put any outrageous price, $500, or hundreds of dollars of valuation, upon it, and levy blackmail upon the industries of the country. In all cases where easements are demanded for agriculture, the owner of the land should be required to give them, on the payment to him of the amount of the value which the land taken possession of amounts to. I consider this one of the most important matters we have coming before us,—the very root of our prosperity in the future.

Mr. GRAY. I fully agree with the gentleman last

1—Sec. 5210, Rev. Stat. 1887.

upon the floor, that the necessities of our country are such that it certainly requires something to be done. If we let this matter go, without mention or authority given in the constitution, which is easily covered, we may as well say good-bye, our country amounts to nothing, those that live under the head of the stream have it all, and a man standing by says; no, this is my land, you must not cross it. But while I will support the substitute, it is because I think that it in many cases may be regarded as much a public use as a public right. I can find cases where a ditch crosses a man's land and goes down and is used by twenty men, and it is regarded undoubtedly to a certain extent as a private use, but if we are taking their cases together, and it is the only way for them to get it, we then call it a public use, and I do not see any impropriety in naming it so, so that when it is used for purposes of that kind it shall be deemed a public use; and I say, under the conditions of this country, perhaps under some circumstances it may be making an innovation upon the law, it may be going further than generally required under the law and than it is allowed to go, but I say the necessities of the case require that something must be done. I think the law must yield,—even the stubbornness of the law must yield, for the necessities of a country like this. I will say positively that had there not been any law of this kind,—well, the gentleman from Shoshone said it was two years that we have had it, and I really don't know that there has been any litigation under it, or at least any more, and without it I certainly say that these desert claims cannot be cultivated. There are ditches going out all the time, and without that, a stubborn man upon the head of a stream can prevent the settlement of thousands and thousands of acres of land, and some have attempted to do it even now, although I will say that it has not been in litigation to any extent. But I do hope, for our safety and protection, and for the benefit of our country, that there will be something put in this constitution. If not, I say that these desert

claims will remain unproductive and uncultivated. I hope the motion will prevail.

Mr. HEYBURN. I desire to send up an amendment.

SECRETARY reads: Amend Sec. 14 by inserting after the word "court" in the 7th line, "under such conditions as the court shall direct," and after the word "the," where it first appears in the 7th line, insert the words "use of."

The CHAIR. I would like to state to the committee that my impression is, that where a substitute and an amendment are offered, before that section should be amended the substitute should be adopted and then amend the substitute after it is adopted.

Mr. HEYBURN. That is the idea,—all that part of it that is identical in the substitute and in the original, and I was about to send it up when the substitute went up. It may rest, however, until after the substitute is disposed of, and the amendment can then be considered.

The CHAIR. Are there any more remarks upon the substitute to the original amendment?

Mr. HAGAN. My amendment was to strike out.

The CHAIR. Your motion was to strike out, and the gentleman sent up a substitute.

Mr. STANDROD. His was an amendment to the section.

The CHAIR. Here this comes up as a substitute to the original amendment; the original amendment was to strike out all such portions of the section after certain words, and this comes as a substitute to that. Now my impression is that the gentleman has no objections to this substitute for the amendment, but if the gentleman insists upon his amendment to strike out, I think that motion should prevail first, under this rule, in the case of a substitute to an original amendment.

Mr. CLAGGETT. Rule 38 covers it. (reading) "A motion to strike out and insert shall be deemed divisible: and a motion to strike out on a division being

negatived, or a motion to insert being decided in the affirmative, shall be equivalent to agreeing to a matter in that form, but shall not preclude further amendment; provided that substitutes for pending propositions shall, for the purposes of amendment, be treated as original propositions." In other words, a motion to substitute sweeps the whole thing up and stops everything until that is disposed of.

Mr. HAGAN. Does not that bring my motion to strike out up first?

Mr. CLAGGETT. No, it says a substitute stands as an original proposition.

Mr. HAGAN. Certainly, and my motion to strike out could not then be amended.

Mr. CLAGGETT. A substitute sweeps all amendments aside, and stands as an original proposition on the whole matter,—the original section and the amendments both.

The CHAIR. The only way to do is to adopt this substitute, and then, if the committee desires, an amendment to the substitute would be in order; and I think this motion to substitute the following to the section would be proper, but this substitute does not substitute anything for the entire section.

Mr. STANDROD. Yes, it does.

The CHAIR. Then the gentleman is correct; that does away with any amendment to strike out, as I understand the rule.

Mr. HAGAN. He has proposed an original section?

The CHAIR. He proposes the substitute as an original section.

Mr. HAGAN. I would like to have it read.

Mr. REID. If that be the case, all in the world a man would have to do to defeat any amendment offered, would be to offer a substitute, and you never could get a vote.

Mr. AINSLIE. I rise to a point of order. How can a substitute be offered for a motion to strike out?

The CHAIR. When this substitute was sent up, as

a substitute to the original motion, I did not know,—didn't understand, at any rate, until it was reached. The amendment was sent up, and the substitute was sent up, without any announcement what it was until inquiry was made, and then the gentleman stated it was a substitute to the motion to strike out; now I find out it is a substitute to the original section.

Mr. REID. Rule 31 provides that (reading) "All questions, whether in committee or convention, except privileged questions, shall be put in the order in which they are made," etc. I make the point of order that the gentleman from Kootenai has a right to have his amendment voted on before the substitute is voted on.

Mr. HAGAN. That is what I claim, Mr. Chairman.

The CHAIR. The first question then would be in order,—to strike out.

Mr. CLAGGETT. Rule 31 just lays down the general proposition, but rule 38 covers all the propositions which we now have before us under the head of amendments.

The CHAIR. It says that "a motion to strike out" etc. "shall be equivalent to agreeing to a matter in that form," "provided that substitutes for pending propositions shall, for the purposes of amendment, be treated as original propositions."

Mr. REID. I make the point, Mr. President, that the rule only says this, that a motion to strike out and insert is divisible; that is, we can have a division on it, and further, if it is agreed to, it is equivalent to agreeing on the matter in that form, and then comes the substitute matter to be acted on; but rule 31 establishes the method of procedure when a number of amendments or substitutes are offered.

The CHAIR. Now the question is before the convention, as I understand it, if this is a substitute for a motion to strike, it should be in order, and I will make that decision, subject to appeal.

Mr. HAGAN. Rule 37 says no motion on new matter shall be brought in under color of amendment.

Mr. MORGAN. That is not under color of amendment, to strike out, at all. I think, Mr. Chairman, the substitute of the gentleman from Oneida is in order for this reason; if it is adopted it does away with the necessity of the motion of the gentleman from Kootenai. If we adopt this substitute it carries with it the amendments and finishes the whole thing. I think the substitute takes the place of it, where it is offered to the whole section, it carries with it the motion to amend the section; it strikes out, and inserts another section entirely. Both the motion of the gentleman from Kootenai prevails to strike out, and the motion of the gentleman from Oneida prevails to substitute.

The CHAIR. Well, his substitute would be in order then.

Mr. BATTEN. I think those two rules, 31 and 38, can be reconciled. The proposition before the committee now is an original proposition; it stands in lieu of the original section, but before it can be considered all amendments must be first disposed of, it seems to me. I think there should be some stress laid on the word "original" in that rule. It takes the place of the original section and should be last considered. All amendments that have been put in should be disposed of in order, in compliance with rule 31.

The CHAIR. That leaves the motion to strike out first in order; the question is upon the motion to strike out.

Mr. HAGAN. I have but a few words, Mr. Chairman, to say on this motion. The only argument I have heard against it is on the question of preparing to protect men in the use of water for irrigating and domestic purposes. If they have got the protection of law, without a constitutional provision, then what is the use of this? I propose to advocate at the proper time the protection of water rights. I propose to make the waters of this country a public use, and that every man shall be protected in the appropriations he has made and the appropriations of water he desires to make for the

purpose of agriculture. But I oppose, and have always opposed all my life, and as every one has opposed in every state constitution ever made that I know of, the idea of taking private property for private use. If the gentleman from Shoshone were to go before his people and tell them they could take his lands and his works for their private use, and that it was engrafted in this constitution, I do not believe he would get forty votes in his county. It would impair the value of the mines, it would embarass mining proceedings, but above all that I take the broad ground that no man has a right to force me to sell my property; I don't care if it not worth $50, I don't want to be compelled to take a million by a forced sale. Under the head of Water Rights water has been protected in Colorado, it has been protected in California, it has been protected in Nevada, but still there is no provision in the constitution allowing private property to be taken for private use. It is a doctrine that is anti-republican in every respect; it is contrary to the right to hold property, to enjoy property, or to pursue happiness. Where is the limit,—even of the agricultural ditch, as was said, for private use? Where is the limit that the landed proprietor would find for his neighbor who wanted to run over him? There should be regulation on the part of the state for irrigating purposes, as there is now, as there will always be. Did not the report this morning, under the head of irrigation, protect that? I have before me a resolution that I intend to offer at the proper time, to protect the rights of parties in the use of water; but I oppose that from the very fact that these people in the state of Idaho, as we call it, will never sanction a doctrine that will allow private property to be taken for private use. It is a doctrine that I know my people whom I represent will not endorse; they cannot endorse it,—it is suicidal. While I do not live in a farming country, and stand somewhat as a representative of the mining interests of the territory, it is my duty to speak out, and keep those people who have spent hun-

dreds of thousands of dollars from being subject, as the honorable gentleman has said here, to blackmailers, from being compelled to go and stop their work, from being run over by a new proprietor. They will hem around the available land, fence in our country by a lot of pretended mining locations, they will run works through our works, they will confiscate our water rights, and so impede and embarass work and development there. Those people will have nothing to do with a constitution that contains that provision or that language. You go before the people of a mining country and tell them that that is the case, and they will never adopt it. At the same time they will meet the agricultural men of this country on the water ditch question squarely and fairly, and give them every right and every privilege and protection. The Committee on Irrigation can protect that. The waters that are flowing in the streams throughout this territory should be and will be protected,—they must and ought to be. But if we have laws which can protect them now, without a constitution, what is the use of enlarging upon it to our detriment? I will never for one instant support a doctrine that will allow any man to take my property for his own private use,—I do not care what that property is, nor what it is for; I would not tolerate it in anybody; I would not ask the privilege of taking any man's property, if it was not worth a dollar; I would not have a right to enforce a sale upon his part, even for a million; it is not right. It is a doctrine, as the gentleman has said, that is new,—I should say it was! Why, it was for years and years that the question of eminent domain for public use was fought, and even went to the Supreme Court of the United States, where Judge Marshall limited its provisions at that time—the first decision in the United States upon the right, even the question of eminent domain. Since then, state constitutions have gone into the business of supporting railroad corporations and public corporations, until the poor men of the country are now subject to have their lands con-

fiscated, even for public use, to a great extent endangering their property. The excuse that it is for public use has gone far enough—it is time to call a halt. When you can say that landed proprietors adjoining you, or mining proprietors adjoining you, can go and take your mine, tear up your works, confiscate your other developments of whatever nature, though your property might be worth about a dollar and a half and mine worth thousands of dollars, and you could never get compensation on the cash value; but let him through your tunnel, because he has a right to take it for the development of his own mine, through your own mine, and let him run it throughout all your works. This provision says "mining and milling purposes." If a man wants to erect a mill, let him go and put up one where it does not interfere with his neighbor. I protest against the right of any man to go out in my front yard, upon my stream, or upon my mine. If he wants property, let him acquire it, not force me to sell mine, not confiscate my works, not disarrange my plans for the development of my mine. But this provision says he shall have that right—any individual whatever can go and conduct his water through my yard, and he—I see that gavel, I will quit.

The CHAIR. Yes, you have exhausted your time.

Mr. CLAGGETT. Mr. Chairman, really the question that is covered by the substitute of the gentleman from Oneida does not come up here now. So far as that question is concerned, there is no possible objection to granting the motion and voting to strike this out, because I am in favor of striking it out myself if it is to be deemed the taking of private property for private use, but I say that the public necessity must make the public use.

The CHAIR. I think you are right. (Cries of "Question!").

SECRETARY reads Hagan's amendment: Strike out all that part of Sec. 14 which reads as follows: "Private property shall not be taken for private use

unless by consent of the owner, except for private ways of necessity and for reservoirs, drains, flumes or ditches, on or across the lands of others for agricultural, mining, milling, domestic or sanitary purposes." Also strike out the words "or private" in line 5 of Sec. 14.

Mr. MORGAN. I want to ask my friend a question: Is it intended to strike out all that part which permits the taking of private property for private use?

Mr. HAGAN. Yes.

Cries of "Question." Rising vote is taken.

The CHAIR. I think the ayes seem to have it.

Division called for. Vote taken; 32 ayes, 7 nays.

The CHAIR. The motion prevails. Now read the section, Mr. Clerk, as it will read after that is stricken out.

Mr. REID. I rise to a point of order. The gentleman from Idaho county offered a substitute before Mr. Standrod's, for the whole section.

The CHAIR. I understand that, but I desire to have the section read, if you desire it.

Mr. REID. I suggested it in order to have it read. Mr. Parker sent up a substitute for the motion.

The CHAIR. (Reading): "Private property shall not be taken or damaged for public or private use, unless by consent of the owner." Do you consider that as a substitute?

Mr. REID. The gentleman offered a substitute and made a speech on it.

The CHAIR. I did not hear the speech.

Mr. STANDROD. Mr. Chairman, I believe my substitute was first offered.

The SECRETARY. Mr. Chairman, they were received at the desk in this order: Hagan's first, Standrod's second, and then this third one; I don't know where that came from.

Mr. MORGAN. I would suggest that the substitute offered by the gentleman from Idaho is in almost the exact language of the other. The only discrepancy is

one word in the first two lines of the section as it now stands, as amended. I see no reason why it should be offered. "Private property shall not be taken or damaged for public use without just compensation. That is the exact language offered in his substitute, with the exception of 'owner" in the place of "compensation."

The CHAIR. Well, we will take a vote on it. The question is now upon the adoption of the amendment offered by the gentleman from Idaho county (MR. PARKER).

Mr. CAVANAH. I would like to hear that amendment read.

SECRETARY reads Section 14: Private property shall not be taken or damaged for public or private use unless by consent of the owner.

Cries of "Question." Vote is taken.

The CHAIR. The motion is lost. The question is now upon the substitute offered by the gentleman from Oneida.

Mr. REID. Let us hear it read.

The SECRETARY again reads Mr. Standrod's substitute.

Mr. ALLEN. Now I would like to have the section as amended read in connection with that.

The CHAIR. This is a substitute for the whole of Section 14.

Mr. ALLEN. The section has been amended, and I would like to hear that read as amended.

SECRETARY reads: Private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into the court for the owner, the property shall not be needlessly disturbed nor the proprietary rights of the owner divested.

The CHAIR. That is the section as amended by the motion of Mr. Hagan. Now Mr. Standrod offers a substitute for the entire section.

Mr. MORGAN. I move its adoption. (Seconded).

Mr. BEATTY. I am heartily in accord with the gentlemen here who have advocated the development of this territory, and to that end that private property shall be taken when absolutely necessary. The question with me, in regard to this substitute as read, is whether it meets that end or not. It is impossible to keep the provisions of the section in your mind from hearing it simply read there without examining it closely, but as I remember it, it first provides that private property shall not be taken for any except a public use, and then it goes on and says that certain uses shall be deemed public. Now the question with me is this: If you undertake to determine by a provision of the constitution that a certain act, which is taking private property for private use, is a public use, does it make it so? Can you by saying that this property which is actually taken—private property taken for private use—by declaring that it is a public use, change the facts? It seems to me that the members who are in favor of this proposition, in advocating that, do not reach what they desire. Now I am heartily in sympathy with the movement to make such a constitution here that our mining interests can be developed, so that one man cannot hold a dozen back from developing property by reason of the situation of it, or that a man owning a farm or ranch, so situated that another farm or ranch can command it, shall be prevented from irrigating his farm. I want the constitution made as liberal as possible, so that all the resources of the country may be developed. But as I understand the reading of this substitute, it seems to me it will fail to reach the very object that it seeks. Can you by any declaration make a thing different from what it is? You take a part of my farm to run your water ditch over; that is certainly taking private property for a private use. Now can any declarations of the legislature, or of the constitution even, or any legislative act, make that act what it is not? I cannot conceive that it does, and it seems to me that if we adopt this, you will not have

accomplished the very object you desire. If I can be convinced that the declaration placed in there will make a private act a public act which will reach the object which you desire and which I desire, then I am ready to support the substitute, for I am in sympathy with the movement that will result in the development of all portions of the territory; but, as I heard that substitute read, I don't think it meets the purpose.

Mr. SWEET. I understood Mr. Claggett to say that he was a member of the committee on Irrigation, and that this committee had made some arrangements with reference to the irrigating of these public lands. Now I think it is patent to everybody in the house that it will be utterly impossible to ever pass through this convention the doctrine included in this Bill of Rights of appropriation of private property to domestic use. I do not believe that will ever be consented to by this convention. On the other hand, every member of the convention recognizes that we must take some steps by which these public lands in the state of Idaho can be irrigated, but this clause is altogether too sweeping, and in my judgment the substitute is too. I would suggest that these members of the Irrigation committee, who have, as I understand, some arrangement by which the lands can be irrigated and not interfere with the industries and the right of property in the state, take the matter up with the object of suggesting a proposition that can reconcile these matters and save all this time.

Mr. CLAGGETT. The committee on Irrigation, Manufactures and Agriculture have simply passed upon the question with regard to the irrigation question and the use of waters. There is something else that is required in this state besides irrigation. We have an immense mining interest here that has got to be protected, and we need the incorporation of some such provision as this in the constitution for the protection of mining interests, in order that they may have mining easements upon their placer ground and condemn them when necessary. This thing concerns all parts of the terri-

tory, and not one particular line. We have the right to do that now. Congress in 1866, in the legislation called the mineral land laws, declared that the legislatures of the several territories should have the power to provide by law for the establishment of easements for drainage and other purposes upon the public lands, and also upon private lands, without compensation.[1] We have that power now, and have exercised that power under the authority given us by Congress; but if we come in here as a state we lose all of that, so far as the legislation of Congress is concerned, and have got to provide for this thing ourselves. I think so far as the substitute is concerned, that that substitute can be amended in such a way as to provide for easements upon lands for those purposes, and leave the lands alone and let the title rest in them. An easement that will carry water over a party's land, an easement to build a ditch across a man's claim, an easement to go over a man's claim when necessary—all of which would be provided by the legislature, under the safeguards there put in—and temporary possession for the purpose of sinking a shaft or running a tunnel—these things are absolutely necessary to be done, and I think the language of the substitute should be modified so as to cover any matters of this kind, to cover these matters of easement. I therefore move that the committee rise and ask leave to sit again, and that in the meantime this substitute be printed, so that we may have the matter properly before us tomorrow morning.

Mr. MORGAN. I suppose the gentleman makes the motion now and includes in the order for printing the amendment offered by Mr. Heyburn.

Mr. CLAGGETT. I make the motion now, that the committee rise, report progress, and ask leave to sit again, and recommend that the two pending amendments, the substitute of the gentleman from Oneida and of the gentleman from Shoshone, be printed, and laid

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[1]—Sec. 5, 14 U. S. Stat. at Large, p. 252.

upon the desks of members tomorrow morning. It is too important a matter to go over hastily.

Mr. HASBROUCK. I find among the committees that there is a committee on Mines and Mining, and that the duties of that committee are to consider and report upon all subjects pertaining to the interests of the mines and the question of the use of water in connection therewith. Perhaps if we had the report of that committee it might throw some light upon that subject. The objection is being raised that the committee on Manufactures, Agriculture and Irrigation do not cover this case. I would like to inquire whether this committee on Mines and Mining covers the case—if their report will aid us.

Mr. HEYBURN. Mr. Chairman, that suggestion came in another form from Mr. Sweet of Latah. The provision we are dealing with now is defining the right of eminent domain; it belongs right here, and does not belong to any of these committees. It is something to be declared in the Bill of Rights—the scope, right and power of eminent domain. This is the proper place to dispose of that question, and not in those committees. After that right is established here, in the Bill of Rights, the committees must conform themselves to it. It does not belong to the committee on Mining or the committee on Irrigation and Agriculture, but it belongs here.

Mr. SWEET. Was your motion to adjourn seconded?

Mr. CLAGGETT. Yes, it was.

Mr. SWEET. Then I move to amend the motion to this effect: That the question of irrigation and the use of water for mining be referred to a general session of the committee on Mining and Irrigation, to see if we can harmonize those two things.

Mr. GRAY. I call for the motion for the committee to rise.

Mr. SWEET. I ask Mr. Claggett—ask that in his motion that the committee rise, he include it in his.

Mr. CLAGGETT. Well, I had got pretty near through with the discussion of the merits; that would be almost unavoidable postponed, to get these two committees together. I presume they can get together now. If they can, and be ready to present something tomorrow, and in the meantime let us have the substitutes printed and have them before us.

Mr. SWEET. I have no objection to that.

Mr. MORGAN. I call for the question, Mr. Chairman.

Mr. CLAGGETT. I think if the chairmen of the committees on Irrigation and Mining get together——

The CHAIR. The question as amended is that the committee rise and report progress, and that the substitute, together with Mr. Heyburn's amendment, be printed. (Vote). The motion is carried.

CONVENTION IN SESSION.

Mr. CLAGGETT in the chair.

Mr. MAYHEW. Mr. President, the committee of the Whole have had under consideration the report of the committee on Preamble and Bill of Rights, and make the following report. (Handing it to the president).

SECRETARY reads: Your committee of the Whole have had under consideration the report of the committee on Preamble and Bill of Rights, have amended Sections 7, 9 and 13, have adopted Sections 10, 11, 12, and have adopted a substitute for Section 8, and ask leave to sit again, and recommend that the substitute offered by Mr. Standrod, with the pending amendments, be printed. A. E. Mayhew, chairman of the committee of the Whole.

Mr. REID. Does that cut off future debate, under the rule?

The CHAIR. Oh, no; I think not; it stands just where it was before.

Mr. REID. Under the rule all these amendments go over, and the ayes and nays may be called on each

proposition in the convention. What I want to understand is, that any proposition debated under this bill may be called up in convention and a vote had on demand.

Mr. MORGAN. It has to be had in the convention —it must be had.

Mr. REID. My understanding was that when a question was referred to the committee of the Whole, they reported no conclusion until the whole matter was gone through with; that has been the custom, as I understand. The Bill of Rights was referred to the committee of the Whole; they come to no conclusion until they finally dispose of it.

The CHAIR. They came to no conclusion upon anything.

Mr. REID. We are debating now what has been done in the convention. If this disposes of that matter finally, then I want to call for an aye and nay vote on some of these questions.

Mr. MAYHEW. This report, as I understand, merely lays upon the table until the conclusion of the consideration of the Bill of Rights.

Mr. REID. With that understanding I have no objections to interpose.

The CHAIR. That leaves nothing before the convention, and the report lies upon the table.

LEAVES OF ABSENCE.

Mr. HAMMELL. I ask unanimous consent for leave of absence after Saturday night, as I have a telegram requiring my presence in north Idaho Monday, and unless the matter is attended to a large number of men will be delayed in their work; it is imperative.

The CHAIR. If there is no objection the leave will be granted.

Mr. SHOUP. My colleague, Mr. Crook, was called away yesterday, and informed me, to ask that leave of absence be granted him until Monday next.

The CHAIR. If there is no objection it will be granted.

Mr. LEWIS. Mr. W. H. Savidge was unexpectedly called away this evening upon a telegram, and requested me to ask for leave of absence until Monday morning for him.

The CHAIR. There being no objection, it is so ordered.

JOINT MEETING OF COMMITTEES.

The CHAIR. I would like to ask, in connection with this matter that came up, as to whether the chairmen of the committees on Irrigation and Mines and Mining can get their committees in joint session about 8:00 o'clock tonight.

Mr. CRUTCHER. So far as the committee on Mines and Mining, I will try to have what members are here present at that time.

Mr. CAVANAH. The committee on Agriculture and Irrigation will meet if I can get them together, at the same time with the committee on Mines, at 8.00 o'clock this evening, in the library rooms.

The CHAIR. It is moved and seconded that the convention now adjourn until ten o'clock tomorrow morning. (Carried).

THIRTEENTH DAY.

FRIDAY, *July 19, 1889.*

CONVENTION called to order by the President at 10:00 A. M.

Prayer by Chaplain.

ROLL CALL. Present: Messrs. Ainslie, Allen, Anderson, Andrews, Armstrong, Ballentine, Batten, Beatty, Bevan, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Gray, Hagan, Hammell, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, May-

hew, McConnell, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Sinnott, Shoup, Standrod, Steunenberg, Taylor, Underwood, Whitton, Wilson, Woods, Mr. President.

Absent: Messrs. Blake, Harkness, Harris, Sweet, Robbins, Hendryx, Parker.

Excused: Messrs. Beane, Crook, Glidden, McMahon, Stull, Savidge, Vineyard.

JOURNAL read.

The CHAIR. Are there any corrections of the Journal?

Mr. LEMP. Mr. President, the committee on Finance, I believe Mr. McConnell is chairman of it, and I see in the minutes that Mr. Harkness is first, but I believe Mr. McConnell was appointed first.

The CHAIR. The secretary will correct the record.

Mr. BATTEN. I desire to call attention to a motion in the Journal. It does not appear that the resolution of Mr. McConnell touching the question of privilege raised by the gentleman of Boise was adopted, whereas in fact it was adopted.

The CHAIR. The secretary will correct the Journal accordingly. If there are no further corrections, the Journal of yesterday will be deemed correct.

Presentations of Petitions and Memorials? None. Reports of Standing Committees?

Mr. POE. The committee on Salaries of Public Officials will report.

COMMITTEE REPORT—SALARIES.

SECRETARY reads: Boise City, Idaho, July 19, 1889. Mr. President and Members of the Constitutional Convention of Idaho Territory: Your committee on Salaries of Public Officers respectfully submit the following report. J. W. Poe, Chairman.

The CHAIR. The reports will lie upon the table to be printed. Reports from special committees? None. Final readings? None. Gentlemen, we have finished the regular order of business for the day.

Mr. WILSON. I move that this convention resolve itself into a committee of the Whole for the purpose of considering the general orders of the day. (Seconded and carried).

The CHAIR. Will the gentleman from Custer take the chair?

Mr. SHOUP. I beg to be excused.

The CHAIR. Will the gentleman from Shoshone take the chair?

COMMITTEE OF THE WHOLE.

10:30 A. M.

Mr. MAYHEW in the Chair.

ARTICLE I., SECTION 14.

The CHAIR. Gentlemen, when the committee rose yesterday evening, we had under consideration Sec. 14 of the Bill of Rights.

Mr. STANDROD. I desire to ask leave to withdraw the substitute which was offered by me yesterday. I will state that it was recommended on yesterday afternoon that the two committees on Irrigation and Mining meet in joint committee, and prepare, if possible, some section as a substitute for Sec. 14 of this Bill of Rights. Those committees have met in joint committee, and have a substitute this morning to offer instead of the one offered by me on yesterday; and for that reason I desire to withdraw the substitute offered.

The CHAIR. If there is no objection the substitute may be withdrawn.

Mr. MORGAN. I would like to hear the substitute before the pending substitute is withdrawn.

Mr. STANDROD. I will present it.

SECRETARY reads: "Section 14. The use of lands necesary for the construction of reservoirs, or storage basins for the purpose of irrigation, or for rights of way across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use, for any useful or beneficial purpose or for

drainage, or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use.

"Private property may be taken for a public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."

The CHAIR. If there is no objection, the substitute just read is substituted for the one withdrawn. There was another amendment, you will recollect, also sent up by Mr. Heyburn.

Mr. HEYBURN. Mr. Chairman, the amendment sent up yesterday by myself applies to the portion of the section that is not included in that substitute; as I understand it, that substitute is for the first portion of the section.

Mr. CLAGGETT. The substitute is for the entire section.

The CHAIR. Is the substitute now offered a substitute for the entire section?

Mr. STANDROD. Yes, sir.

The CHAIR. If there is no objection, the substitute offered by the gentleman yesterday, Mr. Standrod, will be withdrawn. What is the pleasure of the committee? It is now necessary to move the adoption of this substitute as the other is withdrawn.

A MEMBER. I move the adoption of the substitute just as read. (Seconded).

The CHAIR. It is moved and seconded that the——

Mr. STANDROD. Mr. Chairman——

Mr. REID. I would like to have the substitute read once more.

SECRETARY reads.

Mr. STANDROD. Mr. Chairman, the objections that have been made against this section in this article

of the Bill of Rights, as well as many other sections, seem to arise from the gentlemen who claim that these sections are in conflict with the Fifth and Sixth Amendments to the Constitution of the United States. And even the lawyers in this convention seem to differ—they are at variance upon this question—and for the benefit of the convention and members here who are not lawyers, and in order to refute the charges made against the committee on yesterday, intimating it was bringing in something that was unheard of and unconstitutional, I have taken some pains to examine authorities upon this question and I desire to read from decisions of the Supreme Court of the United States. I am aware that my time is short in reference to this, and I will have to read only certain clauses of these decisions. I read from the case of Twitchell v. The Commonwealth of Pennsylvania, decided in 7th Wallace, 321. It was a motion for a writ of error, and the court says this:

"It is claimed that the writ should be allowed upon the ground that the indictment, upon which the judgment of the State court was rendered, was framed under a statute of Pennsylvania in disregard of the 5th and 6th Amendments of the Constitution of the United States, and that this statute is especially repugnant to that provision of the 6th Amendment which declares 'that in all criminal prosecutions the accused shall enjoy the right' 'to be informed of the nature and cause of the accusation against him.'

The statute complained of was passed March 30, 1860, and provides that 'in any indictment for murder or manslaughter it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused; but it shall be sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully, and of malice aforethought, kill and murder the deceased; and it shall be sufficient, in any indictment for manslaughter, to charge that the defendant did feloniously kill the deceased.'

"We are by no means prepared to say, that if it were an open question whether the 5th and 6th Amendments of the Constitution apply to the state governments, it would not be our duty to allow the writ applied for and hear argument on the question of repugnancy. We think, indeed, that it would. But the scope and application of these amendments are no longer subjects of discussion here.

"In the case of Barron v. The City of Baltimore, (7 Peters, 243) the whole question was fully considered upon a writ of error to the Court of Appeals of the State of Maryland. The error alleged was, that the state court sustained the action of the defendant under an act of the state legislature, whereby the property of the plaintiff was taken for public use in violation of the 5th Amendment. The court held that its appellate jurisdiction did not extend to the case presented by the writ of error; and Chief Justice Marshall, declaring the unanimous judgment of the court, said:

'The question presented is, we think, of great importance, but not of much difficulty. . . . . The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on the government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and we think necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes."

"And, in conclusion, after a thorough examination of the several amendments which had then (1833) been adopted, he observes:

'These amendments contain no expression indicating an intention to apply them to state governments. This court cannot so apply them.'

"And this judgment has since been frequently reiterated, and always without dissent.

"That they 'were not designed as limits upon the state governments in reference to their own citizens,' but 'exclusively as restrictions upon Federal power,' was declared in Fox v. Ohio, to be 'the only rational and intelligible interpretation which these amendments can have.' And language equally decisive, if less emphatic, may be found in Smith v. The State of Maryland, and Withers v. Buckley and others.

"In the views thus stated and supported we entirely concur. They apply to the sixth as fully as to any other of the amendments."

I also read from Book 15, page 269, (Smith v. Mary-

land). This case arose upon the power of the state of Maryland to enact laws relating to oyster taking on the coast there. It was claimed it was unconstitutional because Congress had the right to enact laws relating to commerce, and it was further upon the question as to whether the warrant issued out of the state court was defective:

"So far as it rests on the constitution of the state, the objection is not examinable here, under the 25th section of the Judiciary Act. If rested on that clause in the Constitution of the United States which prohibits the issuing of a warrant, but on probable cause supported by oath, the answer is, that this restrains the issue of warrants only under the laws of the United States, and has no application to state process."

Further on in the case of Withers v. Buckley, (the same book, page 816) the question arose in regard to an act passed by the legislature of Mississippi regulating and defining the powers of the commissioners of Homochitto River. They say this in conclusion:

"The Act of the Legislature of Mississippi, therefore, is strictly within the legitimate and even essential powers of the state, is in violation of neither the Constitution nor laws of the United States, and presents no conjecture or aspect by which this court would be warranted to supervise or control the decree of the High Court of Errors and Appeals of Mississippi."

In the case of Fox v. The State of Ohio a woman was indicted there under the state criminal law for issuing counterfeit money and was tried and found guilty. (Book 12, page 222):

"It would follow from these views, that if within the power conferred by the clauses of the Constitution above quoted can be drawn the power to punish a private cheat effected by means of a base dollar, that power certainly cannot be deduced from either the common sense or the adjudicated meaning of the language used in the Constitution, or from any apparent or probable conflict which might arise between the federal and state authorities, operating each upon these distinct characters of offense. If any such conflict can be apprehended, it must be from some remote, and obscure, and scarcely comprehensible possibility, which can never constitute an objection to a just and necessary state power. . . . . It has been objected on behalf of the plaintiff in error, that if the states can inflict penalties for the offense of passing base coin, and the federal government should denounce a penalty against the same act, an individual under these separate jurisdictions might be liable to be twice punished for the one and the same crime, and that this would be in violation of

the fifth article of the amendments to the Constitution, declaring that no person shall be subject for the same offense to be twice put in jeopardy life or limb. Conceding for the present that Congress should undertake, and could rightfully undertake, to punish a cheat perpetrated between citizens of a state because an instrument in effecting that cheat was a counterfeited coin of the United States, the force of the objection sought to be deduced from the position assumed is not perceived; for the position is itself without real foundation. The prohibition alluded to as contained in the amendments to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the state governments in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the states, and of their citizens. Such has been the interpretation given to those amendments by this court, in the case of Barron v. The Mayor and City Council of Baltimore (7 Peters, 243); and such, indeed, is the only rational and intelligible interpretation which those amendments can bear, since it is neither probable nor credible that the states should have anxiously insisted to engraft upon the federal Constitution restrictions upon their own authority—restrictions which some of the states regarded as the *sine qua non* of its adoption by them. It is almost certain, that, in the benignant spirit in which the institutions both of the state and federal systems are administered, an offender who should have suffered the penalties denounced by the one would not be subjected a second time to punishment by the other for acts essentially the same, unless, indeed, this might occur in instances of peculiar enormity, or where the public safety demanded extraordinary rigor. But were a contrary course of policy and action either probable or usual, this would by no means justify the conclusion, that offenses falling within the competency of different authorities to restrain or punish them would not properly be subjected to the consequences which these authorities might ordain and affix to their perpetration. The particular offense described in the statute of Ohio, and charged in the indictment against the plaintiff in error, is deemed by this court to be clearly within the rightful power and jurisdiction of the state. So far, then, neither the statute in question, nor the conviction and sentence founded upon it, can be held as violating either the Constitution or any law of the United States made in pursuance thereof."

I just have a short decision that I desire to refer to and then I am through—delivered by Mr. Justice Marshall, found in Book 8, page 674; it is the case referred to in the first decision I read: (Barron v. Mayor).

"The plaintiff in error contends that it comes within that clause in the fifth amendment to the Constitution which inhibits the taking of private property for public use without just compensation. He insists that this amendment, being in favor of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a state, as well as that of the United States. If this proposition be untrue, the court can take no jurisdiction of the cause."

The court goes on further and says:

"Had the people of the several states, or any of them, required changes in their constitutions; had they required additional safeguards to liberty from the apprehended encroachments of their particular governments, their remedy was in their own hands, and would have been applied by themselves. A convention would have been assembled by the discontented state, and the required improvements would have been made by itself. The unwieldy and cumbersome machinery of procuring a recommendation from two-thirds of Congress and the assent of three-fourths of their sister states, could never have occurred to any human being as a mode of doing that which might be effected by the state itself. Had the framers of these amendments intended them to be limitations on the powers of the state governments they would have imitated the framers of the original constitution and have expressed that intention. Had Congress engaged in the extraordinary occupation of improving the constitutions of the several states by affording the people additional protection from the exercise of power by their own governments in matters which concerned themselves alone, they would have declared this purpose in plain and intelligible language.

"But it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments.

"In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in Congress, and adopted by

the states. These amendments contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them.

"We are of opinion that the provision in the fifth amendment to the Constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the states."

Is my time up?

The CHAIR. No, you have two minutes.

Mr. STANDROD. Now I desire to add that this question is absolutely settled. There certainly can arise no dispute over this question if gentlemen here will undertake to examine the authorities and the settled lay of the land. The section we now present before this convention is a section, while it guards to a certain extent the taking of private property, declares in those instances that we all admit and agree are necessary—that in those instances and in those alone private property shall be taken for public use; and it defines what a public use is. It certainly will not be contended that this convention has not the power—that the state has not the power to prescribe or define what a public use is, and that it is not in conflct with the Constitution of the United States. We have made this definition in this section in order to settle this question and prevent wrangling over it in the courts, because when these questions come up the first opposition we meet with is that it is unconstitutional, it is not a public use, and the court must say what a public use is. Now in order to settle that question and prevent wrangling over it we define what it is, limiting it of course all the way along to those interests that we all see exist in this arid country. And there is nothing in it, it seems to me that is objectionable to any man here that is interested in the welfare and the development of this state. I submit, Mr. Chairman, that the objection that the gentleman raised yesterday that it was in conflict with the amendments or with the Constitution of the United

States certainly should be settled by the decisions I have just read, and if these gentlemen will take the time to examine they will find they are squarely in point, or as the expression goes, are "on all fours," and entirely put that question to rest.

Mr. HEYBURN. Mr. Chairman, I desire to ask that I may take the bill for the purpose of considering the amendment proposed. I agree with the gentleman who has just addressed the convention that it is within the power of the convention to adopt such a provision as this, but we must be careful that we do not limit it to a particular class of uses to the exclusion of others. It struck me in the reading of it by the clerk—I may have been mistaken, not having the bill before me—that it discriminates to some extent in favor of agriculture in this first clause, and I have prepared an amendment which I will send up as soon as I am through with my remarks. (Reading from copy of Mr. Standrod's substitute): "The use of lands necessary for the construction of reservoirs or storage basins for the purpose of irrigation or for rights of way across such lands for the construction"—now I would suggest striking out the word "such" so that it will read: "The right of way across any lands for the construction of canals, ditches, flumes or pipes to convey water," because that would mean all such lands as are referred to in the first portion of this proposed amendment, and in mining operations it is necessary also to construct ditches and flumes across lands for the purpose of conveying water, for the purpose of power and the business of mining in many ways, and it struck me that was limited to the use of agricultural lands to the exclusion of mining. I will proceed: "Across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use;" that is, that would be across agricultural lands because they are referred to. "For any useful or beneficial purpose or for drainage, or for the drainage of mines or for the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts,

hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state." That would not seem to permit the construction of canals across mining lands or lands other than agricultural, because there is nothing in these subordinate provisions that pertain to the construction of ditches. There is no mention among the mining uses. I will send up an amendment that I think will cover that; to amend by striking out the word "such" in the fourth line; then also in regard to this clause that "private property may be taken for a public use, but not until a just compensation to be ascertained in the manner prescribed by law shall be paid therefor." I think that should be amended by adding the words, "or deposited in court under such conditions as the court may prescribe," because as it stands now, that in effect would take away the party's right of appeal, and I think this, with these amendments, will cover the interests of mining.

The CHAIR. Is the amendment offered by the gentleman from Shoshone supported?

Mr. CLAGGETT. Mr. Chairman, the substitute which has been offered by the committee on Bill of Rights—speaking for Mr. Standrod—has been very carefully considered by three of the standing committees of this convention, constituting almost a majority of the convention. We got the members together, and those members have considered this matter. Not all of them on the committee on Bill of Rights, but all of them on the two committees on Mines and Mining and on Irrigation. The language which is here reported has been very carefully considered; it covers in my judgment every conceivable interest which should be mentioned in the constitution, and I trust that in a matter of this kind we will not undertake to mutilate it by words which are not necessary, or through adopting the special ideas as to phraseology of any gentleman upon the floor. I read again: "The use of lands necessary." Those are

the "such lands" as are referred to all through the section. "Such lands as are necessary" to be taken for these special purposes. "The use of lands necessary for the construction of reservoirs or storage basins for the purpose of irrigation;" that is, to cover the case of utilizing the large surplus flow of water in the spring, and where the state or large companies or corporations or individuals may desire to build reservoirs or storage basins above the place where water is to be used for irrigating purposes. I read again: "The use of lands necessary for the construction of reservoirs, or storage basins for the purpose of irrigation or for rights of way across such lands;" that is, such lands as are necessary for this purpose. "For the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose or for drainage."

Mr. REID. Will the gentleman allow me now to ask whether under that clause: "for any useful or beneficial purpose," you can do that for any other purpose except irrigating and mining?

Mr. CLAGGETT. Certainly; it was intended to cover all cases which are now recognized by law.

Mr. REID. Then as I understand the proposition, its effect is that private property can be taken for any purpose whatever, just so that it is considered useful or beneficial.

Mr. CLAGGETT. No sir, if the gentleman will wait until I get through. "The construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, or for drainage;" that is, a right of way across lands for the purpose of draining swamps or anything of that sort, "or for the drainage of mines or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or any other necessary means for their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, it is hereby declared to be a

public use. Private property may be taken for a public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."

Mr. Chairman and gentlemen of the convention, we have got rid, I hope, of the bugbear which embarrassed us yesterday in regard to the limitations upon our action here. The fact of the matter is that we old timers have lived so long in these territories that we have practically forgotten the tremendous power of a state government. We have been in leading strings so long that now when we represent the people of the state, subject to their ratification of this constitution which we are preparing, when the people of this state is a sovereign power, armed with all the powers which the state of New York or any other state has, we are met here on yesterday by these ideas which prevailed and which belong to the territorial condition, and which have no reference whatever to our condition as a state. A state possesses the power of eminent domain; a state is a sovereign with the exception of such limitations as are contained in the Constitution of the United States and the national character of the few prohibitions which are specifically there laid upon state action. With these exceptions and limitations the state is a sovereign power, which is possessed of the same degree of power as the most despotic nation on this earth. It may take the private lands of individuals for public use without compensation; that is the original theory of the law of eminent domain. We are inquiring here, not whether we would not have the power to do it, but we are inquiring here to what extent will we exercise this power, and what limitations will we put upon this action of the state. And the resolution which has been reported provides that the uses of lands for these necessary purposes are hereby declared to be public uses, and as such may be condemned in the manner provided by law. That is the substance of it. Are we going to create a state government here and act on the theory that we are nothing but a corporate body, deriving all

the powers we have from a legislative act? I apprehend not. Will my friend from Nez Perce say, for instance, that where it is necessary to subject private lands to uses of this kind, necessary to subject them to the purpose of building reservoirs and irrigating large sections of country, or building storage basins, that it is not a public use in the very nature of things? Will my friend from Nez Perce go so far as to say that the use of facilities for mining and the complete development of mining property is not a public use? Will he go so far as to say that the power to preserve the welfare of the inhabitants of the state by subjecting private property on the payment of compensation to public use, is not a public use, or any other use which is necessary for the complete development of the material resources of the state? I apprehend not.

Now, Mr. Chairman, every one of these provisions is taken in substance or in spirit from three sources: One is the theory which was adopted by the constitution of the state of California,[1] and which was reported with reference to the use of water by the report of the entire committee. The other was taken with regard to mines from the act of Congress, providing that in the absence of legislation by Congress the local legislature may provide rules for the regulating of mines, involving easements and all other means necessary to their complete development.[2] The language was almost copied. And the third source of information drawn on here is from the oldest territorial statute passed some twenty-three years ago, and under which we have been operating very beneficially, but our friends have never discovered the existence of this statute.[3]

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[1]—Sec. 1, Art. 14, Cal. Const. 1879.

[2]—Sec. 5, 14 U. S. Stat. at Large, p 252.

[3]—Possibly referring to Sec. 2 of an act passed in 1864, regarding location of quartz claims; 1st Terr. Sess. Laws, p. 577. But see also the early Nevada statute, entitled; "Condemnation of Property for Mining Purposes," enacted Mar. 3, 1866; Sess. Laws 1866, p. 196; Comp. Laws of Nevada, 1873, Sec. 120. Mr. Claggett was living in Nevada at the time that statute was passed.

Now, I do not think that the amendment offered by Mr. Heyburn with regard to the court has anything to do with it. The committees who have considered this matter have suggested this substitute which has simply defined and declared—or rather has simply declared what shall be considered public uses, and then the machinery for the execution of any public use is left entirely to the legislature. Now let me illustrate; I may run over my time a minute.

The CHAIR. No, sir, you have a few minutes left.

Mr. REID. I ask unanimous consent that the gentleman may finish his argument. I think the matter should be discussed fully.

Mr. CLAGGETT. Now, the great trouble——

Mr. MORGAN. One of the principal purposes of this section is to permit private property to be taken for individual use, and yet that is not expressed anywhere in the section. Do you think it is sufficiently expressed?

Mr. CLAGGETT. It is not intended for any such purposes whatever. It is intended to be taken for public use, but the sovereign power of the state declares what shall be considered public uses, extending to everything which is necessary to the complete development of the material resources of the state or the preservation of the welfare of its inhabitants. Now let us see. We very frequently get into trouble by not carrying a proposition in our minds far enough. Let me inquire for a moment as to what this talk means about taking private property for public use. Let me ask my friend from Bingham whether he will not admit that if the legislature of the state should undertake to grant a right of way across private lands for the purpose of constructing a railroad, would not that be subjected to a public use?

Mr. MORGAN. Yes.

Mr. CLAGGETT. Why? Do you not take from the farmer over which that right of way is granted the use of these lands and give it to a private corporation?

Mr. HAGAN. No.

Mr. CLAGGETT. I beg your pardon, you do. You give the use to the private corporation, to the railroad company. Why do you do it, and yet you call it a public use? Why? Because it is necessary that it shall be subjected to the uses of a private corporation in order that the public may be benefited thereby. That is the point.

Mr. REID. Will the gentleman allow me to ask him what becomes of the right of eminent domain?

The CHAIR. The gentleman has been talking ten minutes.

Mr. REID. I ask unanimous consent that he be allowed to proceed.

Mr. CLAGGETT. My friend from Kootenai says no. I reiterate my statement that it does. The corporate authorities, in the case I have supposed, are treated as the agents of the state, in declaring a public use through the agents of the state, who proceed to apply it to the greatest interest of the people under the laws provided for that purpose, not of declaring it a public use, but of condemning it for public purposes. That is the theory, but as a matter of fact the lands of the private citizen—the use of the lands, not the lands themselves, for the lands continue the property of the farmer in the case I have put; the use of the lands is taken away from the farmer so far as the use of them would interfere in any way with the use of the railroad corporation in them, and transferred to the corporation itself. Now I ask, does not that meet all this talk with regard to the question of taking private property for private use? In other words, there is only one way in which you can take private property for public use; I do not except that where the state itself has proceeded to build its own railroads, and then the state itself would own the right of way instead of the corporation owning it. Now if that is true with reference to railroad corporations—I have taken this for the purpose of illustration because all concede that—what is the

difference between that and the case which was put here with regard to these other matters? Here is a farmer who has a piece of land; it is necessary that a reservoir should be built upon that land. Therefore a corporation, I will say a water company, a corporation is organized for the purpose of constructing a large reservoir or canal, and that corporation under the same power as is here given to a railroad company for a right of way, comes in and subjects the land of private persons to this easement or servitude called a use, and although taken for public purposes, for the public benefit, it is practically turned over and transferred to the corporation, and I say the proposition cannot be successfully denied. Now what is the test as to what is a public use? I am not now speaking of that by legislative enactment, but the test in the very nature of the thing. Why is it a public use to take a man's land and give the use of it to a railroad corporation for transporting passengers? Is it because of the man's wealth? Not at all. Is it because all men may ride on it as they choose? Not at all. It is because thereby the public interests will be provided for and the public benefit secured; that is the legal principle that underlies the whole question of public use, and will anyone say that the subjection of a piece of land for the right of way of a railroad company for one public purpose, or for the purpose of public benefit, is of any higher degree of benefit than it would be to subject the land to the easements provided for here, for the purpose of irrigating a large section of the state, and enabling hundreds of thousands and millions of people to live while there are now one to the square mile? It is absolutely necessary that these public interests should be guarded, provided for, and the declaration made that they are for public uses.

Mr. Chairman, in conclusion I simply want to say this, that nowhere here in this provision is there a taking of any private property for anybody's private benefit. It is simply the subjection of private property to public control, in the interest and for the purpose of promoting

the development of the state and securing the welfare of its people; that is all.

Mr. BEATTY. I would like to ask the gentleman a question before he takes his seat. I would like to ask if under the provisions of that amendment one farmer can run his irrigating ditch across another farmer's land?

Mr. MORGAN. By making compensation he can.

Mr. CLAGGETT. That depends entirely with regard to what the legislature may say. If it does not take action the power is not conferred; if the legislature leaves it out, he cannot. The machinery of the whole thing is left to the legislature.

Mr. BEATTY. Then under the provision as there made, that power you do not concede is granted?

Mr. CLAGGETT. I concede that the power of the state is granted to subject all the lands of the state that may be necessary to those uses, to the uses which are contemplated in this provision; that is all. Not of itself, —it does not exercise itself, but I am not one of those who say that we should put in our constitution the broad declaration to the effect that private property can only be taken for public uses and and then stop there. Then in case the legislature proposes to subject it to any use which prior to the adoption of the constitution had not been considered a public use, you would have the question raised in the courts of the unconstitutionality of the statute, because it would be claimed that that was not a public use but a private one. That is the point, and if you do not put such a provision as this in the constitution, you will be hung up by the holidays, so far as the complete development of all the resources of this state is concerned. Under the old constitution of the state of California they had that provision, prohibiting the taking of private property for anything except public uses, and what was the result? We saw how the monopolies grew up, until in 1879, when the new constitution was adopted, which has been most ungraciously referred to by two distinguished gentlemen on this floor,

for the purpose of creating prejudice against it, as the sand-lot constitution, the people then for the first time got an opportunity to pass upon this question, and the first thing they did was to provide—I will read from Section 1 here, Article 14. Now bear in mind the state had never done anything of this kind before. The use of water was never esteemed a public use in California but a matter to be subjected to private ownership and control alone, and nobody could interfere with it because it had become a vested right; but the constitution went on and provided: (reading) "The use of all waters now appropriated, or that may be hereafter appropriated, for sale, rental or distribution, is hereby declared to be a public use, and subject to the regulation and control of the state." Why was not the question raised there then, if the sovereign power of California had not the power to pass any such provision? Nevertheless they did it. They took the use of the waters in their state and declared that that use was a public one with them, that no man might use the water at all for any purpose except in the manner provided by the authority of the laws of the state. And yet when we come in here and present this substitute for all these absolutely necessary uses, and provide that only such lands as are necessary to carry out these uses shall be subjected to that use, we are met by such objections as are raised here.

Mr. REID. Mr. President, I offer the following amendment——

The CHAIR. As I understand, the amendment offered by the gentleman from Shoshone was seconded.

Mr. HEYBURN. I understood it was seconded at the time.

Mr. REID. Well, I will second it now, if no one else has.

The CHAIR. Now what is the nature of this amendment of the gentleman from Nez Perce?

SECRETARY reads: Strike out the words "for any useful or beneficial purpose or"

Mr. MORGAN. Mr. Heyburn's amendment is in order.

Mr. REID. Mine is an amendment to the original substitute. I take it that both amendments are before the committee for consideration. He has offered it to one part of the section and I offer it to another.

The CHAIR. The amendments do not conflict at all, but they will be put in their order.

Mr. REID. Well, his comes first.

The CHAIR. Is the amendment proposed by Mr. Reid supported?

Mr. MORGAN. I will second it.

Mr. REID. I do not wish to take up the time of this convention by talking too much, but the constitution of the United States is my political Bible, and I do not proposed to be sneered at, as the distinguished gentleman seemed disposed to do with those of us who have taken a position on the other side of these constitutional questions, and I do not suppose the charges against the profession I represent and to which I have the honor to belong, that may create prejudice among laymen here, will deter us from standing up here for constitutional principles. The gentleman says we have lived so long out here that we have forgotten the powers—that most of us have forgotten the powers of a state constitution. I take it from the radical changes he has made, that he has forgotten too some parts of the Constitution of the United States, which is above all these state constitutions, and I find other gentlemen here who have been just as long engaged in the same business—we may be tenderfeet so far as our legal knowledge of this principle is concerned—but I find here, standing with me, the conservative gentleman from Shoshone, his colleague, and the other conservative gentleman from Shoshone, his colleague, and I find yourself, Mr. Chairman, another of his colleagues, all three of you, who have been practicing in the same courts as the honorable gentleman who has addressed this convention, had the same experience that he has had, who are just as loyal and pa-

triotic as he is—and I will grant no gentleman can be more so, I give him credit for his intentions—yet, at the same time, when I find myself with a majority of you gentlemen who have lived on this coast too long—lived so long that you have forgotten the powers of the state constitution and the Constitution of the United States, I think that I can dare raise my voice for these rights of the people that I see attempted to be stricken down here, without it being charged that I want to thrust my opinions on this convention, or being sneered at because perhaps we have not had the same experience as some other distinguished gentleman who has addressed the convention. And furthermore we have been treated to decisions of the Supreme Court. It is true of these constitutional questions that they have been set at rest, and yet with one exception every decision read was taken from opinions rendered long heretofore, and before the constitutions of those states had incorporated in them these innovations that are being made now every year or two in some of them. Why not come down to a latter day, and present to this convention, as the gentleman from Shoshone, Mr. Hagan, yesterday said, some decisions of recent date from this court, where they passed upon these very constitutional provisions the gentleman proposes to incorporate here? The first one he read, the one upon which he seemed to rely, was simply upon the wording of a criminal indictment—whether or not it charged the crime with certainty, and then he referred to the remark that it was not in conflict with the Fifth and Sixth Amendments to the federal constitution. And the gentleman assumed here to place us in a hole, in that we did not want to develop the resources of Idaho. What gentleman here has raised his voice against this provision for developing the mining interests of this territory? What member has risen on this floor and uttered one word against irrigation? Not one. That is not what we are striving to do—and the gentleman makes an argument on that—nobody has

opposed it, nobody has said that you cannot take water for the uses of irrigation or for mining purposes. But what have you got in that bill, in that portion of the section that I propose to strike out? That I may take private property "for any useful or beneficial purpose," for *any* purpose—for *any* useful or beneficial purpose! What does that mean? Why, it simply means that if you want to take your neighbor's property and run water across it for a tan-yard, for a mill—for any purpose conceived to be useful or beneficial, you can do it. I stand on this question like I did on the Mormon question; build your constitution so tight and so strong, and empower your legislature so fully to carry it out, that you can crush it. And that is the question with this section of the constitution we are considering; that Idaho may be developed by irrigation, that our mines may be dug out, that our resources and our wealth may be developed; but when you have done that, stop, and don't say that "for any useful or beneficial purpose" any man or any set of men can walk into the cabin of the poorest man, or across his land, and take his property for any purpose of that sort he may see fit; that is what I am protesting against here; I insist upon my rights guaranteed me by the Constitution of the United States. And, Mr. President, if I am to go into this Union without the barriers thrown around the protection of my rights and my liberties that the Constitution of the United States guarantees, then I don't want to go into a Union of that sort. I want its safeguards. I have seen the time when it protected us in difficulties as dangerous as history has ever recorded. Its great provisions, even in civil war, protected us with the writ of habeas corpus; we fought that war through, we saw our government nearly overthrown, we saw how much that represented—that old flag, those great principles that I am trying to stick to now, that gave us liberty and freedom. I have tested it and seen its benefits, and I propose to stand by it. I am willing to go as far as any gentleman, but when you

say that private property may be taken "for any useful or beneficial purpose," and leave it to juries, or courts, or individuals to do it, then I say you are striking down one of the safeguards of the constitution, and I say that you are making innovation after innovation, that the gentleman cannot find in the constitution of California or any other state, and never will find it there, because it don't belong there. If you do cut off debate here, if you do pass these innovations, when you go to the people you will have a forum where we will be heard, and if you touch the question of these constitutional rights that are dear to them, they will rise up and vote your constitution down at the ballot box; they will never be denied by that tribunal; they will reject it if these provisions go in.

Mr. HAGAN. One would think by the position taken by the gentleman who sustains in chief this proposed amendment, that if the convention endorsed that sentiment contained there, we would drift from constitutional limits and away from constitutional barriers. I judge by the reasons that he gave, I judge that the experience he has had in the territories has so affected him that he can drift insensibly away from these barriers and still maintain that he is within the constitution. All these decisions read by my friend Standrod are well settled principles of law, against which no lawyer today has a word to say, but not one of them touches the point in issue, and not one of them yet has told us the real issue in this case. They give us a dose of medicine; they expect, because they gave it with some covering, that we can't taste it; at present we have not taken the medicine. Why, that is worse than the original resolution. It is the most remarkably composed set of gush that I ever heard presented to either a legislature or a constitutional convention. Dissect it word for word, and with all due deference to what the gentleman says, he has got no legal reason for its adoption. There is not a constitution in this Union that ever adopted it; why don't they show us one? Why don't they tell us that

Colorado, when she sought to be admitted into the Union, had almost the same provision, but that they could not get it adopted, that Congress would not accept it, and the only state in this Union that had a provision that applied these principles or attempted to do it, is the state of Colorado, and she dared not yield her claim of sovereignty by putting into her constitution what we attempt today in Idaho to do, because it was deemed anti-republican, because, put this in your constitution and you will sound the death knell of every hope you have for admission into this Union. Private property for private use is what that means, and what it tries to say, it does not mean. Whoever heard of a constitution giving the right to a coterminous, adjoining farmer or mine owner to not only go with an easement over the ground or through it, under it, over it, but put a reservoir on it and confiscate the very foundation of his neighbor's property? Mr. Claggett says we call it a public use. You might call it a public use when my neighbor for his own self-protection does this, but not when for his own self-gratification he wishes to take my property. He says that is a public use; I say it is not. The Supreme Court of the United States, in a decision rendered there which has been frequently in the court cited, long ago held that the states may exercise acts of eminent domain; that is as far as any state has ever attempted to go. You may call it a public use for my neighbor to take my property because he wants it. What is to prevent me instead from taking his because I want it? Can you cover it up, make it any the less odious, because you call it a public use? Why the idea of the gentleman's proposition about railroads, about public corporations taking property! I fear he has not read the decisions if he seriously maintains that. If he had he would know that these corporations, unless they are public corporations known to the law, can never condemn for eminent domain. He should know that because a corporation is owned by private individuals it is no less a public corporation and so declared by law, and unless they are public—for the

benefit of the public—they cannot touch one foot of my property or force their way through my property in any manner. In speaking here today I am going to make the issue squarely and fairly; I am opposed to the section and every amendment that can be offered to it. I am opposed to taking gilded pills telling me that private property can be taken for private use, and that we will knock at the doors of this Union with such a clause in our constitution. I am opposed to it for the mining community. They are struck at especially in this, and they are the only class that the measure attempts to strike down. Anybody knows that proper resolutions can be passed for the protection of irrigation and water rights. I have one here on the table that I propose to offer at the proper time to protect all irrigating and water privileges throughout this state, one that can be made; and the courts have decided—and the gentlemen have not even found a decision upon their own side—the courts have decided the right of the state to control the waters of the state for irrigating and for any purpose, and the flow of water. That can be protected. Why don't you attempt then to pass a law that will protect every right? No; you go to the miner in the mining district and pass a law to take his property for all flumes, tunnels, ditches, reservoirs, dams, so that you can confiscate his property for private use. You don't do it with the farmer; you let him go; and one of the most vital interests in this country attempted to be stricken down is the one which I stand here to protect today. The gentleman comes from a mining community. Can he go back to his constituency and tell them that because a private individual joins him he has got a right to go through his mine, tear up his tunnels and works, make reservoirs right through his shaft because the water flows there—do anything, in other words, to destroy a coterminous proprietor—that that is a public use? It would take a more silver-tongued orator than he is to make those miners up there accept it. Our mining men in this country will

never tolerate a clause in that constitution of that sort, and when you pass a law under which you can take private property for private use you strike down the very business of that class of people in this country under this constitution. Now sir, I want to protect all the irrigating ventures and all the mining ventures, and it can be done on other lines. You have no right to take from a man his mining property except to the extent of an easement; that I am in favor of, all easements applicable to mining, agriculture, or anything else. I am in favor of that, but when you tell me that a private individual can take my property for his private use as he may see fit and say it is a public use, you deprive me of a constitutional privilege that is guaranteed by the constitution of the United States itself, and you seek to do that which no state in this Union has ever sought to do. Now why has Colorado had to come down and modify her constitution before she could be admitted? And it is the only state that contains it which I can find. On the question of irrigation—I will not read it all; it is long, five or six sections; it protects everybody in the use of water and all easements for water. I read from section 7, article 16:

"All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation."

Now that ought to suit anybody. That gives them every right, and the preceding sections protect far more interests throughout the country than have been protected in this state. I am in favor of going even that far and indorse it. But I am not in favor of calling it a public use for a private individual to take my property and subject it to the uses he pleases and

take it away from me. The Supreme Court of the United States has shown by decisions that we can do that. We are not restricted from that right. But to tell me now that we have got eminent domain engrafted in our law everywhere over the Union, that we shall now take a step farther and strike down every constitutional guarantee that protects a man in the ownership of his property and allow a private individual to take it—I do not believe there is a constitution or a country in the world where it is allowed. The gentleman says the state can take private property without compensation; I say it cannot. The state owns certain property, it has certain privileges and rights, and the only reason that the state through her constitution can take any property at all, or allow others to take it, is by reason of the sovereignty that remains in her, notwithstanding the limitations of the constitution of the United States. Those limitations have been thrown around the state and the people. She preserves to a certain extent sufficient sovereignty to exercise those rights of eminent domain, but no state has a right either by herself or otherwise to give an individual of that state the right to take my property for his own use.

The CHAIR. The gentleman's time has expired but if there is no objection he can continue.

Mr. HAGAN. All I have to say in addition is this——

Mr. CLAGGETT. I move that he be allowed to continue. (Seconded.)

Mr. CAVANAH. I object.

The CHAIR. It is moved and seconded that the gentleman be allowed to continue.

Mr. HAGAN. No sir, there has been objection made. I suppose the gentleman takes the position that private property can be taken for private use.

The CHAIR. The motion has been moved and seconded that the gentleman have more time. He can continue his remarks.

Mr. HAGAN. I am through, Mr. President.

Mr. MORGAN. The difference between the constitution of the United States and of the several states is this: The constitution of the United States is a granting of power to the federal government. The people give the federal government power to do certain things. It is also to some extent a limitation upon that power, and it is a grant by the sovereign people of all the states to the federal government to do certain things. On the contrary, the constitution of the state is a limitation of power; the power resides in the people. The legislature of the state can do anything, unless it is restrained by its constitution. We are seeking here to frame a constitution which shall restrain and limit the powers of the legislature of this state and of the courts. That is the difference between the federal constitution and the constitution of the state. I agree with the gentleman from Shoshone when he states that all power resides in the people of the state; within the sovereignty of the state, the state can do anything; but we propose by this constitution to put limitation upon that power. Among other limitations is the one to prevent the taking of private property for public or private use except with just compensation. Now, the taking of this property for the purpose of irrigation—and I speak of this question because I am more familiar with it than I am with the other; and I will leave those gentlemen who come from the mining districts to take care of their own interests—the necessity for taking private property for public and private use is absolutely essential and this country cannot exist without it. In any part of the country where irrigation is necessary it is also absolutely necessary that both individuals and corporations shall be permitted to take private property for the purpose of constructing reservoirs and ditches. It is an easement, and the only objection that I have to the section that was introduced this morning, is that I fear it does not go far enough. The question asked by Mr. Beatty

of the gentleman from Shoshone was not answered. His question was: Can one farmer take the property of another? He can to secure a right of way across the farm of his neighbor for the purpose of irrigation. I did not understand the question to be answered. If this section does not permit that to be done it does not go far enough. It is an extraordinary power, I grant it, and we should be careful in granting extraordinary powers, but it is a necessity which exists in this country and without which the country cannot exist. We must give this country up and let it go back to desert unless we can do this very thing. If we can't do it, then this country as a country cannot exist. Now a section has been laid upon our tables this morning which I think covers this thing completely, and if I understand the gentleman from Kootenai he is in favor of it. It is section 4 of the report of the committee on Manufactures, Agriculture and Irrigation. Section 4 reads as follows: "All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation in the manner prescribed by law."

Mr. HAGAN. Yes, but that has been withdrawn and this put in its place. That was a very well drawn article.

Mr. MORGAN. It has not been under consideration.

Mr. HAGAN. It was withdrawn. That was taken from the constitution of Colorado.

Mr. MORGAN. Now, gentlemen, the constitution of Colorado has precisely this section in it.

Mr. TAYLOR. I think the gentleman is mistaken about it being withdrawn. It has not been considered at all.

Mr. MORGAN. What I mean is this substitute for it by the committee.

Mr. HAGAN. Didn't the gentleman withdraw his substitute this morning?

Mr. BEANE. It was reported by another committee.

Mr. HAGAN. That I understand to refer to Mr. Standrod's substitute.

Mr. MORGAN. The section in the constitution which was reported here and which I understand the gentleman to refer to has not been withdrawn.

The CHAIR. The one goes under the Bill of Rights, and this section is in the report of the Committee on Agriculture, Irrigation and Manufactures.

Mr. MORGAN. Section 14 of Article 2 of the Colorado constitution is as follows:

"Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes."

It will be seen that this section of the constitution in terms permits the taking of private property for private use, and that is just precisely what we are contending for for the purpose of irrigation. And the objection I have to the section which was offered this morning as a substitute was that it did not seem to cover this thing. If it is proposed to pass both sections I am in favor of it, but if it is proposed to pass the substitute introduced by Mr. Standrod this morning and reject this section of the constitution of Colorado, or that section reported perhaps by the committee on Irrigation, then I am opposed to it because it does not go far enough. I want this convention to put it in such terms that the courts and everybody else can understand it, that for the purpose of irrigation private property may be taken for private use, and I contend it can be under the constitution of the United States.

Mr. HEYBURN. I would ask for the bill or amendment under consideration.

The CHAIR. There are two amendments to this substitute and we are now discussing the merits of the original substitute; an amendment is offered to strike out too.

Mr. HEYBURN. I am going to discuss briefly the amendments offered. My first impression as to the phraseology of this amendment or substitute was correct, I find, upon re-examination of it. With all due deference to the joint committees that have reported this and the skillful manner in which the gentlemen have framed its language, yet I see I am correct in my first impression as to the construction to be placed on the first sentence, and I will call the attention of members particularly to it, because I submit that it will not accomplish the purpose for which it is intended. It reads:

"The use of lands necessary for the construction of reservoirs, or storage basins for the purposes of irrigation or for rights of way across such lands." Across what lands? Lands necessary for the purpose of constructing reservoirs and storage basins; those are the "such lands" that are referred to. I say the word "such" should be stricken out, so that this right should be granted across all lands, and I submit that I am correct in this criticism. They say here: "The rights of way across such lands" and "such lands" are defined to be the lands necessary for the construction of reservoirs, or storage basins for the purpose of irrigation or for the right of way across such lands. Those are the "such lands" that are referred to. Now that would limit the rights of way intended to be conferred under that provision. Further it would deprive mining ditches and mining flumes from receiving any benefit under that provision. I am in favor of going just as far, right up to the line of possibility in this matter, of conferring the right of eminent domain in reference to irrigation and mining. I am in favor of the pro-

visions contained in the Colorado constitution, for one reason, because they have already been passed upon by the judiciary of the district courts of the United States, and have been accepted by the congress and president of the United States as proper measures and within the scope of the powers we have. They have been in other words adjudicated by one of the high courts in the land, and if we go to them with the same provisions in our constitution, they cannot criticize them, because we have the precedent established by themselves and we are safe. I am in favor of providing in this constitution that the corporations and individuals shall have the right to condemn the right of way across agricultural lands and across mining lands for useful and necessary purposes; but I do not find in this proposed substitute, or amendment to the substitute I believe, that it is confined to cases of necessity. The case of necessity should be clearly set out and established and defined, that is to say a man should not be allowed wantonly to condemn his neighbor's land for any purpose whatever. He should not be allowed to manufacture a necessity, a fictitious necessity, in order that he may take that which his neighbor particularly prizes. The necessity should be such that the court or jury would see it from the face of the matter. The case of necessity should be left to the court to determine whether it was necessary or not. Then if a mining corporation or an individual seeks to take his neighbor's property, his neighbor may raise the question of necessity, and say that the placing of your mill there to require the making of that waterway is a wanton act, that it is not necessary, that you should place it on your own land because you own all the property around there, and you can place it in such a manner that it would not be necessary to take this ditch through my land but you can construct it over your own. Instead of putting your mill on the other side of your property so that it would be necessary to bring your water

through my property to your mill, you bring your water through your own.

I say these questions of necessity should be left to the court to determine and the rights of the individual should be guarded against a wanton taking or condemnation of a man's land. I say that a man or a corporation which would desire to oppress an individual owner, a poor man or any other class of men that might lie below him, ought not to have the right, except in case of necessity, to go down upon that man's land and stop up his tunnels and make a dump over his grounds, if he has property of his own upon which he can make it. So that I say that question of necessity should be clearly expressed in this substitute. Now it is a well known principle of construction that if the constitution says as this does, in the last clause, "Private property may be taken for public use, but not until a just compensation to be ascertained in the manner prescribed by law therefor shall be paid." Now I say it is not right for the constitution to place that limitation upon the legislature, and it *is* a limitation upon the power of the legislature. It would not be competent for the courts or the legislature to say that you may take that property or use it for any purpose until after that compensation had been paid, and an appeal would tie up the attempt to take the benefits of this provision until the appeal was determined. I say there should be a provision in there such as is embodied in the amendment I sent up "or the money deposited in court on such conditions as the court may prescribe," because if the money is deposited in court that has been assessed as the value of this property, and if that individual whose property was taken was willing to accept that amount of money, then his rights are protected fully, as that money stays there subject to the determination of this issue between them; and the constitution places that limitation upon the legislature by the provisions of this proposed substitute, so that it would not be competent for the legislature even to say

that the court may require the money to be deposited and prevent that man from taking it, because the wording means delivery to the party and does not mean deposit to his credit.

We want to move carefully in this matter, because when we have done that we will not be able to undo it perhaps. I say leave that last clause off; leave it for the legislature to provide entirely, or else remove that limitation from it, one or the other. Either strike out that word "such" before lands, or else enlarge that so that it will cover cases of mining ditches and flumes that are necessary to take the water around the sides of the mountains in order to give pressure to run the machinery of mills. Don't let us have anything ambiguous or uncertain, anything that will need construction by the courts. I believe that this convention and that the people of this state represented in this convention, have the right to say that private property may be taken for these uses, but I concur with the suggestion of the gentleman from Nez Perce, (Mr. REID,) that the phrase "for any useful or beneficial purpose" should be stricken out, because it is indefinite. "Any useful or beneficial purpose" is an indefinite expression, and there should be nothing indefinite in the constitution. Enumerate every use to which you intend to apply this principle and then stop. But don't leave it in any way possible for somebody to say that it is useful he should take your property, when in all conscience and common sense it is not for any useful purpose except to himself; useful to whom, the proprietor or the public? Useful in the interests of developing the country, or useful in the interests of the pocketbook of the man who takes it? I say that expression is too indefinite to be in any constitution, and there should be no "ifs" or "ands" about it. When you have enumerated these uses—and I don't see any enumerated here that are not proper on the face of them—when you have enumerated them stop, and leave out the expression "any useful or beneficial use," because it is in-

definite. With these remarks I am in favor of the substitute; make it definite and certain.

Mr. KING. Mr. Chairman, I would like to ask a question of these gentlemen that are objecting to this bill on the ground that it is taking private property for private use. It seems to be their argument—they will all admit the fact—that private property may be taken for public use upon just compensation being paid for it. What I want to understand from these learned men is, who is to determine what is a public use. Is it a question that must be left to the courts, or is it a question to be left with the people? That is what I want to understand. If it is a question to be left with the courts we have nothing to do with it; if it is a question to be left to the people, as we represent the people, then it is for us to decide. For instance, if you admit the right to take a right of way for agricultural purposes, who is to determine that that right of way for the use of a farmer across there is a public use, when it is a well-known fact that that ditch is dug for the benefit of that particular individual? It seems to me that that is a private use just as much as it is to take a ditch for a mine; why not? Then who is to decide what is a public use and what is a private use? If we are going to decide that question then we must specify in our constitution those things that we consider a public use. We must specify clearly and distinctly what use is a public use and what a private use. If we can take private property for a public use, tell me what is a public use and who is to decide. I do not understand yet. Some of these men learned in the law may tell me if they will what is a public use and who decides what is a public use, whether it is the courts or whether it is the people of the state in their constitution.

Mr. CLAGGETT. Mr. Chairman, all that anyone wants is to get rid of objections. The objection which has been made by Mr. Heyburn I think is not well taken as a matter of construction, but by just simply changing the place of the word "necessary" it covers

the whole business and then I will read the section through, going back to the first clause:

"The necessary use of lands for the construction of reservoirs;" I change it you see. "The necessary use of lands for the construction of reservoirs or storage basins for the purpose of irrigation, the necessary use of lands for rights of way across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, the necessary use of lands for the drainage of mines or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary purposes——

Mr. HEYBURN. Put in "flumes or otherwise" and you will have it.

Mr. CLAGGETT. I have it in here: "drainage of mines, etc., or other necessary purposes;" that covers all those above.

Mr. HEYBURN. Why not put it right in there?

Mr. CLAGGETT. It is all in here above: "The necessary use of lands for rights of way across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose" which covers mines, irrigation and power.

Mr. HEYBURN. It says: "Across such lands." See what lands you have described.

Mr. CLAGGETT. "The necessary use of lands for the construction of reservoirs or storage basins for the purpose of irrigation; the necessary use of lands for rights of way across such lands"—what lands?

Mr. HEYBURN. For the use of reservoirs and basins.

Mr CLAGGETT. Not at all. Oh, you mean to strike out the words "such lands?"

Mr. HEYBURN. Yes.

Mr. CLAGGETT. I would not consent to that. By consent that can be done, but I will now read: "The necessary use of lands for the construction of reser-

voirs or storage basins for purposes of irrigation, the necessary use of lands for rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, or for drainage; the necessary use of lands for the drainage of mines or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development; the necessary use of lands for any other use necessary to the complete development of all the material resources of the state or the preservation of the health of its inhabitants is hereby declared to be a public use." Now that is the way I read it in substance. I have gone back to the first clause.

Mr. HEYBURN. Why not put in "ditches and flumes" in the section that deals especially with mines, and save any ambiguity?

Mr. CLAGGETT. Because I don't want to limit it to mines. That raises the question that has been raised by the gentleman from Nez Perce. I do not propose to limit this matter to the question of mines and irrigation. I say if a man wants to start a manufacturing establishment anywhere which will give employment to hundreds of people in all human probability, but who wants to take out a ditch which shall go down and convey that water to the place of use as power, he ought to have that right, and the right to condemn land for a right of way crossing private lands, for the purpose of getting to his place of use. And this phase "useful or beneficial purpose" is a phrase which is used in all the decisions of courts with reference to appropriating the use of water. If you turn to your own state you will find it here, with regard to appropriations that may be made for any useful or beneficial purpose. In order to enjoy the use of water for any useful or beneficial purpose, it is absolutely necessary that there shall be a right of way across lands, in order to get from the point of diversion to the

place of use, and therefor this substitute as suggested by the committee this morning, covers all these matters and leaves the whole thing to the regulation and control of the state. Now in answer to the question of my friend from Shoshone, which was an exceedingly pertinent inquiry, as to in whom is lodged the power to determine what is a public use, I will say that it is lodged in the sovereign power of the state.

Mr. KING. That's it.

Mr. CLAGGETT. And if you do not put such a provision—and we are here to define and limit this power to necessary uses for useful and beneficial purposes, and to preserve the welfare of the inhabitants and develop the resources of the state—if you do not put that necessity in this constitution as a limit upon the sovereign powers, speaking through the legislature, I say here that the legislature can go on and subject private property to any purpose whatever without restriction, and that is the reason why this thing should be put in the constitution, not as a grant of power to the legislature, for the legislature has got the power already unless we see fit to limit it and control it, but as an expression to the legislature of the purpose for which this thing may be done, and leaving to them the method within the scope of the authority herein conveyed, to define the manner by which this power shall be exercised.

I would like in conclusion to say simply that I am trying to meet these objections which in any shape or form may be raised to the provisions reported. I would ask unanimous consent to insert after the words "public use" the words "to be subject to the regulation and control of the state." If there is no objection I will put it in. It is implied anyway, and you can put it in in specific terms, and then we will know who it is that is going to have the power, and then I will read it again.

Mr. HEYBURN. Can the state delegate that power to the judiciary?

Mr. CLAGGETT. No, sir.

Mr. HEYBURN. The state is an indefinite thing then?

Mr. CLAGGETT. The powers of every state, Mr. Chairman, are divided up between three co-ordinate departments. When you speak of regulation by the state, you speak of regulation by legislative authority. The functions of the judiciary are merely interpretative. They neither can make laws nor limit laws; they interpret the law as they find it. The constitution of the state tells the legislature how far they can go and what they may do. In pursuance of that power that is delegated by the sovereign to the legislature, laws are passed, and then the functions of the judiciary come in, and they interpret and construe and apply the law as given by the legislature in pursuance with the terms of the constitution. Of course the people can abolish the legislative department altogether if they choose, and provide that the judges shall get up the law to suit themselves; but we don't propose to do anything of that kind. I will now read this: "The necessary use of lands for the construction of reservoirs or storage basins for purposes of irrigation or for rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, or for drainage, or for the drainage of mines or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means for their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state but not until a just compensation to be ascertained in the manner prescribed by law shall be paid therefor."

Mr. HEYBURN. I would ask the gentleman to read back towards "for any useful or beneficial purpose."

Mr. CLAGGETT. You mean that clause ending——

Mr. HEYBURN. —"for any useful or beneficial purpose."

Mr. CLAGGETT. "Or for rights of way for the construction of canals, ditches, flumes, or pipes to convey water to the place of use or for any useful or beneficial purpose."

Mr. HEYBURN. Add the word "necessary."

Mr. CLAGGETT. Where? Why, it will not be necessary in one sense of the word, I have got that all in; "the *necessary* use of lands" for the purpose of conveying, etc., the right of way subjects it to the necessity.

Mr. HEYBURN. That "necessary" there—it is "The necessary use of lands for the purpose" but the purpose should be necessary also; not only the use of lands themselves should be necessary, but the purpose itself should be necessary.

Mr. CLAGGETT. You mean "useful, beneficial or necessary purposes?"

Mr. HEYBURN. Yes.

Mr. CLAGGETT. I have no objection to that; I will put it right in here.

Mr. REID. Does the gentleman object to changing the "useful or beneficial purpose" to leave it to the——

Mr. CLAGGETT. No sir; I put it where it is because I stand on the proposition that this right should be allowed, subject to control of the state for any useful or beneficial purpose. There in the case which the gentleman has himself put, that is to say the condemnation of a right of way, a right of way, an easement upon land—for this use is nothing but an easement and an easement is nothing but a use—a right of way across private lands even to carry water for the purpose of a tan-yard if there is anything of that sort—it is to be assumed that the legislature when it comes to regulate this question, is not going to job the constituency which sent them; it is to be assumed they will legislate with

that degree of consideration which will protect the powers herein conferred upon the legislature and the limitations herein placed upon the legislature in such a manner as will promote the general welfare of this state. We are getting back to the old proposition too often suggested, namely, that in cases——

The CHAIR. The gentleman's time has expired.

Mr. BATTEN. Mr. Chairman, the end which is sought to be attained by this measure is certainly one that we can all readily agree in, but the means seem to me to be questionable. I am reminded somewhat of a certain legal fiction devised by some of the old-time lawyers, in what the attorneys always denominated the action of trover. The substance of that action and the real purport of it was this, that John Doe may steal Richard Roe's property, and then under cover of the protection of a certain ridiculous fiction which these cunning lawyers devised, it was said that he found John Doe's property and appropriated it to his own use, thereby escaping all the pains and penalties of thievery. It is said the astute lawyers sought to excuse it by calling it a pious fraud. Now it seems to me that this is a parallel case with that to a certain extent. The primary object of this scheme is really to deprive a man of his goods and chattels, of his property, because it is real estate, under the specious pretext that it is being taken for a public use. Now that to my notion is tantamount to the old idea of pious fraud. The force of the mere declaration here that Mr. A. can take Mr. B's property by declaring it to be for a public use, I fail to see. I am willing to admit the force of the argument that we are laboring under a peculiar condition of things that does not prevail in other states, except to some extent in this intermountain region. We have vast tracts of arid land that need fructifying, need to be made productive, and I am willing to go as far as any man will go within the proper limits, in any measures or any schemes or plans that may be proposed, whereby this vast area of

land may be reclaimed and made to support a teeming population. But I am not disposed to go to the extent that this measure proposes, because I say it is a specious pretext to take the private property of the individual under the guise or false claim of its being a public use. I think in the consideration of this measure the gentlemen are certainly proceeding in a commendable spirit of trying to avoid all these obnoxious features, and to get it into such shape as will make it less odious to us all, but I don't think it is in that shape yet. That clause "beneficial or useful purpose" is very broad indeed; it gives almost an arbitrary power to any single man to take the property of his neighbor and claim protection under this broad, constitutional right that is sought to be injected into this constitution. I am opposed to it for that reason. I believe we should add additional safeguards in this matter, recognizing the need of some action of this kind, in regard to these dump easements or whatever you call them that go with mines, and the rights of way that go with irrigating ditches. Still I am not disposed to violate my convictions on constitutional law and what is fundamentally right and proper, to meet any exigencies that may arise, unless every safeguard is thrown around the measure proposed.

Mr. WOODS. Mr. Chairman, the gentleman from Alturas who has just spoken has voiced in a measure my sentiments on this subject. I am opposed, certainly, Mr. Chairman, to doing by indirection that which we have a right to do directly, and I do not believe in calling this thing of taking private property for private use—I do not believe the declaration in the section proposed as the member has said, makes it a public use by any manner of means. I do claim that this convention has the power under the constitution to prescribe the taking of this private property for private uses in the way of easements, and in order to reduce this thing somewhat I move a substitute which I will send up.

SECRETARY reads: "Private property shall not be taken or damaged for public use without just compensation. The taking of private property except for private ways of necessity, and for easements for reservoirs, drains, flumes, ditches, pipes, or other means to appropriate water for agricultural, mining, milling, domestic or sanitary purposes, and for roads, railroads or tramways over or across the lands of another, shall be prohibited, and all appropriations hereby excepted shall be made in the manner prescribed by law, and then only by making just compensation to the owner."

Mr. AINSLIE. Mr. Chairman, I move the adoption of the substitute offered by the gentleman from Shoshone. (Motion seconded).

Mr. McCONNELL. Mr. Chairman——

Mr. AINSLIE. I have not yielded the floor yet, Mr. Chairman.

The CHAIR. That is correct.

Mr. AINSLIE. The substitute reported this morning, which I understand to be the concurrent action of some gentlemen on these committees, appears to me nothing but a sugar-coated pill—sugar-coated for the purpose of catching the votes of the agriculturists, and it may be also to get the vote of the monopolists and corporations who can crush out mining men and mining enterprises for the benefit of their own. As to the question of constitutionality or the right of this convention to incorporate in the constitution a provision for taking private property for private use, the question of the sovereignty of the people as we propose to put it in our constitution here in the Bill of Rights, is a question that has been thoroughly discussed in the last twenty or thirty years. We are told by all the republican newspapers and by all the republican statesmen that the state's right doctrine was a heresy and state sovereignty was politically dead. I am glad to see some leading lights of the republican party residing in this territory like prodigal sons return to the fold. I am glad to see such able men as the gentleman

from Shoshone admit that the doctrine of state's rights is not a heresy, but that the states do possess certain rights, that state sovereignty still exists among the people and in the state organization. If it is dead as claimed by the majority of their party, in the attempt to take private property for private use as proposed in this measure, they are in the position of trying to revive a political corpse and infuse the breath of life into it by this amendment. Now there should be something done by this convention. Everyone admits the necessity of placing something within the organic law of the state by which the purpose of irrigating all these unimproved public lands may be accomplished. Nobody denies the necessity of it. We should also incorporate some measure by which the lands of water appropriators throughout this territory cannot be shut out of water by one single proprietor. But gentlemen, when you admit the right of private ownership in private property, you must so guard the provisions of the organic law that no injustice may be done to the individual. There is a provision of law well known to lawyers and probably to many laymen, that is recognized throughout the civilized world wherever the law is enforced, that he who is first in point of time is first in right. Now are we going to reverse all the laws of every civilized country? Are we going to admit the right, when it was contended for years and years before all the highest courts in the United States that you cannot even take private property for public use or for public purposes? Are you going beyond all the safeguards that have been hedged around the rights of the individual for the protection of his property, and come in here in this convention and say for the new state begging for admission into the Union, that the property of one individual may be taken and given to another and call it a public use? While I admit the doctrine that private property may be taken for public uses upon a just compensation being paid, as incorporated in the organic law of every state, I deny the right of

anybody, of any legislative body or convention, to take the property of one individual and give it to another. Do it under the forms of law if you choose, but it is nothing but legalized robbery, an invasion of the inalienable rights of the individual to possess his own property and protect it, and we propose today to incorporate in the charter of this state the right to take an individual's property from him and give it to another, but not taking it for a public use. Now, gentlemen, it is impossible to accomplish that without injustice. I question the statement of one of the gentlemen here, that all persons interested in the welfare of the state are supporting the substitute first presented in this convention this morning. I know of no people more interested in the welfare of Idaho than those who came here and discovered it and have been living in it twenty or thirty years, and have lived under a territorial organization, under a system almost of communism. I know of no people who will appreciate the benefits of liberty more than the people who have lived under this old system of vassalage. I do not know a set of men who will appreciate the privileges and rights of liberty which will be granted them by the constitution and admission into statehood more than those who, like myself and many others sitting in this convention, have been living in territories all of their lifetime. But sir, in striking for liberty, in striking for more freedom and more rights than we have enjoyed under the territorial system, we should carefully guard and protect the rights of the individual as against the encroachments of monopolists and the encroachments of other individuals who are entitled to equal rights but not higher than those who are here first.

Now, if I am engaged in developing the material resources of this state, or the necessary resources, as denominated by the gentleman in some of his amendments, I may have a twenty or forty acre patch of land up here above a small canyon, and been living there for years upon it, have my dwelling house upon it, my

little home. Forty acres of land is sufficient for my purpose, it is my homestead, there my children are born and raised. People come in and settle the lands below me, half a dozen or a dozen take up some land, wealthy people. These people own 640 or 1000 acres of land. Now under the provisions of this substitute if they consider, in the interest of developing the material resources of the state, that they should farm or cultivate more land than I am able to farm or cultivate, they can put a dam across that ravine, condemn my forty-acre tract for a reservoir and run me out altogether, by giving me a nominal consideration, for the benefit of those people who have settled below the canyon. Now that can be done if you adopt this in your constitution. I say protect the rights of every individual, and do not take the property of one man and give it to another. And therefore, I am opposed to any such provisions as are attempted to be incorporated in this constitution, and in favor of the substitute offered by Major Woods of Shoshone.

Mr. McCONNELL. Mr. Chairman, the question arises now to put an end to this matter. I regret the necessity of taking any steps which would deprive future generations of reading or us from listening to the eloquence of these gentlemen, but we have had a generation of talk on the question of state's rights. I will therefore move the previous question. (Seconded).

Mr. BEATTY. Which is the previous question?

Mr. REID. Does not that motion have to come from the chairman of one of the two committees having the bill in charge?

Mr. McCONNELL. I think any member on this floor is entitled to move the previous question, which recurs on the previous motion.

The CHAIR. If I understand the rule, the gentleman must be supported.

Mr. CLAGGETT. It has been seconded by several members.

The CHAIR. The question is: Shall the main

question be put? Are you ready for the question?

Mr. BEATTY. Before that is done I would like to know what the main question is.

The CHAIR. It is upon the original substitute as offered by the gentleman from Oneida, Mr. Standrod.

Mr. McCONNELL. And that as I understand, was the report of the joint committee?

Mr. STANDROD. Yes.

Mr. CLAGGETT. That original proposition by unanimous consent, to simplify these matters, was to be amended by putting that word "necessary" in——

The CHAIR. I will state to the joint committee that as to unanimous consent I don't know anything about it. There was some amendment that was sent up by Mr. Heyburn that has never been disposed of by motion. He has not withdrawn the amendment, nor has it, so far as the committee is concerned, been referred at all by his consent.

Mr. HEYBURN. Some changes were made; I don't know how far——

Mr. CLAGGETT. The words "or necessary" were put in and the phrase "subject to the control and regulation of the state."

Mr. BEATTY. Before that question is put I would call for the reading of the resolution upon which we are to vote, so that we will understand distinctly what we are voting on.

The CHAIR. The question is upon the previous question now—the main question. That must be supported; then we vote upon the resolution, the gentleman from Shoshone's motion; the secretary will please read it.

SECRETARY. What shall I read?

Mr. POE. I would like to vote intelligently upon this question but Mr. Claggett, as I understood, had what purported to be a substitute offered by Mr. Standrod, and in that there were certain alterations or changes made which covered the objections made by Mr. Heyburn; that is my understanding.

Mr. CLAGGETT. Yes, I think so.

Mr. POE. Now I want to know if we are voting upon the proposition made by Mr. Standrod, as altered by Mr. Claggett at that time.

Mr. CLAGGETT. That was done by unanimous consent.

Mr. REID. If that is the case, I make the point of order that the first thing in order under Rule 20 would be the substitute offered to the main question by Mr. Woods; the main question comes last. First is the substitute offered by Mr. Woods, then my amendment, then Mr. Heyburn's, then the main question, in each case in the inverse order.

The CHAIR. The rule on the motion for the previous question is, that before a vote on the same a call of the convention is in order; that is the rule.

Mr. REID. Yes.

The CHAIR. "That if the demand for the previous question shall have been sustained, no call shall be in order, and the convention shall be brought to an immediate vote, first, upon the pending amendments in the inverse order of their age, and then upon the main question." (Reading from Rule No. 20).

Mr. REID. I maintain, sir, under the rule that the main question has not been altered, but it will be altered and then the vote shall be in the inverse order, Mr. Woods' first, and then mine, and then Mr. Heyburn's.

Mr. McCONNELL. Is there any rule of parliamentary law upon which you can vote on an amendment when the roll is called on the previous question?

Mr. REID. If the clerk will read Rule 20, he will find it there.

The CHAIR. I will read the rule upon the pending question: (Reading Rule No. 20). Now it seems to me the vote must first be had upon the substitute to the substitute, as made by Mr. Woods. I cannot find any other construction to be placed upon it.

Mr. CLAGGETT. I rise to a point of order. There

is nothing before this house; the question is: Shall the main question now be put?

Mr. REID. That's it; the other questions they are talking about now would be in order when the previous question is ordered by the convention, but they are out of order now.

The CHAIR. Very well; then the convention is in order and the chair is out of order as I understand it, (laughter) if the gentlemen cannot place any other construction upon it than the gentleman from Nez Perce.

Mr. REID. The point the gentleman from Shoshone makes is that we ought to vote upon the main question; we have not voted upon that yet.

The CHAIR. There is no doubt about that. The question now before the convention is: Shall the main question be put? (Vote.) The ayes have it. Now the main question shall be put, and this is the motion of Mr. Woods, as I understand it.

Mr. REID. I ask that it be read.

Mr. CLAGGETT. I ask that the original proposition may first be read, and then the pending amendments in their order.

Mr. REID. I make the point of order under the rule that it is to put in the inverse order.

Mr. CLAGGETT. I do not question about the order of putting that; I ask that they be read simply.

The CHAIR. The secretary will read it.

SECRETARY reads: "Section 14. The use of lands necessary for the construction of reservoirs or storage basins for purposes of irrigating or for rights of way across——"

Mr. BEATTY. Which is being read now?

The CHAIR. If the gentlemen will allow the chair, I will ask the secretary to read the substitute offered by Mr. Standrod this morning.

The SECRETARY. That was the one I was reading. "—such lands for the construction of canals,

ditches, flumes or pipes to convey water to the place of use for any useful——"

Mr. HEYBURN. Mr. Chairman, the one that is being read by the clerk is not the original, and the changes I think are not in it.

Mr. CLAGGETT. Yes they are.

The CHAIR. This is the original offered by Mr. Standrod.

Mr. CLAGGETT. He is not reading from the copy, where the committee agreed that these amendments might be made to the copy, and that was done by unanimous consent, and it states a part of the original proposition.

SECRETARY reads Section 14 as revised: "The necessary use of lands for the construction of reservoirs or storage basins, for the purposes of irrigation, or for the rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use, for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

"Private property may be taken for a public use, but not until a just compensation, to be ascertained in a manner prescribed by law, shall be paid therefor."

Mr. REID. Now I ask that my amendment be changed by unanimous consent so that it will meet the change made by the gentleman from Shoshone. The original amendment read to strike out "any useful or beneficial purpose." He has put in the word "necessary." I want the amendment to read now "for any useful, beneficial or necessary purpose" so as to strike

out that clause. I ask unanimous consent that that be done.

The CHAIR. If there are no objections it will be so ordered.

Mr. CLAGGETT. I would suggest to the gentleman from Nez Perce that it embrace the word "purpose" also after the word "necessary."

Mr. REID. Yes, I want to strike out that clause "for any useful, beneficial or necessary purpose" so as to limit it entirely to mining and irrigating.

The CHAIR. Now the question is upon the substitute as offered by Mr. Woods.

SECRETARY reads: "Private property shall not be taken or damaged for public use without just compensation. The taking of private property except for private ways of necessity, and for easements for reservoirs, drains, flumes, ditches, pipes, or other means to appropriate water for agricultural, mining, milling, domestic or sanitary purposes, and for roads, railroads or tramways over or across the lands of another, shall be prohibited, and all appropriations hereby excepted shall be made in the manner prescribed by law, and then only by making just compensation to the owner."

The CHAIR. Are you ready for the question, which is upon the adoption of Mr. Woods' substitute? (Vote). The nays seem to have it. (Division called for. Rising vote, 16 affirmative, 38 in the negative). The motion is lost. Now the question is on the adoption of the amendment offered by Mr. Reid of Nez Perce.

Mr. REID. I call for a division. (Rising vote, 15 in the affirmative, 32 in the negative).

The CHAIR. The amendment is lost. The question now is on the original motion to adopt the substitute offered by the committee reported this morning. (Vote). The chair is in doubt. (Rising vote, 39 in the affirmative, 11 in the negative). The motion to adopt the substitute prevails.

Mr. BEATTY. I now move the adoption of the substitute as amended, as Section 14. (Seconded).

Mr. HEYBURN. I call the attention of the committee to the fact that the title of this section will need to be changed by striking out the word "private." I move that the words "private and" in the title where it occurs the second time be stricken out. (Seconded and carried).

The CHAIR. The motion prevails and the words "private and" are stricken out. The question is now on the adoption of the section as amended.

Mr. AINSLIE. Is it on the adoption of the whole section?

The CHAIR. On the whole section; the motion is that the substitute be adopted.

Mr. BEATTY. My motion, Mr. Chairman, was that the section as amended be adopted.

Mr. REID. It has not been amended; it is a substitute.

The CHAIR. This is a substitute.

Mr. CLAGGETT. I rise to a point of order. It has already been adopted. It was proposed as a substitute for this convention to consider, and it has been adopted by the convention.

Mr. BEATTY. I will withdraw my motion, Mr. Chairman.

The CHAIR. The gentleman withdraws his motion and the substitute is adopted for the entire Section 14.

Mr. WILSON. I move that the committee rise, report progress and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. MAYHEW. The chairman of the committee of the Whole desires to submit its report.

SECRETARY reads: Mr. President, the committee of the Whole have had under consideration the report of the committee on Preamble and Bill of Rights, have come to no conclusion thereon and ask leave to sit again. A. E. Mayhew, Chairman."

Mr. TAYLOR. I move that the report of the committee of the Whole be adopted. (Seconded and carried.)

It is moved and seconded that the convention take a recess until 2:00 p. m. (Carried.)

RECESS.

CONVENTION called to order by the President at 2:30 p. m.

Mr. MAYHEW. I suggest, Mr. President, that the roll be called to see whether a quorum is present. (The roll is called by the clerk and a quorum found present).

LEAVES OF ABSENCE.

Mr. PYEATT. I would like to ask for leave of absence for my colleague, Mr. Andrews; it is my opinion he will not return again but I can't say as to that.

Mr. PRESIDENT. What is the reason?

Mr. PYEATT. He did not express to me the full purport of it, but he said he had important business at home that he must attend to; if the convention holds any great length of time he would return, if it does not he will not return.

Mr. PRESIDENT. Indefinite leave of absence is requested for Mr. Andrews of Lemhi county. Is there any objection?

Mr. MORGAN. Is Mr. Andrews going away today?

Mr. PYEATT. Yes.

Mr. MORGAN. I think a man ought to state when he requests leave of absence what his reasons are; it is important that he should return.

The CHAIR. Gentlemen, I think it is necessary to excuse him under a vote of the house.

Mr. PYEATT. I move that Mr. Andrews be allowed leave of absence. (Seconded).

Mr. GRAY. I would like Mr. Andrews to come and state the reasons, if he has reasons.

Mr. MORGAN. I have been informed that his father is sick, and that his father has been attending to

his business. Perhaps the gentleman who moved for leave of absence can tell.

Mr. PYEATT. It is my opinion that it is not the principal cause, but that his business is of such a nature that he would not care to come into this room and make his business known. His father is not well also. He has not expressed to me exactly the cause.

Mr. PRESIDENT. It is moved and seconded that Mr. Andrews be granted indefinite leave of absence. (Carried.)

Mr. ARMSTRONG. I desire to ask leave of absence until next Monday evening. I have important business to attend to.

The CHAIR. Is there any objection? There being no objection Mr. Armstrong is excused.

Mr. SHOUP. I move that when this convention adjourns it adjourn to meet tomorrow morning at nine o'clock. (Seconded and carried.)

COMMITTEE REPORTS.

Mr. HEYBURN. Mr. President, with the consent of the convention I submit the report of the Judiciary committee.

SECRETARY reads: Mr. President, your committee on the Judiciary herewith submit their report and beg leave to state that on the question of the manner of selecting the judges of the Supreme Court they are unable to agree and herewith submit two reports, sections numbered 6 and 7 on that question. W. B. Heyburn, Chairman.

Mr. PRESIDENT. The report of the committee will lie upon the table and be printed.

Mr. ARMSTRONG. The committee on Labor wishes to report.

SECRETARY reads: Mr. President, the committee on Labor hereby submit to the convention their annexed report. Respectfully, H. Armstrong, Chairman.

Mr. PRESIDENT. The report will lie upon the

table and be printed. What is the pleasure of the convention?

Mr. HASBROUCK. As I am informed there are some members that have got excused, the committee on Ways and Means have to report the mileage of members, and on behalf of the committee on Ways and Means I request that those members, if any there be, report to the committee their mileage, so that the committee may report the same to this convention.

Mr. MORGAN. I move that the convention go into the committee of the Whole on the general orders of the day. Carried.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. MAYHEW in the Chair.

SECTION 15, ARTICLE I.

The CHAIR. Section 15 and Article I. is the first. (The secretary reads Section 15 as reported).

Mr. SHOUP. Mr. Chairman, I wish to offer an amendment.

SECRETARY reads: Strike out in the third line after the word "law" the words "or in cases of tort." Also all after the word "fraud."

Mr. REID. I offer a substitute for the whole section.

SECRETARY reads: Substitute for Section 15: There shall be no imprisonment for debt in this state except in cases of fraud. (Seconded).

Mr. REID. That expression "only upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law" I think is a little too broad; it leaves to the legislature the enactment of an insolvent law which might affect their rights. As recognized now in most states you can arrest a debtor in a civil action in any case of fraud, for instance an absconding debtor. I do not like the expression there "where there is a strong presumption of fraud." I think the affidavit should always

show such a state of facts that the court in passing upon it shall find there was fraud when he issues the order of arrest, and the substitute I have sent up embodies the statement contained in most constitutions. Where there is fraud he can always be arrested, as an absconding debtor. The words "or in cases of tort" I think might as well be left out, but wherever there is a civil transaction tainted with fraud you can arrest the debtor. To provide there shall be no arrest except in cases of fraud, I think covers all cases.[1]

Cries of "Question." (Vote).

The CHAIR. The ayes have it. The substitute is adopted.

SECTION 16.

SECRETARY reads Section 16, and it is moved and seconded that the same be adopted, which is carried.

SECTION 17.

SECRETARY reads Section 17, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have sent up an amendment.

SECRETARY reads: Amend by inserting after the word "affidavit" in the third line the words "showing such probable cause."

Mr. REID. I second the amendment.

Mr. HEYBURN. Mr. Chairman, the object of that is, that in drawing it, it does not show to what the affidavit shall be directed, and it should be directed of course to the subject of showing probable cause, and should on its face show it.

Mr. CLAGGETT. I would suggest striking out the

1—This section as originally reported appears to have been based upon Section 12, Article II of the Colorado Constitution, which is as follows: "That no person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases of tort where there is a strong presumption of fraud."

words "support" and put in the words "be shown" so that it will read: "without probable cause be shown by affidavit."

Mr. HEYBURN. I accept the amendment.

Mr. SINNOTT. I have an amendment which I wish to offer.

SECRETARY reads: Substitute the word "unlawful" for the word "unreasonable" in the second line. (Seconded).

The CHAIR. The amendment is offered to strike out the word "unreasonable" and insert the word "unlawful." (Vote). The motion is lost.

Mr. CLAGGETT. I move the adoption of the section as amended. (Carried).

SECTION STRICKEN OUT.

SECRETARY reads Section 18 and it is moved and seconded that the same be adopted.

Mr. HEYBURN. I move to strike out Section 18.

Mr. HAGAN. I second the motion.

Mr. HEYBURN. Mr. Chairman, the object of moving to strike this section out, is because it belongs in the Judiciary department of the government and is already provided for, inasmuch as it has been reported by Section 5 of the Judiciary Act, describing the crime of treason; the same provision is contained in the Judiciary department and does not belong to the Bill of Rights.

The CHAIR. It is moved and seconded that Section 18 be stricken out. (Vote.) The ayes seem to have it. (Division called for. On rising vote, 32 in the affirmative, 12 in the negative). The motion is carried. Section 18 is stricken out of the Bill of Rights.

SECTION 18.

SECRETARY reads Section 19. (18).

Mr. CLAGGETT. I suggest that this section be numbered 18 to take the place of the one stricken out.

It is moved and seconded that the section be adopted.

Mr. HOWE. Mr. Chairman, I move to strike out the word "to" in the second line after the word "afforded" and substitute the word "for."

Mr. CLAGGETT. I second the motion.

It is moved and seconded that Section 18 be adopted as amended, which is carried.

SECTION 19.

SECRETARY reads Section 19 (according to changed numbering, being section on elections).

Mr. CLAGGETT. I move to amend by inserting the words "and lawful" after the word "free" in the second line, so that it will read "interfere with or prevent the free and lawful exercise of the right of suffrage."

Mr. HEYBURN. I second the motion. (Carried).

Mr. PINKHAM. Mr. Chairman, I desire to submit a substitute for the section which was read.

SECRETARY reads: Substitute for Section 19 the following: All elections authorized by the laws of the United States and of this state shall be free and equal.

The CHAIR. Is there any support to the amendment?

Mr. MORGAN. I second the amendment.

Mr. PINKHAM. Mr. Chairman, it seems to me that there are too many restrictions upon elections of all kinds. It does not confine itself to elections held under the authority of Congress, but it goes to all elections, that they shall be free; it does not use the word "equal" at all, but that they shall be free, open and legal, and no power, civil or military, shall interfere with them. Now I have known circumstances only a few years ago, especially in some of the states of this Union, where the writ of habeas corpus was suspended and that elections were held under military authority when it was in full force after the suspension of the writ of habeas corpus. Such conditions as that might arise with us, in cases for instance of insurrection or rebellion in our midst, when it would be actually neces-

sary for the governor to suspend the writ of habeas corpus and an election should be ordered, it would be necessary for us to have something of this character in the constitution, or leave out this portion of it entirely; because there would be a condition of circumstances in which those in authority would conflict, and it would be impossible to hold an election under those circumstances; for that reason I move the substitute.

Mr. AINSLIE. I don't understand that expression: "Free and equal." I don't see how you can have equal elections. I never saw the expression used in reference to elections. All men are created free and equal, according to the Declaration of Rights, but how you can have an equal election is not plain to me. All elections shall be free and open, is a proper term to use. I don't know what an equal election would be, unless every candidate would have an equal number of votes.

Mr. PINKHAM. In reply to the gentleman who has just taken his seat I refer him to every constitution of the eastern states. I have before me this section in the constitution of the state of Illinois which reads: "All elections shall be free and equal."[1] (Vote.)

The CHAIR. The noes have it; the substitute is lost. What is the pleasure of the committee?

Mr. HEYBURN. I move that after the word "open" in the first line we insert the words "and by secret ballot."

Mr. BEATTY. I object to that, because that is a matter to be provided for in another report, in the report of the committee on Elections and Suffrage is the proper place for it.

Mr. HAGAN. I think it is a good place for it in the Bill of Rights.

Mr. AINSLIE. I move to strike out all of the section down to the word "no" in the first line, to leave it to read "No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." Mr. Chairman, in moving

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1—Art. 2, Sec. 18, Ill. Const. 1870.

that amendment, I do it for the reason that the provision with regard to the manner of holding elections by ballot was committed to the committee on Suffrage and Elections, and that is provided for in another report, and it is unnecessary to put it in the Bill of Rights. (Seconded).

The CHAIR. The question is now on the amendment offered by Mr. Hagan. (Vote). The chair is in doubt. (Rising vote, 20 in the affirmative, 29 in the negative). The motion is lost. The question is now on the amendment offered by Mr. Ainslie. Is it supported? (The motion is seconded). (Vote). The chair is in doubt. (Rising vote, 26 in the affirmative, opposed 23). The motion prevails, the amendment is adopted. The question now recurs on the adoption of the section as amended. It is moved and seconded that the section be adopted as amended. (Carried.)

Section 20.

Mr. REID. I offer the following amendment. In Section 20, line 1 after the word "property" insert the following "or educational." The object of the amendment is simply that in prescribing that no property qualification shall be required, that no educational qualification shall be required either. I don't think a man should be required to read and write or any other qualification, to entitle him to vote. I have seen some of the best men in the country that had to sign their names with a cross-mark, and they were just as safe depositaries of the business of the state as the graduate of a university, and I do not think an educational qualification should be required; I hope the amendment will be adopted.

Mr. SHOUP. I wish to offer an amendment to the section.

SECRETARY reads: Amend Section 20 by inserting after the word "office" in the second line the words "except in school elections or elections creating indebtedness."

Mr. BEATTY. I second that amendment.

Mr. SWEET. Mr. Chairman, I don't propose to take the time of this convention on this amendment proposed by the gentleman from Nez Perce, Mr. Reid, but I hope it will not prevail. While under the status of affairs in this state today I would not be in favor of adding an amendment requiring an educational qualification for suffrage, at the same time we do not know what class of people may become citizens of this state, how many of them or where they may come from, and it may be very desirable some time to require this qualification, to insist that the voter know something about the fundamental principles of state government and that he can read the fundamental law, and it may be desirable to have such a qualification, but I don't think it is a good idea at the present time.

Mr. BEATTY. I think it is bad enough to send out over the world a section, even as drawn, that does not prescribe an educational qualification, but I think it would be even worse to say to the world that we will positively provide that no educational qualification shall ever be required. I hope the amendment of the member from Nez Perce will not prevail. As we leave it here, we leave it that all may vote, but we do not want for all time to bind ourselves to that kind of provision. The emergency may arise when we may want to say that we value and encourage education in this territory, and I am opposed to any proposition so broad as that, to say to the world we do not care whether the people can read or write the English language or not, and that is what it amounts to.

Mr. POE. If the present constitution is such that it would be proper that this amendment should go in here—it is the present that we are looking out for, it is the present we are legislating for, and we are also legislating for the future. I am unalterably opposed to putting in any qualification whatever as to the right of exercising the elective franchise. There are many persons in this territory who have never had the opportunities of some of the gentlemen who oppose this, good

citizens, men who know what is right and what is wrong as well as the learned gentlemen who oppose it. Why, we have a provision now in this constitution, or proposed provision, to allow Indians not taxed the right of suffrage; that is now pending. How many of those Indians who had renounced their tribal relations but have never had any advantages of education, brought up in ignorance, could exercise that right if this restrictive bar was put upon it? But I believe it to be an absolute wrong for us at this time to deny any American citizen the right of suffrage on account of his ignorance. Every man in this country is presumed to be equal in law; there is no distinction, and no man who is an American citizen should be deprived of that right unless he is convicted of some crime or associated with some organization that is inimical to our institutions; and though perchance this particular man has been unfortunate in his early days, neglected by his parents, and therefore cannot read or write, I say it would be an injustice to him now to deprive him of that right. We are not sending out to the world the idea that we are opposed to education; nothing of the kind; but we are endeavoring to do what is just and what is right. We in this constitution will publish to the world that we are in favor of public schools, that we are in favor of education and the dissemination of knowledge and of the arts and sciences. Now while we are doing this it seems to me right at the same time that we should not take away from him, the poor man who has been unfortunate in his early days, and deprive him of his right of citizenship. I do not think it is right, gentlemen, and therefore I shall favor the amendment, that the words "educational qualification" shall be placed there.

Mr. REID. I have but one word to offer in reply to my friend from Latah. The Judiciary committee have reported a plan of amending this constitution, that where two-thirds of the general assembly recommend an amendment, it may be submitted to the people. As

our interests may require or as the public safety may demand, we can limit the suffrage. But especially in a territory am I opposed to it. You have not had the common schools nor the subscription schools nor the means for education in the territories that you have in the east. I know of no such qualification in the states; doubtless it may exist in some, but there is many a man and boy who has grown up here without having the opportunity of attending school, a class of men who don't have these facilities and advantages of civilization, and who have grown up without these educational qualifications. The residents of this territory may change, and I am ready as any man to take up that question hereafter, and I propose to disfranchise the dangerous elements that may come in; we will disfranchise this class of citizens. If I am not mistaken the committee on Education have reported a bill in which they require children between certain ages to go to school. That is a requirement which we propose to incorporate in our laws, but I do not propose that there shall be any test put upon the suffrage in our new state, so far as my individual vote is concerned, except that of true manhood. If a man is a citizen who obeys the law, does what is right, don't connect him, as my friend says, with any organization that countenances crime; if he is a citizen of this territory, and comes up in every other respect to the qualifications prescribed by law, don't say that he can't vote for the people who tax him, simply because he was unfortunate in his early days and could not have the blessings of education that he wished for himself.

Mr. SWEET. These gentlemen seem to talk as if there was a provision in this constitution requiring educational qualification for suffrage or for the exercise of the right of suffrage. There is no such provision here as I understand it. I do not understand further that there is any disposition to insert such a requirement in this constitution. The objection urged here is that it prevents such a qualification ever being

made. Now take the case referred to by Mr. Poe: suppose two or three reservations are opened here, and a thousand Indians are permitted to vote at once, without any knowledge whatever of the laws of this country, or of the English language, or of the customs of society, or in any way fitted at all for citizenship or to exercise the right of suffrage. Now I say it is no more than right that they be required to know a little something about our government and our people, at least as much as would be attained in learning how to read and write. I would not be in favor of having this clause in our constitution at this time.

Mr. REID. That would not do in Nez Perce county; Indians who have severed their tribal relations vote, and is there any evil——

Mr. SWEET. I think they did on county seat questions.

Mr. REID. Didn't they on all other questions?

Mr. SWEET. I never saw any. (Laughter.)

Mr. REID. Don't some of them vote the Republican ticket?

Mr. SWEET. I have no doubt they do.

The CHAIR. I think the objection is well taken.

Mr. SWEET. What objection?

The CHAIR. Of the gentleman from Nez Perce.

Mr. SWEET. Well, I think it is reserving no greater right than we ought to, and it is a matter of necessity.

Mr. POE. What we are complaining about is this: It says that no property qualification shall ever be required of any person to vote or hold office. Now that does mean that an educational qualification can be engrafted in our law. That is what I am objecting to, and therefore we wish to prevent the legislature from passing a law requiring an educational qualification to vote.

Mr. GRAY. Mr. Chairman, I can hardly see the force of this amendment. I read the section and it says: "No property qualification shall ever be required for

any person to vote or hold office." Now if we are to bind ourselves by this constitution that we require that, then I might just refer now to the report of the Judiciary committee, which requires that gentlemen be learned in the law, etc., but no such qualification it seems now must be required. We do not require it. This section don't require it for suffrage or for anything else. Now, on yesterday we were asking the gentleman from Nez Perce if he was not willing to leave something to the legislature. Are they afraid they will shut out their party vote, or some of their party vote, or some sections of the country that never intend to learn to read or write? Perhaps it may never be the law, but I do say this, that I believe the time will come when probably it will, and when that time does come, probably the legislature will take it in hand and enact such laws as will be just and equitable at that time. There would be some force in this objection if that educational proposition was to be in here, if it was a requirement here. But no, we leave it as it is; they are all voters now and probably will be, and I fail to see their object in putting that in there; can't we trust our legislature to deal with it? Let them take care of that when the proper time arises. The only thing is that this section gives as much right to hold office as it does to exercise the suffrage, and there is no qualification, no educational qualification for holding office, a school office or any other office. Why, I hate to see such a constitution as that go out to the world, to say that a man need not have any educational qualification at all to hold office.

Mr. BEATTY. I will ask the gentleman a question: Would it not be an inducement to an ignorant population, to come in here instead of intelligent people?

Mr. GRAY. Well, it would seem that we are trying to here. (Applause). If there was any restriction, if they had an educational qualification in here, there would be some force in this amendment, but I cannot

see any now whatever, and further than that I would hate dreadfully to see that engrafted in our constitution.

Mr. MORGAN. If this amendment was inserted, a man who could neither read or write could appear as a candidate for superintendent of schools in the county, and there would be no law against it.

Mr. REID. When there is an express provision put in the constitution, and a declaration of right in the Bill of Rights, does not the express prohibition or declaration in the constitution take precedence and become the law over any declaration in the Bill of Rights?

Mr. MORGAN. As a matter of course it does.

Mr. REID. Then the declaration that a judge shall be learned in the law must take precedence.

Mr. MORGAN. I am not speaking of that.

Mr. REID. That was the argument made by Mr. Gray which you are upholding.

The CHAIR. Mr. Morgan has the floor.

Mr. BEATTY. I would like to ask the gentleman from Nez Perce county a question.

The CHAIR. Does the gentleman from Bingham yield the floor?

Mr. MORGAN. I think I had better say what I have to say first, and then let him go on. With the amendment inserted in the constitution which is proposed by the gentleman from Nez Perce, there is nothing to prevent a person from running and being elected as superintendent of schools in every county or any county in this proposed state, who could neither read nor write. There is nothing to prevent a person from running for election to the office of the clerk of the district court; yet he might not be able to read and write at all. I think there is not a constitution in the Union, so far as I can see from the very hasty examination I have made, that has this provision in it, and I would like to ask the gentleman if there are any constitutions which have it.

Mr. REID. None at all, Mr. Chairman. If the people want to elect a man of that sort, let them do it. I remember the fact that Andrew Johnson learned to read and write after he was 21 years of age and he was good enough to be elected vice-president.

Mr. MORGAN. That was after he had learned to read and write; the people would not have elected him if he had not learned.

Mr. HEYBURN. Mr. Chairman, I would be rather inclined to favor a provision that would require that in ten years no person should be allowed to vote who could not read and write, to compel these people to learn to read and write who have been here so many years that they have had time enough. I do not offer this as an amendment at all, but I say I would favor an amendment of that kind rather than to favor an amendment so unusual as to require that it should never be made a qualification. Of course this will be an interesting question to us. They are dividing these Indian lands in severalty, and putting them in a position where they can demand the franchise, and if we had a provision that no person after a certain time could vote unless they could read and write, we would prevent these people voting. If this law was made in the northwestern states where public school books are in Norwegian and Swedish, that would compel them to learn to read the English language and it would be so much better for the nation. I certainly shall oppose this amendment.

Mr. LEWIS. There is another reason. It is a well known fact that in the Mormon church a very large percentage of the members of that church in this territory today are unable to read or write, and the source of their strength is the fact that in their ignorance they have absolute control of all their material affairs.

Mr. REID. Will you allow me to ask you a question?

Mr. LEWIS. Yes; two of them.

Mr. REID. Is not every Mormon precluded under another declaration of this constitution from voting?

Mr. LEWIS. The Mormon church and the position they take today, and the position which their missionary in this city has suggested, is this: That this very legislature be restricted in its powers, and that is the very reason we should object to having the change that the gentleman proposes inserted.

Mr. REID. But it is provided in this very declaration I refer to that the legislature may restrict the powers of the voter in the future.

Mr. LEWIS. And that is the reason why Mormon citizens stand here and maintain the proposition that the legislature shall not restrict the ignorant population, thereby preventing the Mormon church from controlling the people of this territory.

Mr. REID. I will ask the gentleman a question if he will yield a moment; if in this very Bill of Rights itself is it not declared that every man who in any manner belongs to that church, who aids, abets, or counsels it, or contributes to it in any way, is precluded from voting, without requiring an additional qualification?

Mr. LEWIS. Very true.

Mr. REID. Then if that is true, would not that exclude him, no matter what the additional qualification was?

Mr. LEWIS. I will answer my friend with proof when he gets through. However, I wish to suggest here that that is a great amendment, and that is the position of the Mormon church in relation to the action of this convention, and I can prove it if the gentleman wishes to have it. That is the very position the Mormon church takes in this convention and in this constitution, that no restriction shall be placed, so far as it is concerned, upon the right of suffrage, so that if they have the majority in the legislature they can demand this elective franchise, and I say that is another reasor why we should guard the matter and vote that amendment down.

The CHAIR. Did I understand the gentleman to say that in this convention on the part of Mormonism?

Mr. LEWIS. No, I say the position which they take in regard to the action of this convention.

The CHAIR. In this convention?

Mr. LEWIS. Yes, the action which the convention may take, so far as the restriction in the constitution which they may prepare, that they desire this restriction shall not be too broad, but shall be limited, that is, the right of the legislature to make it. I say that is one more reason why the right of qualification, so far as education is concerned, should be included.

Mr. REID. Just one word. I will not trouble the convention long, but since the gentleman has said something about missionaries in the Mormon church, I desire to state to the convention that I knew nothing about any missionary. I will state further that this question has been on this floor before; I have had the honor to preside over the democratic caucus, and have presided over it and called it every time it has been held since this convention assembled, and the statement that a missionary or Bishop Hoge or any outsider has ever been in that caucus or ever present or taken any part in it in any way in favor of the Mormon church is untrue. If there is any missionary here in this town influencing anybody's vote or anybody's action, I know nothing about it. I offered this amendment in good faith, because I am not in favor of a man who has money in his pocket to send his children to school and another man who is too poor even to support them—to force him to go to the public school to learn to read and write, or that there should be a property qualification prescribed for him. I lived in a town——

Mr. SWEET. Are we allowed to speak twice on this question?

The CHAIR. The gentleman objects to speaking more than twice on the question.

Mr. REID. The gentleman had his say, and I rise to a question of personal privilege. The gentleman's intimation is that a missionary in this city or in this town is influencing the vote of this convention; it

might have been considered to apply to myself. He made the explanation, or it was made to appear that that was one reason why the Mormon church wanted this done, that they were in favor of this. He stated the reason why; he introduced it; he said he could prove it. I do not care anything about it if he can. I defy him or any other gentleman to prove that any Mormon missionary influenced me in my action in this matter or in any other.

Mr. LEWIS. I will simply explain to correct that impression, that I didn't say any missionary was in any democratic caucus or intimate anything of the kind. I hope the gentleman will not state that because it is not the fact.

Mr. REID. Didn't the gentleman state a missionary was trying to influence the action of the convention?

Mr. LEWIS. I will explain just what I said and what I meant. I say that the position of the church is represented by its members.

The CHAIR. In the convention?

Mr. LEWIS. I didn't say in the convention; I say —I don't say in this convention, I say there has been no missionary in this convention, nor in any caucus of this convention, but I say that their wish is, as to the action of this convention, that the legislature shall not have the power to restrict the suffrage by a property or educational or other qualification, which may affect their power in this territory.

Mr. REID. What I desired to say, Mr. Chairman, in explanation of that was; the only reason is, I never intend to cast a vote that will make a distinction between the rich man's son and the poor man's son. I have lived in a country where one-half of them could not read and write; they went to the ballot box and voted and cast their vote intelligently; I never saw that they mismanaged it——

Mr. SWEET. I object to the gentleman's speaking continually, unless we can all have a chance to talk.

The CHAIR. The gentleman is called to order.

(Cries of question.)

The CHAIR. The question is on the amendment offered by Mr. Reid of Nez Perce. Are you ready for the question? All in favor of the motion prevailing say aye, those opposed no. (Loud chorus of "noes.")

The CHAIR. The motion is lost. The next amendment in order is that of Mr. Shoup.

SECRETARY reads: Amend by inserting after the word "office" in the second line the words "except in school elections or elections creating indebtedness." (Vote.)

The CHAIR. The ayes seem to have it. It is moved and seconded that the section as amended be adopted.

SECRETARY reads section as amended: No property qualification shall ever be required for any person to vote or hold office, except in school elections or elections creating indebtedness. (Carried.)

Mr. PEFLEY. I wish to offer an additional section.

SECRETARY reads: "No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious service in either house of the legislature." (Seconded.)

Mr. PEFLEY. Mr. Chairman, the object I have in introducing that addition or amendment to the Bill of Rights, is this; it is to save the disbursement of several hundreds of dollars at each convening of the session of the legislature.

Not only that but it is to keep any sectarian lobbyists or influences away from the legislature during its session. It also is to prohibit services that are distasteful to a large majority or at least a large number of law makers in this day and age of progressiveness. I am opposed to that mode of taking money out of the treasury to pay for services for which the people receive no adequate benefit. Not only that, but most of the legislators look upon these exercises as ostentatious bosh, and that they have no influence or any good

effect upon the deliberations of a body that feels such exercises are preposterous. Not only so, but the people send their legislators to the capitol for a certain purpose; they send them there to make laws for the country, and not to make long-winded prayers themselves or listen to them from others. Secondly, I am opposed *in toto* to taxing people for any sinecure office whatever. It is not necessary to say that congress or many of the states have these officers, or that the government makes provision for their payment in the navy, in the army and territories of the United States, or that it is impossible not to have these officials in assemblies of this character, or that it is breaking down a custom hoary with age in legislatures generally, or that it is in direct opposition to religion itself. All this, Mr. Chairman, has nothing to do with the question of legislation, which legislators are expected to perform with ability and dispatch. These old customs should be discarded; they are discarded in many of the great powers. The houses of parliament with their twenty-eight bishops have no exercises of this kind. The assembly of France has nothing of the kind; and very few of the courts, especially the Supreme Court of the United States. The legislatures of New York, Virginia, Pennsylvania, Illinois, Oregon, and perhaps others have no such exercises. They have done away with this expensive nonsense. I say "nonsense" from the fact that three-fourths of the law makers, as is well known, in America at least, are non-communicants of any society or sect, and take no interest in anything which cannot be demonstrated. The other one-fourth may belong to as many sects as there are members, and if you elect a Catholic or a Methodist, or a Baptist as a chaplain, he may have but few members that would care to hear his supplications, and the others all the time would consider him a heretic; yet each member would be obliged to hear something that he was opposed to, or else absent himself purposely; in either case it would divert his mind from the special

duties which he is supposed to perform. But if these diurnal exercises are actually necessary, I am in favor, when the legislature convenes in this capital, to invite the whole clergy to come here and perform, so that each member may find his affinity, and let them pray and carry on their exercises as long and as late and as often as the tenets of their creed require, provided that the time so occupied does not impinge upon the legislative hours, and that the members shall be required to settle the bill therefor. This is taken from a neighboring state constitution,[1] one of the most prosperous in the Union. They have had this provision in their constitution for thirty years, and I think perhaps it has a good deal to do with its prosperity, because they have saved many thousand dollars thereby. I move its adoption.

The CHAIR. Is the motion supported? (Seconded.)

Mr. POE. Mr. Chairman, I cannot sit quietly and hear such principles avowed in the blaze of the nineteenth century, in this Christian age, in the age of civilization, the Christianity that now exists. I am astonished to see any gentleman get up in a deliberative body like this, in a constitutional convention organized as it were by the Christian people of this country, because we all claim, I think, to be Christians, we all, I think, claim that there is a Supreme Being to whom we look for aid and comfort in our hours of need; and yet there is a gentleman in this convention who has the effrontery, has the boldness, in the blaze of the nineteenth century, to propose that the future legislation of this state shall be directed and empowered to withhold from all deliberative bodies one who might offer supplications to the Divine Being——

Mr. PEFLEY. Will the gentleman allow me a moment——

Mr. POE. ——for the reason, as he maintains, that it would be an expenditure of public money, that it is

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1—Oregon Constitution of 1857, Art. 1, Sec. 5.

wrong for the people to pay a chaplain, and therefore he wants an interdiction put in this constitution, forever denying to the people the right when assembled in their legislative halls to employ a chaplain.

Mr. PEFLEY. Mr. Chairman, the gentleman has either misunderstood me, or else he intends to misrepresent me; I don't know which.

Mr. POE. No sir, I don't intend to misrepresent you.

Mr. PEFLEY. He says I deny the people having that privilege. I not only do not deny it, I agree to give it to them, but I wish every man that comes to the legislature to have persons to pray for him that are suitable to his sect. If you employ a chaplain, he may be elected by one majority; the other 49 or 29, or whatever the minority should be, may belong to other churches; his ministrations would be distasteful, his petitions would not suit them; they might all think he was a heretic. But my proposition is to allow every man his affinity, to invite the whole clergy to the capitol, to come and ministrate, but that they shall not take up the hours of legislation, and that each member shall foot the bill, because he received the benefit and not the people. That is my position, Mr. President.

Member from ADA. This is my first attempt, Mr. President, to say anything in this convention; I cannot sit still. Does the gentleman from Ada forget our fathers and our forefathers, the founders of this republic? Does he forget the example set to us from the Declaration of Independence down to the present day? Does he forget Washington, who bowed in the snow and adored the great architect of the universe? Does he forget that Lincoln, Washington and Jefferson set us the example? Gentlemen, I trust that this amendment will not prevail. I as a citizen of Idaho want us to recognize that Supreme Being who presides over the destinies of all nations.

Mr. AINSLIE. I call for another reading of that

amendment. It appears to me that a part of that should be adopted in the constitution, and a part I think not.

SECRETARY reads: No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislature.

Mr. AINSLIE. I ask for a division of the question; I am in favor of the first part of it. I do not believe the money of the people in this state should be drawn from the treasury and appropriated to support any religion or religious institution of any kind. In several states, and I think the state of New York, there are probably a million or two dollars a year appropriated for schools and asylums which state they are under some particular denomination, not under the state government at all. I believe in appropriating all the money necessary to support the institutions of the state, but I am opposed to appropriating the money of the people, or state money, towards the support of any denominational or religious institution of any kind. But I am in favor of allowing the people to have a chaplain, if they want it.

Mr. GRAY. Let me ask the gentleman if Sec. 4 of the Bill of Rights does not cover that?

Mr. MORGAN. I think upon examination you will find that subject fully covered by the section in the educational bill; it covers every point under discussion in this clause. (Cries of "Question.")

The CHAIR. The question is on the adoption of a new section to the article, to be called section 21. I don't know that it demands a separate vote on this question; "No money shall be drawn from the treasury for the benefit of any religious or theological institution." Do you desire a separate vote on that, Mr. Ainslie?

Mr. AINSLIE. There is a provision in section 4

which says "no person shall be required to attend or support," etc.——

The CHAIR. Are you opposed to the adoption of the section?

Mr. AINSLIE. I am in favor of the first portion, and of dividing it, to leave out the chaplain part.

Mr. SWEET. I would like to say to Mr. Ainslie that I have seen the report of the committee on Education,—I don't know whether it is printed or not,—and they absolutely prohibit the apportioning of one dollar of public money to any sort of secret or denominational institution.

Mr. AINSLIE. Very well; I am satisfied then.

Mr. PEFLEY. I——

The CHAIR. The gentleman has spoken twice; if there is objection——

SEVERAL MEMBERS. I object.

Mr. MORGAN. I hope the gentlemen will hear the gentleman in explanation.

Mr. PEFLEY. Mr. Chairman, I don't wish that question divided; I want it to stand or fall altogether. If the people of this territory or this coming state wish to carry on something that is hoary with age and handed down from a barbarous generation to the present time, of course I cannot object; I am not a majority here. But gentlemen, I hear them talking about this blaze of the nineteenth century. According to my reading, the blaze of the nineteenth century does away with this nonsense, because many of the great states,—New York has more people than twenty or thirty such states as this alone,—they do not have it there. They have done away with it in the Supreme Court of the United States. The Congress of course keeps it up, as a mere matter of form. And the question of economy is what is looked at more than anything else, from the fact that it is one of the questions upon which the adoption of this constitution will depend,—the economy of the provisions made in it. And the idea of taking out several hundred dollars every session of the legis-

lature, to pay for something that does no one any good, and that is a sinecure office in any way, shape or form you can put it——

Mr. BEATTY. I rise to a point of order. I understood the gentleman rose simply for an explanation; it seems to be for an additional argument. It is the third time he has been on the floor.

Mr. PEFLEY. I had permission to go on.

Mr. BEATTY. We understood it was simply for an explanation.

The CHAIR. The gentleman is in his third speech, and he cannot speak, unless it is by motion giving him permission.

Mr. PEFLEY. Then I can sit down, I guess. (Cries of "Question.")

The CHAIR. All those in favor of the adoption of the section offered by Mr. Pefley say aye, contrary no. (Vote.) The noes have it, the section is rejected.

SECTION 21.

SECRETARY reads: Sec. 21. "This enumeration of rights shall not be construed to impair or deny other rights retained by the people."

It is moved and seconded that it be adopted.

Mr. HEYBURN. I suggest striking out the word "popular" in the title.

Mr. HOWE. I would like to know whether these headings are to be printed in the constitution or not.

The CHAIR. I don't know what the committee on Revision are going to do. It is moved and seconded that the word "popular" be stricken out of the title. (Carried.)

The CHAIR. The question is now upon the adoption of the section as read; it is moved and seconded that it be adopted. (Carried.)

HEADINGS TO SECTIONS.

Mr. GRAY. I call the attention of the chair to section 13, in the title to that, the right of accused

persons to depositions in criminal cases,—by referring to the correction of this section, I see that depositions in criminal cases was stricken out, and it should be stricken out of the title.

Mr. CLAGGETT. I do not suppose that anybody will imagine that when this comes to be incorporated in the constitution, these headings will be put in; it will be simply articles and sections.

The CHAIR. Some have them in, and some have not.

Mr. STANDROD. Whenever it is construed by a court, certainly the whole title of a section is no part of the section.

Mr. GRAY. What harm would it be to strike that out?

Mr. STANDROD. None at all.

Mr. GRAY. I move that that part, depositions in criminal cases, shall be stricken out in the title. (Seconded and carried.)

Mr. BEATTY. Mr. Chairman, as chairman of the committee on Revision, I would like to call attention to the fact that this report which we have been considering has a heading to all the sections, while some subsequent reports have no headings whatever. Now the committee ought to adopt some rule and ought to have some instructions from this body or from the convention. We have no rule and no instructions upon it.

Mr. SHOUP. I rise to a point of order; we are considering the preamble to the Bill of Rights, and have not yet adopted the Bill of Rights.

The CHAIR. Well, do not by a point of order prevent any member from asking information.

Mr. HAGAN. I think the preamble cannot be considered until the whole constitution is adopted. It is the last thing to be acted upon.

The CHAIR. What is the pleasure of the convention?

Mr. CLAGGETT. I move that we adopt the preamble at the head of this article. (Seconded.)

Mr. PEFLEY. Mr. Chairman, I wish to offer a substitute.

SECRETARY reads: Constitution of the State of Idaho, Preamble: We the people of Idaho, to the end that justice be established, order maintained and liberty perpetuated, do ordain this constitution." (Seconded.)

Mr. PEFLEY. Mr. Chairman, the reason why I offer that substitute is that there are no redundant, meaningless or ambiguous words in its composition. Every man, woman and child can understand that, and agree on every word as to what it means. Not only so, but it is no secret that in the greatest charter of liberty or freedom ever conceived, promulgated to the world by American men, they made plain statements in their preamble; and if such men as Washington, whom we consider the greatest man that ever lived in our own or any other age, such men as Franklin, the greatest philosopher that this continent ever produced, and Madison, the greatest law-giver, or rather framer of constitutions that the world has ever seen, and fifty others of their compatriots,—I say if they had no use for ambiguous words in the preamble of the constitution of the United States, why should we, amateur statesmen here, far away in the sagebrush of Idaho, undertake to improve on their work, that has been applauded all over this great universe, and is the grandest and best work that ever fell from the hand of living men? (Cries of Question.)

The CHAIR. The question is on the adoption of the substitute for the preamble, offered by the gentleman from Ada. All in favor of the motion signify it by saying aye.

Mr. PEFLEY. Aye.

The CHAIR. Contrary, no. (Vote.) The noes seem to have it. (Laughter.) The amendment is lost.

Mr. PEFLEY. Mr. Chairman, I wish to offer an amendment.

SECRETARY reads. Amendment to Preamble, article 1, State Constitution. Strike out in the first line all after the word "to" to the word "for" and insert in lieu thereof; "the Constitution of the United States."

The CHAIR. Is there any support to the motion?

Mr. BALLENTINE. I move that the committee rise, and that the bill be reported with the amendments to the convention.

The CHAIR. The gentleman is out of order.

Mr. CLAGGETT. Mr. Chairman——

Mr. BALLENTINE. But I understood the preamble to be adopted.

The CHAIR. No; the question now before the committee is the adoption of the preamble.

Mr. HAGAN. Mr. Chairman, I rise to a point of order; that the preamble is a clause in which we recite the fact that we do establish this as the constitution. We have made no constitution yet. After we get through with it, we go back and pass the preamble.

The CHAIR. A particular rule provides that that shall be the last considered, whether it means the last of this article, or the entire constitution——

Mr. HAGAN. I think it refers to the entire constitution. This article is only one part of the constitution; it is the same as the title to a bill. That question was asked, and it was stated by the president of the convention Monday morning.

Mr. CLAGGETT. Before the chair rules upon the matter, I would like to refer to Rule 53, which says: "as soon as any entire proposition for incorporation in the constitution shall have been disposed of, such proposition, if agreed to by the convention, shall be referred to the committee on Revision, to be by that committee embodied in the constitution;" and that is what is done with this report. It necessarily will go to the committee on Revision, as soon as it is agreed

to in the convention, and if we hang it up to the holidays, we hold it there until the whole thing is adopted.

Mr. REID. Under Rule 49, directed to this question, it says; "In committee of the Whole propositions shall be read by the chairman or secretary, and considered item by item, unless it shall be otherwise directed by the committees, leaving the preamble, if any, last to be considered." That is, the preamble is to the whole constitution. It says that we do establish this whole constitution, in the Bill of Rights, and the whole proposition, to which this preamble refers, is not only the Bill of Rights but the whole constitution, and I think the point made by the gentleman from Shoshone is well taken.

Mr. HEYBURN. That is not a part of article one, which we have been considering.

Mr. CLAGGETT. Then in order to reach the matter, so that we can get along into business, I move that when the committee rise it report the matter which has been considered by the committee in that article one, the Declaration of Rights, and recommend to the convention that it be turned over to the committee on Revision, to be incorporated into the constitution.

The CHAIR. I think the only proposition before the committee now is the adoption of article one, as amended by the committee; until we have adopted it section by section, that that is not the adoption of the entire article. However, I submit that proposition to the committee. I think it would be proper to adopt the entire article as amended.

Mr. HAGAN. We have got to go before the convention for that purpose.

The CHAIR. No, the committee adopts it, and then recommends it to the convention. I think the proper motion would be to adopt it as a whole, and recommend its adoption by the convention.

Mr. CLAGGETT. I will withdraw the motion then, which I have just made, and make that motion to ex-

pedite business, that article one, the Declaration of Rights, be now adopted. (Seconded.)

ARTICLE 1 ADOPTED.

The CHAIR. It is moved and seconded that article one be adopted by this committee, and that the committee recommend its adoption to the convention. (Carried.)

The CHAIR. I will decide as chairman, that the preamble is last to be considered by the convention under Rule 49. Gentlemen, that completes the consideration of the Bill of Rights; what is the pleasure of the committee?

Mr. CLAGGETT. I call for the next regular order of business, and that is the report of the committee on Militia and Military Affairs.

COMMITTEE REPORT ON MILITIA AND MILITARY AFFAIRS.

ARTICLE XIV,—SECTION 1.

SECRETARY reads section 1, and it is moved and seconded that it be adopted. (Carried.)

SECTION 2.

SECRETARY reads section 2, and it is moved and seconded that it be adopted. (Carried.)

SECTION 3.

SECRETARY reads section 3, and it is moved and seconded that it be adopted. (Carried.)

SECTION 4.

SECRETARY reads section 4, and it is moved and seconded that it be adopted. (Carried.)

SECTION 5.

SECRETARY reads section 5, and it is moved and seconded that it be adopted.

Mr. CLAGGETT. I would like to transpose the words, so as to make it read; "No military organization under the laws of this state shall carry any other

device." It says now; " All military organizations—shall carry no other device." It is not good language.

Mr. HAMMELL. I second the motion.

Mr. HOWE. I would like to have it read.

SECRETARY reads: No military organization under the laws of this state shall carry any other device, banner or flag than that of the United States or of the State of Idaho.

Mr. HAMMELL. I offer a substitute to the gentleman's amendment, to strike out the word "all," so that it will read; "Military organizations under the laws of this state shall carry no other device, banner or flag than that of the United States or the state of Idaho. It is in the negative, the way it stands now.

Mr. CLAGGETT. It should be; "shall not carry any other device." I accept the substitute offered by Mr. Hammell.

Secretary reads the substitute of Mr. Hammell.

Mr. CLAGGETT. I move the adoption of the substitute.

Mr. MORGAN. I move the insertion of the word "organized" after the word "organization," so that it will read, "military organizations organized under the laws of this state."

Mr. CLAGGETT. Is it intended that we shall allow military organizations from foreign parts to parade flags other than the flag of the Union? It is limited in that way; our own local companies can do nothing, but foreign companies that come here on business or anything of that kind may do it. My idea in regard to the language is that military organizations, whether organized under the laws of this state or any other state, should not be permitted to parade anywhere in this state under any other flag except the flag of the country or of the state.

The CHAIR. Is the amendment proposed by the gentleman supported? I see no support to the amendment. The question now recurs on the substitute section,

Mr. MORGAN. The section is ambiguous as it stands.

The CHAIR. The committee thinks differently.

Mr. HAMMELL. I think I can suggest a word probably there that would satisfy the gentleman. "Military organizations, existing under the laws of this state, shall carry no other banner or flag than that of the United States or the state of Idaho." I offer that amendment. (Seconded.)

Mr. HOWE. I move the amendment to the section, to strike out the words "under the laws of this state."

The CHAIR. Gentlemen, you have heard the amendment proposed by the gentleman from Nez Perce. Is the motion supported? (Seconded).

Mr. BEATTY. Mr. Chairman I have an amendment. (Laughter). My amendment is to make the first line read "No military organization shall in this state carry any other device, banner or flag than that of the United States or of the state of Idaho."

Mr. AINSLIE. That last arrangement would prevent the parade of voluntary organizations in the militia at all. I am not in favor of that.

Mr. HAMMELL. It would prevent also voluntary military organizations from any other states from carrying their own state banner.

Mr. BEATTY. I would submit the amendment I have reported there will not prevent any kind of military organization.

The CHAIR. It is moved and seconded that the last amendment, sent up by the gentleman from Alturas, be adopted.

Mr. HEYBURN. I should not like to see that amendment prevail, because if I understand it, it would prevent any number of military organizations from carrying their regimental flags, unless I misunderstand the nature of it.

Mr. TAYLOR. I move that all these amendments be laid on the table, and call for the previous question. (Seconded and carried).

Mr. TAYLOR. I now move that we adopt the original section. (Seconded and carried).

Mr. TAYLOR. I move now that the article be adopted as a whole by the committee, and that when the committee rise, it report the bill back to the convention and recommend that it be adopted.

Mr. GRAY. I move that the committee rise and report all matters that have been before them to the convention. I don't know that it would be necessary in this motion to report progress and ask leave to sit again.

The CHAIR. Probably the motion would be to rise, report these two articles to the convention, and recommend to the convention their adoption.

Mr. GRAY. That is my motion.

The CHAIR. It is moved and seconded that the committee now rise and report these two articles to the convention and recommend their adoption. (Carried).

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. MAYHEW. Mr. Chairman, as chairman of the committee of the Whole, I beg to report that your committe have had under consideration the article on the Bill of Rights and also the article on Militia, and desire until tomorrow morning to make their report. The clerks cannot arrange them intelligently before that time, unless you are going to have an evening session.

Mr. CLAGGETT. The instruction was to report them now.

Mr. MAYHEW. No sir, I beg your pardon, Mr. President, the motion was that the committee rise and report the two bills back with the recommendation for their adoption, not that we shall report now.

The CHAIR. If there is no objection that action will be taken, although it does not agree with the ideas of the chair upon the subject.

Mr. GRAY. I move we adjourn until nine o'clock tomorrow morning. (Seconded).

(Vote. Division called for. Rising vote, 24 in the affirmative, 21 in the negative).

Mr. PRESIDENT. The motion to adjourn is carried.

FOURTEENTH DAY.

SATURDAY, *July 20th, 1889.*

CONVENTION met at nine o'clock a. m., Mr. President in the chair. Prayer by Chaplain.

ROLL-CALL. Present: Mr. Claggett, President, Ainslie, Allen, Armstrong, Batten, Beatty, Ballentine, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammel, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Parker, Pierce, Pinkham, Poe, Pyeatt, Reid, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Taylor, Underwood, Vineyard, Whitton, Woods, Andrews, McMahon, Pritchard, Lamoreaux, Lewis, Brigham, Pefley.

Absent: Blake, Harris, Robbins, Sweet, Wilson, Lemp.

Excused: Anderson, Beane and Stull.

Mr. BALLENTINE. I move that the reading of the minutes be dispensed with. (Seconded).

Mr. CAVANAH. There is one part of the minutes I wish to make amendment to, and I don't see how I can have it amended unless they are read. I will state that it is all that part of the minutes that refers to that infidel resolution yesterday. I didn't want the Ada delegation to be plastered with such a name, and it seems they will be, because not one of them have got up to protest against it.

The CHAIR. The chair would suggest that the committee on yesterday ordered the chairman to report back the two articles for incorporation in the constitution. The amendments which were proposed to those

articles in committee have been preserved by the clerk in the minutes. The first and natural order of business will be, when we get through with the regular business of the day, for the consideration of the report of the committee of the Whole, and in the consideration of that report any amendment which was offered in the committee of the Whole may be offered again in convention, and no other amendment can be made; and therefore it is necessary in order to pass intelligently in the convention upon these bills when they come up, I think that we should have the minutes read, so that we may have them in our mind. I for one would like to have them read.

Mr. BALLENTINE. I will withdraw my motion, Mr. President. (Secretary reads the minutes of yesterday's proceedings).

The CHAIR. If there are no objections to the minutes as read they will stand as approved.

RESOLUTION OF INVITATION.

Mr. AINSLIE. I ask unanimous consent to offer a resolution at this time.

The CHAIR. Is there any objection?

SECRETARY reads: *Resolved,* That a committee of three be appointed to receive the delegation of Members of Congress who will visit this city next week, of which committee the Governor be requested to act as chairman, and extend to the said delegation of Congressmen an invitation to visit the convention, and that the privilege of the floor be granted them. (Seconded and carried).

Mr. CAVANAH. Mr. President, I desire to offer a motion with reference to these minutes. I don't know whether this is the proper time or not.

The CHAIR. All motions are out of order unless by unanimous consent, until the reports of committees are received.

Mr. PEFLEY. I object.

The CHAIR. Objection being made, under the rules it will have to be deferred until——

Mr. REID. I rise to a point of order. The gentleman's motion is to correct or expunge a part of the minutes. Does not that follow immediately the reading of the minutes?

The CHAIR. No sir, I think not. The only question that would come up in connection with the reading of the journal is to correct the journal to make it correspond with the facts, and the motion to expunge is a separate and independent proposition that must come up for action as any other proposition does. I will read the rule so that the gentleman from Nez Perce will see: "As soon as the Journal is read and corrected as aforesaid, the President shall call for: Presentations of Petitions and Memorials, Reports of Standing Committees, Reports of Select Committees, Final Readings," etc. It will then be in order for the gentleman's motion to be made. Presentation of Petitions and Memorials: (None). Reports of Standing Committees:

Mr. MAYHEW. The committee of the Whole desires to report.

The CHAIR. The chair will have to rule the report out of order. We are now calling for reports of standing committees.

COMMITTEE REPORT—LIVE-STOCK.

Mr. HARKNESS. As chairman of the committee on Live-stock I desire to submit the following report: Mr. President, we your committee on Live-stock beg leave to submit the following article on the subject referred to us for our consideration.

The CHAIR. The report will lie upon the table and be printed.

WAYS AND MEANS.

Mr. HASBROUCK. As chairman of the committee on Ways and Means, I desire to report as follows:

Mr. President, your committee on Ways and Means respectfully submit the following report: We find the following named members, not heretofore reported, entitled to the mileage set opposite their respective names, to-wit:

	Miles
S. F. Taylor, Eagle Rock, Bingham County	660
Robt. Anderson, Eagle Rock, Bingham County	642
Aaron F. Parker, Grangeville, Idaho County	1154

HASBROUCK, *Chairman.*

The CHAIR. Under the rules that report should be ordered printed, but I presume there is no desire to have it printed. If there is no objection the printing of this report will be dispensed with. Are there any other reports of standing committees? (None). Reports of select committees? (None).

Mr. MAYHEW. I suppose now the chairman of the committee of the Whole would be in order to make his report. I don't know what committee it goes under, but I always understood the chairman of the committee of the Whole could report at any time.

The CHAIR. If the gentleman will call the attention of the chair to any rule that allows the report to be made at any time, I would be glad to receive it.

Mr. SHOUP. As I understand the rules, the chairman of the committee of the Whole may report at any time that the convention desires he shall report.

Mr. MAYHEW. Mr. President, there is no doubt about that, when leave is once granted to any chairman to make report, his report may be made at any time to the incoming session. Of course the convention may demand the report forthwith.

The CHAIR. The chair does not understand it that way, and will be obliged to rule otherwise until some rule is referred to. Are there any further reports of select committees? (None). Final readings? (None). That finishes the regular order of business. What is the pleasure of the convention?

Mr. CAVANAH. Mr. Chairman——

Mr. MAYHEW. I would like to ask, Mr. President,

when the report of the committee of the Whole can be made? We have gone through the regular routine of business and are now ready to go into committee of the Whole. Is not the action of the committee of the Whole to be taken notice of by this convention? I have sent it up and ask leave that it be received with the proceedings this morning. It does not make any difference to me when it is made, so that I can get it out of my hands; I think it is my duty to do so.

The CHAIR. No question about that. The chair ruled the gentleman out of order at that time, as well as the gentleman from Elmore with his motion. After the regular order of business is finished, the gentleman from Elmore is first to rise, and therefore is recognized by the chair. The gentleman from Elmore has the floor.

Mr. CAVANAH. I sent my motion up to the secretary.

RESOLUTION TO EXPUNGE.

SECRETARY reads: Mr. President, I move that the amendment offered by the member from Ada, Mr. Pefley, relating to the Preamble of the Bill of Rights, be expunged from the minutes. (Seconded; cries of "Question.").

Mr. PEFLEY. I certainly shall not be convicted without a hearing. That preamble was drafted from other constitutions. I don't know that there is another constitution that has exactly the same words, but take two-thirds of the constitutions of nearly any of the states of this Union, and you will find those identical words in those constitutions, and there is one proposition that is almost exactly the same in all, and if there is any infidelity, such as the gentleman intimates, in a man's offering a substitute for a preamble that contains words similar to those in the Constitution of the United States and many of the states of this Union, then I stand convicted, I presume, as an infidel, before this august body. But, Mr. President, I supposed that we

were here for consultation, to prepare a constitution, not at the whim of any one man, but that we might put our heads together and draft something that would be suitable for the government of this state—not anti-republican, for of course we could not expect to be admitted if it was radically proposed in some respects. But those words as contained in it, are almost exactly the same words as contained in several of the constitutions of the Union; they have been passed upon by Congress, admitted as states. and a part of the same words exist in the Constitution of the United States, and the idea of expunging anything of that kind from the minutes appears to me ridiculous, and could only emanate from a man who was not in his right——

Mr. AINSLIE. I rise to a point of order. Under Rule 56, "Resolutions giving rise to debate shall lie over one day before being acted upon, if, upon their introduction any member shall give notice of a desire to discuss the proposition therein contained." If the gentleman from Ada county, Mr. Pefley, desires to discuss this question it will have to lay over.

The CHAIR. The chair sustains the point of order. Does the chairman of the committee of the Whole desire to bring up his report now? If there is no objection it will be presented.

SECRETARY reads:

"The committee of the Whole have had under consideration the report of the committee on Preamble and Bill of Rights, report the same back to the convention, and recommend that Sections 1, 2, 3, 5, 6, 10, 11, 12, 16, and 18, be adopted.

"That Section 4 be amended by continuing after "worship" at the end of line 11, the following:

'Bigamy and polygamy are forever prohibited in the state, and the Legislative Assembly shall provide by law for the punishment of such crimes.'

"Also by inserting after the word 'denomination' in line 9, the words 'or pay tithes.'

"That Section 7 be amended by inserting in second line after the word 'verdict' the words, 'and the Legislature may provide that in all cases of misdemeanor five-sixths of the jury may render a verdict.' That in lieu of Section 8, the following substitute be adopted:

'Section 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on the presentment or indictment of a grand jury, or information of the public prosecutor, after a commitment by magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace; and in cases arising in the militia when in actual service in time of war or public danger.

"Provided, That a grand jury may be summoned upon order of the judge of the district court in the manner provided by law.

"That Section 9 be amended by striking out all after the word 'liberty' in the second line.

"That Section 13 be amended by striking out all after the word 'himself' in the sixth line, and inserting the following words, 'nor be deprived of life, liberty or property without due process of law.'

"That the title to Section 14 be amended by striking out the words 'private and' where the word 'private' occurs the second time in the title, and that the following be substituted for Section 14:

'Section 14. The necessary use of lands for the construction of reservoirs, or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use, for any useful, beneficial or necessary purpose, or for drainage, or for the drainage of mines, or for the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps or other necessary means to their complete development, or any use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

'Private property may be taken for a public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.'

"That the following be substituted for Section 15:

'Section 15. There shall be no imprisonment for debt in this state except in cases of fraud.'

"That Section 17 be stricken out.

"That Section 19 be amended by striking out the word 'to' after the word 'afforded' in line 2, and insert in lieu thereof the word 'for.'

"That Section 20 be amended by striking out all down to the word 'no' in the first line, and inserting the words 'and lawful' after the word 'free' in the second line.

"That Section 21 be amended by inserting after the word

'office' in the second line the words 'except in school elections or elections creating indebtedness.'

"That the word 'popular' be stricken out of the title to Section 22.

"And that Section 18 be made Section 17: Section 19, Section 18: Section 20, Section 19: Section 21, Section 20, and Section 22, Section 21.

"And that the report be adopted as so amended.

"Also, the committee have had under consideration the report of the committee on Militia and Military Affairs and report the same back to the convention with the recommendation that it be adopted.

A. E. MAYHEW, *Chairman.*"

The CHAIR. It is moved and seconded that the report of the committee of the Whole be adopted.

Mr. HEYBURN. Is it not proper to receive this report instead of adopting it? I move to substitute the word "receive" instead of "adopt."

The CHAIR. The chair will have that word "receive." It is moved and seconded that the report of the committee of the Whole be now received. (Carried).

Mr. HEYBURN. I move now that the report of the committee lie on the table. (Seconded).

Mr. HAGAN. That necessarily follows, does it not from receiving the report, that it lies on the table until——

The CHAIR. It necessarily follows unless some motion is made to dispose of it. It requires no motion to lie on the table. It is now on the table subject to the action of the convention. If the convention desires to take any action, that business is now in order.

Mr. SHOUP. I move that the report be adopted. (Seconded).

The CHAIR. It is moved and seconded that the report of the committee of the Whole be now adopted. Are you ready for the question?

Mr. MAYHEW. That motion was just made, and the gentleman from Shoshone moved that it be changed to "receive." I hope members will not act too hastily in the convention. If we adopt that, the question may

hereafter arise whether the convention has not adopted everything that has been recommended by the committee of the Whole, and cut off any amendment that may be desired to be offered by the convention. For that reason, Mr. Chairman, it then lies upon the table to be taken up for consideration in connection with the article upon the Bill of Rights. I hope it will not be taken up now.

Mr. REID. I rise to a point of order. Under Rule 51 it lies on the table and is to be taken up in the order in which the reports are made and voted upon by sections, and then as a whole, and is to be printed.

The CHAIR. The chair called the attention of the convention to Rule 49 which is the one that covers this question. "In committee of the Whole propositions shall be read by the chairman or secretary and considered item by item, etc."

Mr. REID. Now the point I make is this: That is to be read section by section as taken up, and any member has a right to call for the ayes and nays, a right which was reserved by me in the committee of the Whole.

The CHAIR. There is no question with reference to that.

Mr. REID. But they propose now to adopt this article, and the vote would carry the whole thing with it.

The CHAIR. Under the rule this report must now be taken up; that is the proposition, that the amendments adopted by the committee of the Whole must now be taken up. I presume it may be taken up in almost any way, either by adopting it as a whole or taking it up by sections.

Mr. HEYBURN. I understand that is only after the convention authorizes the order. I made a motion to lay it upon the table to dispose of that.

The CHAIR. The motion was not seconded.

Mr. MAYHEW. It was seconded. I seconded it.

The CHAIR. As long as this previous motion was made, the chair will now put it, and rule that the gen-

tleman from Custer was out of order. It is moved and seconded that the report of the committee of the Whole be laid upon the table. Are you ready for the question?

Mr. SHOUP. I wish to know where in the constitution is this report then placed.

The CHAIR. It lies upon the table subject to be taken up at any time by order of the convention. The motion to lie upon the table operated as a suspension of the rule for its immediate consideration. The question is on laying the report of the committee of the Whole on the table. (Carried).

Mr. REID. I move that the convention resolve itself into committee of the Whole for the purpose of taking up the next regular order, the report of the committee on Executive Department. (Seconded).

LEAVES OF ABSENCE.

Mr. HAGAN. I want to ask leave of absence both on account of business and illness of my family.

The CHAIR. The gentleman from Kootenai requests leave of absence from the convention. Is there any objection? If not, leave is granted by the convention.

Mr. HOWE. I would also ask leave of absence indefinitely on account of business and illness of my family.

The CHAIR. Is there any objection? There is no objection and leave is granted.

Mr. REID. My motion is that the convention resolve itself into committee of the Whole for the purpose of proceeding with the first regular order of the day, the report of the Legislative Department. (Seconded).

The CHAIR. It is moved and seconded that the convention now resolve itself into committee of the Whole for the purpose of considering the report of the committee on Legislative Department. Are you ready for the question?

Mr. BEATTY. I move the motion be changed by inserting the word "executive" instead of "legislative."

Mr. REID. The reason I stated that was because it was first on the order of the day, and I thought we were to take it up in order.

Mr. MORGAN. As the chairman of the committee on Legislative Department I would be glad if the report of that committee could be postponed until Monday morning, in accordance with this motion, and that the committee report on the Executive Department be taken up.

Mr. REID. I will accept the gentleman's amendment then.

The CHAIR. It is moved and seconded that the convention go into committee of the Whole on the report of the committee on Executive Department. (Carried). Will the gentleman from Oneida county, Mr. Standrod, take the chair?

Mr. STANDROD. Mr. President, I would respectfully decline and ask that someone else be selected.

The CHAIR. I will call Mr. Reid to the chair.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. REID in the Chair.

SECTION 1—ARTICLE IV.—EXECUTIVE DEPARTMENT.

SECRETARY reads Section 1 of article on Executive Department, and it is moved and seconded that the same be adopted.

Mr. McCONNELL. I would like to have an opportunity to speak on this section, if it is not too late.

The CHAIR. Proceed.

Mr. McCONNELL. It is easy to adopt these provisions in the constitution, but they have got to be adopted by a higher tribunal than ours, that is, when they go to the people, and the question will occur to our constituents as to what benefits we will derive from state government, or what they will cost us. The benefits can be easily explained, but whether we can explain the additional expense of state government, is a question for us to consider, and consider carefully, before

we proceed to the hasty adoption of any of these sections.

It occurs to me that we have more offices described here than is necessary for a state of our size and prospective wealth. We have, namely, a governor, lieutenant governor, secretary of state, auditor, state treasurer, attorney general, and superintendent of public instruction. I think for a term of years at least we could easily dispense with either of these officers, namely, the lieutenant governor, state auditor or attorney general. I would like to hear further from gentlemen on this subject. I am sure that an explanation will be required of us when we go home. The state of Oregon has up to the present date got along without any lieutenant governor, without any auditor or attorney general, and there has certainly been as much business transacted in that state as will probably be transacted in this state, within the next twenty years at least.

Mr. AINSLIE. I don't know anything about the condition of the state of Oregon, or its resources for the support of a state government. These provisions are in the constitution of nearly every state of the Union. The office of lieutenant governor, while considered as a sort of figure-head, is necessary, unless we change the whole line of succession in regard to the office of governor when it become vacant by death, removal or impeachment. It would necessitate re-writing the entire system of state organization, if we made any inroads in cutting down the officers enumerated in this bill. The lieutenant governor derives no salary from the state treasury, except when he is in actual service as presiding officer of the senate; it is so provided, and then he only draws the same pay that the speaker of the house of representatives does, during the time it is in session. During the balance of the year he draws no pay at all, and he has no vote, except in case of a tie in the senate. I think the office is a necessary one, and the committee unanimously believed so, or they would not have so reported it.

A state auditor is one of the most necessary officers we can have. How are the accounts of the state to be kept unless we have an auditor, so as to have a system of checks and balances between him and the state treasurer, protective to both officers? They have found it necessary—or the Congress of the United States found it necessary, to authorize the legislatures of the territories to create such offices, which it did in the case of those three, I believe. We have found that the office of territorial controller, or auditor, as it used to be, is one of the wisest positions established in the territorial government. And as to getting along without an attorney general, I think that is impossible; nor can you devolve the business of the attorney general upon a district officer. That would be a fine thing to see, that the district attorney from some district should act as attorney general in some case coming here on appeal, or assume his duties in some matter requiring a construction of the constitution. Let us make this a proper organization, in carrying out the ends of state government. I don't see how you can get along without it, and I object to any amendment to it.

Mr. HASBROUCK. I have an amendemnt.

SECRETARY reads: To amend Section 1 by striking out in the second line the word "auditor" and insertng in lieu thereof the word "controller."

Mr. AINSLIE. I don't know that that would make any difference at all. I believe it is territorial controller now; I know the offices are identical.

The CHAIR. Is it supported? (Seconded).

Mr. HASBROUCK. So far as I am informed, under the present regime the controller of the territory does not audit any bills; if that is considered, it is a misnomer, and I presume the same line of action will be taken in the state government. For that reason I wish to change it.

Mr. SWEET. I would like to inquire who will audit the bills of the state if the auditor does not?

Mr. MAYHEW. I hope the gentleman will answer the question; I want to know.

Mr. HASBROUCK. I cannot tell, because I do not know what the other reports are yet on these questions.

Mr. AINSLIE. I think if the gentlemen here offering amendments to these bills would take the trouble to read this bill, they would find all their troubles provided for. I think the bills are usually read through for information. If they will read it for information, they will drop the proposition of making so many amendments here.

Mr. GRAY. I hardly see the force of the objection to the number of officers we have here. We considered that they are necessary. The lieutenant governor has been mentioned by the chairman of the committee. We have this benefit, that we would not have in the event we did not have that office: The likelihood is, if the governor holds his position, that all the duties he will have to perform is that of president of the senate; and that is the only pay he gets—is for that service, but in the event of the governor's death, or absence from his post, then there is some sort of positive person to take his position; and we think it is a very important clause in it, when it costs the state nothing in the event that does not happen, to have the succession of the office provided for. We can easily see of how much benefit it might be, supposing that we might suddenly lose the governor or for some reason he should be disqualified to perform his duties. As to the number of officers, it is no more than the territory has today—governor, secretary of state, controller, treasurer, attorney general and superintendent of schools. The attorney general I must say—you must agree with me, I think, who will attend to the legal duties of the state, is necessary. Upon whom will these devolve? Upon the district attorney, or must there be a man got for the occasion? If so, who? If one should be taken for the occasion, it would certainly cost more, should there be litigation to any extent, than it would to have a regular salaried officer upon whom

we could depend. I think our history will show,—that is, with a good appointment, that there is money saved to the territory in having an officer of that kind; I think this territory has received benefits from having an officer of that kind—a poor officer anyway, but a good officer of that kind is certainly one of the most important officers devised among the state officers, to attend to all the state business, to attend to all the prosecutions before the supreme court; and we certainly will have to increase our expense accounts for the prosecution of criminals arising from the counties, if the district attorney must follow them here and prosecute them in the event of appeal; it certainly must be an expense to some one, and on this account it would be much simpler for them one and all to have a prosecuting officer here to attend to it.

Mr. McCONNELL. I desire to ask for information of the chairman of this committee, whether it would be possible for the secretary of state to audit these accounts?

Mr. AINSLIE. No sir, I don't think he can. The secretary of state will have as much as he can attend to, to verify the laws passed by the legislature, to issue the certificates and papers signed by the governor, attend to his recording and other duties. You might as well say that the governor or some of the clerks could attend to the duties of the controller's office. We all know very well he has had to employ one or two additional clerks to attend to his own office. If you want to consolidate all these offices, have nothing but a governor and have nothing but clerks—but we propose to have a state government of some dignity, not for any one man. (Cries of "Question").

The CHAIR. The question is upon the amendment offered by the gentleman to strike out the word "auditor" and insert the word "controller." (Vote). The motion is lost. The question now recurs upon the adoption of the section as originally read. (Vote and carried).

Section 2.

SECRETARY reads Section 2, and it is moved and seconded that it be adopted.

Mr. CLARK. There are two blanks in this section, and I move that they be filled by inserting the word "one." (Seconded and carried).

Mr. AINSLIE. I would suggest that the secretary be authorized to fill them.

The CHAIR. Without objection, it will be so ordered It is moved and seconded that the section be adopted. (Carried).

Section 3.

SECRETARY reads Section 3, and it is moved and seconded that it be adopted.

Mr. CLARK. I have an amendment.

SECRETARY reads: To amend Section 3, in the first line by inserting the word "or" after the word "governor." In the second line, strike out the words "or superintendent of public instruction." In line 4 insert after the word "auditor" the words "superintendent of public instruction."

The CHAIR. The secretary will read the section as it would be when amended. (Secretary reads the section with the amendment).

Mr. MORGAN. I think the word "or" is in the proper place. Where there are words occurring in two sentences of that kind, the conjunctive should be placed before the last term, as it is in this section. I do not recollect what the other proposed amendment was. (Secretary again reads the section with proposed amendment). Did I understand the gentleman's amendment was to strike out the words "superintendent of public instruction?"

The SECRETARY. In the second line, strike out the words "or superintendent of public instruction."

Mr. AINSLIE. As I understand it, it is only to place the superintendent of public instruction in the

category of the last series of state officers, requiring them to be 25 years of age, instead of leaving the superintendent of public instruction to be 30 years of age, the same as the governor and others.

Mr. CLAGGETT. Mr. Chairman, the gentleman from Boise has correctly stated it. The first set of officers are required to be 30 years of age, and the next succeeding set of officers, 25 years of age. We wish to take the superintendent of public instruction from the first class and transpose him to the second place. So far as the office has yet been held in this territory, I think the officer has sometimes been under the age of 30 years. I think my young friend from Alturas, Mr. Batten, has already held the same office, and has not yet reached the age of 30 years. Men thoroughly competent for this office have been found and will be found at the age of 25 years.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Ada. (Vote). The noes seem to have it. (Division called for. Upon rising vote, ayes 29, nays 20). The ayes have it, and the motion is adopted. The question now recurs upon the adoption of the section as amended. (Carried).

SECTION 4.

SECRETARY reads Section 4, and it is moved and seconded that it be adopted. Carried.

SECTION 5.

SECRETARY reads Section 5, and it is moved and seconded that it be adopted. Carried.

SECTION 6.

SECRETARY reads Section 6, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: After the word "of" in the

sixth line, add the word "office of justices of the supreme or district court."

Mr. HEYBURN. I would state, Mr. Chairman, that there has been no provision made for the filling of vacancies, that is, conferring the power directly upon the governor to appoint, in the Judiciary bill, and it is necessary to have it somewhere, and this is dealing with the subject of the vacancies the governor may fill by appointment, and it is proper to provide that he may fill these offices where a vacancy occurs by death or for any other reason.

Mr. MAYHEW. I would like to inquire of the gentleman from Shoshone, if his motion prevails before the convention takes up that article on the judiciary, it would not make a conflict in the matter. The committee on Judiciary have sent up two reports, as to the election of chief justices of the territory, one by election, the other by appointment.

Mr. HEYBURN. It will not make any conflict in either case, because this only provides in case of death a vacancy shall occur, while a vacancy might occur if he was appointed by the governor as well as if he was elected, but this only provides that he fill the vacancy in case of one arising. There should be some provision made, otherwise in case of death there would be no provision.

Mr. MAYHEW. If it does not conflict with that provision I have no objection.

Mr. MORGAN. I would like to have it read.

SECRETARY reads Section 6 as proposed to be amended.

Mr. GRAY. It says in the fore part of the sixth line, "If during a recess of the senate a vacancy occur in any office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office." It occurs to me as if that might conflict with the Judiciary bill.

Mr. HEYBURN. I would suggest, Mr. Chairman,

that would be true, if we knew that the convention would adopt the second report of the Judiciary committee, but we do not know it. It will not conflict with it in any event; it may constitute an additional clause. I am not certain as to that sentence or provision, or as to what one.

Mr. MORGAN. It occurs to me that if any of these sections should be found to conflict with each other, when the committee on revision comes to examine them, they can recommend to the house a change. I want to suggest one matter to the mover of the amendment. It seems to me the language is not proper—putting the amendment in the language it is. I would suggest "office of a justice of the supreme or district court," instead of "office of justices of the supreme or district court."

Mr. HEYBURN. I accept the amendment.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone. (Vote and carried).

The CHAIR. The question now recurs upon the adoption of the section as amended.

Mr. WHITTON. Should there not be some provision for the governor to appoint county commissioners in case of vacancy? The way the law is now, the county commissioners appoint their own members in case of vacancy, but it seems to me that should be taken out of the hands of the commissioners themselves, to be appointed by the governor, in each county where a vacancy should occur. I only speak of that and suggest it to the convention. It seems to me that would be better than to have the other two appoint one.

The CHAIR. The chair would suggest that under the provision of the fourth line, if no other provision is made by law, could not the governor appoint to fill any vacancy?

Mr. MAYHEW. I desire to offer an amendment.

SECRETARY reads: In the fourth line, after the

word "any," insert the words "state or district." (Seconded).

Mr. MAYHEW. You will observe, Mr. Chairman, that if this should be adopted as it is now, the governor might appoint to any offices that might become vacant in the state, such as constable, sheriff, etc., and I want to confine this strictly to the state and district officers, and it will then read, if this amendment is adopted, "If during a recess of the senate a vacancy occurs in any state or district office, the governor shall appoint," etc. That denies the governor the right to appoint sheriffs, justices of the peace, or anything of that kind.

Mr. AINSLIE. I desire to say in my behalf individually in this matter, that I was not present when this bill was completed by the committee on executive department, and it was handed to me by the secretary of the committee as speaking the views of the committee. I coincide with the views of Judge Mayhew on that matter. It would make it possible for the governor to nominate a constable, sheriff or justice of the peace, and I think "any state or district" should be inserted there. Those are the officers, and none others. The legislature provides for the manner of filling vacancies in county offices; that is a matter that the executive of the state government has nothing to do with. I am willing to accept the amendment.

The CHAIR. The question recurs on the adoption of the amendment by inserting the words "state or district" after the word "any" in line 4. (Carried, and the section is adopted as amended).

Mr. BEATTY. I would like to ask, in view of the last amendment, what kind of district officers can be included?

Mr. MAYHEW. District attorney, and such officers as that.

Mr. BEATTY. The question is whether that would include mining districts, and such as counties.

Mr. MAYHEW. I do not suppose precinct officers or justices of the peace.

SECTIONS 7, 8, 9, 10 AND 11.

SECRETARY reads Sections 7, 8, 9, 10 and 11, and the adoption of each is separately moved, seconded and carried, without debate or amendment.

SECTION 12.

SECRETARY reads Section 12, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I desire to offer an amendment.

SECRETARY reads: Amend Section 12 by inserting before the first word in line 2 the word "treason."

Mr. AINSLIE. We have no objections to that amendment.

Mr. MORGAN. It occurs to me that if the words "treason" and "felony" are introduced there, the word "other" should be inserted after the word "or," as both crimes named are infamous crimes. I move to amend by inserting the word "other" after the word "or" in the second line. (Seconded).

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Bingham, that the word "other" be inserted after the word "or" in the second line. (Carried). The question now recurs upon the adoption of the section as amended by the amendment of the gentleman from Bingham and the amendment accepted by the chairman of the committee. (Carried, and the section is adopted).

SECTION 13.

SECRETARY reads Section 13, and it is moved and seconded that the same be adopted. Carried.

SECTION 14.

SECRETARY reads Section 14, and it is moved and seconded that it be adopted.

Mr. CLAGGETT. I suggest that the same amend-

ment be made in this section as in the previous section.

Mr. HEYBURN. I have sent up an amendment of that kind.

SECRETARY reads: Amend Section 14 by inserting after the word "of" in the second line the word "treason," and after the word "or" first occurring in said line, the word "other." (Seconded).

Mr. AINSLIE. The committee accepts the amendment.

The CHAIR. The question now recurs on the adoption of the section with the amendment as accepted by the committee. (Carried).

SECTION 15.

SECRETARY reads Section 15, and it is moved and seconded that the same be adopted.

Mr. BEATTY. Might I be allowed to ask the chairman of this committee whether any provision is made in case either the governor, lieutenant governor or speakers of the houses are incompetent to fill these offices?

Mr. AINSLIE. So far as the committee is concerned, we never found anything, any provision of that kind in any constitution we examined. You can always elect a new president of the senate pro tempore, or a new speaker of the house, if either one of them dies or becomes disqualified. The legislature can provide for a successor to the office in either house, who would naturally succeed to the office made vacant.

The CHAIR. What will the committee do with the section? It is moved and seconded that the section as read be adopted. (Carried).

SECTION 16.

SECRETARY reads Section 16, and it is moved and seconded that the same be adopted. (Carried).

SECTION 17.

SECRETARY reads Section 17, and it is moved and seconded that the same be adopted. (Carried).

SECTION 18.

SECRETARY reads Section 18, and it is moved and seconded that it be adopted. (Carried).

SECTION 19.

SECRETARY reads Section 19.

Mr. AINSLIE. Mr. Chairman, it appears to me that in line 16 the word "tenure" should be always "during the term."

Mr. MORGAN. That depends upon what the committee means. "Tenure" means the holding of office, and the word "term" means the time for which he was elected or appointed.

Mr. POE. I would ask the further consideration of this section by postponing it until we take up the consideration of the report of the committee on Salaries of public officers; they necessarily go together. The report of that committee will have to be done away with and no part included as an article in the constitution, or else this section will have to be expunged from the report of the executive committee. And we can act upon it more intelligently when we take up the matter of salaries. Of course it would be possible to authorize the blanks to be filled, but they cannot be filled until after we consider the report of the committee on Salaries of public officers, and I therefore move that the further consideration of this section be postponed until the matter of the consideration of the report of the committee on Salaries is taken up.

Mr. BEATTY. I move an amendment to this motion.

The CHAIR. It has not been seconded.

Mr. AINSLIE. I second the motion.

Mr. BEATTY. Then I move the previous motion, and that the committee on Revision be instructed to fill up these blanks after this committee's report.

Mr. GRAY. I think that would be perfectly proper, that after the passage of the salary bill, that these blanks may be filled by the committee on Revision; it

would be a portion of their business, in accordance with the report of that committee; and therefore let's get through with this bill.

The CHAIR. Does the gentleman from Nez Perce accept the amendment?

Mr. POE. There has been no second to my motion, and therefore there is nothing to accept.

The CHAIR. I understood that the motion was seconded. The motion was made by the gentleman that the consideration of this section be postponed until the report of the committee on Salaries was taken up. That was seconded by the gentleman from Boise. The gentleman from Alturas moves as an amendment or substitute to this motion, that the consideration be proceeded with, except that the blanks be left to be filled after the convention, or committee of the Whole under the convention, has passed upon the report of the committee on Salaries. The question recurs first upon the amendment.

Mr. BEATTY. By the committee on Revision.

The CHAIR. By the committee on Revision, as shall have been determined by the convention when they shall have got the report of the committee on Salaries. The question is first, on the amendment that the blanks be left to be filled by the committee on Revision, after we shall have acted upon the report of the committee on Salaries. (Vote and carried).

The CHAIR. The question now recurs upon the adoption of the section, otherwise than the filling of these blanks; what will you do with the section?

Mr. McCONNELL. I would like to offer an amendment.

Mr. SHOUP. I would like to inquire if the report of the committee on Salaries does not provide that the lieutenant governor shall be a salaried office?

Mr. POE. No sir, it makes no provision of that kind, but that he shall only receive such pay as the speaker of the house shall receive.

Mr. CLAGGETT. There is one provision here

that should be stricken out altogether, or it should be changed, I think, To bring the matter before the committee, I move to strike out the word "tenure" in line 16, and insert the word "term" in Section 19. (Seconded).

Mr. CLAGGETT. The way the matter reads then, "No person mentioned in this section shall be eligible to hold any other public office except regent of the state university during his term of office." That is, during the term for which he was elected. It is limited to the governor of the state, the state auditor, treasurer, attorney general and superintendent of public instruction. I make the motion for the purpose of preventing occupants of these high offices in the state government, from accepting one position by an election before the people, and then during their terms of office intriguing to secure other offices. It is one of the most fruitful causes of abuse that has been known on this Pacific coast. I approve the limiting of it myself to the governor, but I make the motion for the purpose of bringing it before the convention. (Seconded).

Mr. McCONNELL. I have an amendment.

SECRETARY reads: Amend line 16 of Section 19 by inserting after the word "university" the words "or member of the state board of land commissioners." (Seconded).

Mr. AINSLIE. I would ask the gentleman from Latah county, if there is not some provision in the bill on education that creates these offices, that provides a state board of land commissioners?

Mr. McCONNELL. That is the object of making that amendment. In our report of the committee on Schools and Public Lands, we provide for a state board of land commissioners, for the sale of public lands, school and university lands, and it would be necessary, I think, to have that in there.

Mr. AINSLIE. On behalf of the committee, we make no objection to the amendment.

The CHAIR. Do you accept the amendment pro-

posed by the gentleman from Shoshone also?

Mr. AINSLIE. No sir, I certainly do not want to accept that. That would leave a doubtful construction, as to whether the term of office would be for the time he was elected; better leave it as the committee has reported it, as tenure of office. It may be that some of these gentlemen may want to run for the United States senate, and that would shut them out, if you make the amendment proposed by the gentleman from Shoshone. I do not intend to intimate that any of them would be candidates for that office, although I don't think I have heard one of them refuse it. But there may be instances where the offices of state treasurer, auditor and superintendent of public instruction—some of these offices are filled frequently by lawyers; now there may be a vacancy in the office of district attorney, or in some district office, and sometimes the salaries of those offices are better than that of state superintendent of public instruction or state treasurer, and a man might want to resign his state office and become a candidate for the vacant county office, and if you change the word "tenure" to "term" it would deprive him from being a candidate for the minor office; that would be one objection to it.

Mr. MORGAN. There is one other reason; as the section reads, if you change the word, it would prevent any in those positions from accepting any federal office also.

Mr. LEWIS. Could not there be other officers provided by the legislature, I mean, ex-officio commissioner of public lands, in connection with the office of emigration commissioner?

Mr. CLAGGETT. By leave of my second, whoever it was, I would like to withdraw and re-present the amendment which I offered, so as to cover my own ideas about it.

The CHAIR. Is there any objection to his withdrawing it?

(No objection is made).

Mr. CLAGGETT. I move to amend the section, withdrawing the other amendment, by adding after the word "office" in line 16 the following: "nor the governor during the term for which he was elected." That then will prevent any one of these officers mentioned in the section from duplicating an office during the time that he holds his office, and will make the governor ineligible to any other office in the state during the term for which he is elected.

The CHAIR. Now read the sentence as amended.

SECRETARY reads: No officer mentioned in this section shall be eligible to or hold any other public office, except regent of the state university or member of the state board of land commissioners, during his tenure of office, nor the governor during the term for which he was elected.

Mr. CLAGGETT. I offer the amendment, Mr. Chairman.

The CHAIR. The chair would like to ask the gentleman from Shoshone if he withdraws "during the term" instead of "tenure."

Mr. CLAGGETT. I did state that; I got leave of the convention to withdraw that. The idea of presenting that amendment is this: The governor possesses a large amount—or will possess, in one form or another, a considerable degree of patronage. On the Pacific coast it has been in years past a fruitful source of trouble, that the governor has used the patronage—all the patronage of his office and the influence of his position, for the purpose of lifting himself into some other office, generally that of senator of the United States; and the governor's chair is frequently made a place from which political intrigue extends out into all portions of the territory, and improperly affects the freedom of legislative action in this regard. I think any man who receives from a vote of the people of the state electing him the office of governor, should be contented with it during the term for which he was elected,

and not during that term aspire to any other position of a higher nature.

Mr. MAYHEW. I would like to ask the gentleman a question: If the election of governor in this state would then not be interfered with very materially, as to getting a good and responsible man to run for governor; you have so many candidates for United States senator—there are so many in the state, you will never get a governor. (Laughter). But how can he accomplish his wish if the balance of the people don't think it is right? It makes no difference about patronage. I would just as soon see a governor go to the United States senate as anybody else; but I think if you are going to cut off the governor from aspiring to the senate of the United States, we shall never be able to get a good governor in this state.

Mr. McCONNELL. I would like to ask the gentleman from Shoshone a question. Is it not a fact that the United States senate judges as to the eligibility of their own members? Would any action we take here prevent them from giving a seat on the floor to any person who was properly elected from this state?

Mr. CLAGGETT. So far as that matter is concerned, the question of eligibility when you go to Washington is to be determined by the Constitution of the United States, I presume. But one thing is certain, in case this amendment were adopted, it would prevent the legislature from sending a governor there. The question of his eligibility never would arise in the senate, because he never would get to the senate. Now I want to state one thing more about this matter. In California at an early date, Mr. President, this matter was a great public abuse. The legislature elected the governor of the state of California simply, as was said and believed at the time, according to agreement, and the trouble about it was that his election to the position of United States senator was by reason of the patronage of his office. So far as the suggestion that has been made here by my friend from Shoshone, that you

would have no governors in case you shut out senatorial aspirants, I don't know how many senatorial aspirants there would be in the state—I presume the usual number in all new states—but so far as this is concerned I don't think there will be any trouble whatever in getting all the material you want for governor, who would not want to go to the United States senate, or who could not go if he wanted to.

Mr. BEATTY. I regret the gentleman from Shoshone withdraws the other amendment. I am heartily in accord with the amendment as now proposed, but go further. I think when the people elect a man to any office he should undertake to fill that office during the term for which he was elected, and not when he gets into office merely use it for something else, and hence I regret the proposition has been changed at all; let it apply to all the offices. We do not want to send a man up here as attorney general and as soon as he gets here see him go to work for some place else and compel us to look around for another attorney general; and so it applies to all offices. I think when a man asks to be elected to any office he should take it with the understanding that he will fill it until the end of the term. I am in favor of this motion, as I would be in favor of the other, if the gentleman from Shoshone had not withdrawn it.

Mr. STANDROD. I desire to ask the chairman of the committee on the Judiciary Department if this same provision is not had in their report, applicable to the justices of the supreme court?

Mr. HEYBURN. It is.

Mr. CLAGGETT. Yes, that is a fact.

The CHAIR. The question recurs upon the adoption of the amendment to the section. The amendment proposed by the gentleman from Latah has been accepted by the chairman of the committee, to insert the words "or member of the state board of land commissioners." The amendment proposed, to strike out the word "tenure" and insert "term" has been with-

drawn. The question is now upon the adoption of the amendment proposed by the gentleman from Shoshone, to insert the words "nor the governor during the term for which he was elected." As many as are in favor——

Mr. HEYBURN. Before that is put, in view of the question that was asked me, the object of inserting that in the Judiciary bill there was to remove from politics and political ambition the supreme bench. It does not apply to the district judges, only the members of the supreme court, and I hope that this amendment will not prevail, because it is making an exception of the governor, and his office is a more valuable one in a pecuniary sense than some other state offices, and if it is applied to one, it should be applied more generally.

Mr. McCONNELL. I hope this motion will not prevail, because I have heard this question discussed so thoroughly and seen its relief tried. The state of Oregon has a provision similar, but when several years ago Col. Tom Cornelius, whom you may know, was nominated by the republican caucus of his state for the office of United States senator, he felt as though under his oath of office he could not accept it. He refused positively, and they nominated another individual who was sent to the United States senate. In recent years, within the memory of all of you who are familiar with our political history in the Oregon legislature, the question was raised in the case of the Hon. Sol Hirsch, who was then a member of the state senate, and they balloted in their senate chamber for Mr. Hirsch, to assure that election. Now it was held by all the attorneys there, that while that provision was in the constitution, yet there was nothing to prevent the election of Mr. Hirsch and his getting his seat. I believe the same state of affairs may arise in this state if we adopt this provision, and it will only be simply a block in the way.

Mr. SWEET. That word "tenure" it seems to me is rather loose in construction, and I am sorry to see the word "term" withdrawn. According to this the secretary of state, state auditor, state treasurer or attorney

general, may accept these appointments, serve a couple of weeks, and then, if they see anything better, drop the offices. I would like to see that word "term" put in.

Mr. AINSLIE. As a legal proposition I think the position taken by the gentleman from Latah is correct. The qualifications of United States senators and members of Congress are prescribed by the constitution of the United States, and the state legislature cannot prescribe any additional qualifications whatever. I think it would be a nullity to put it in the constitution of a state, prescribing that the governor should not be elected to any office, as senator or member of Congress, or any other office he chooses to run for. As long as a man possesses all the legal qualifications for any office under the government of the United States as provided by the constitution of the United States, he is eligible to that office, notwithstanding any disabilities which may be placed upon him by the state constitution. We cannot amend the constitution of the United States, and I am willing any man should run for any office he wants to, whether governor or justice of the peace. Cleveland was elected president of the United States while governor of the state of New York, and while governor of the state of New York was nominated by a national convention of the United States, but under the proposed provision of the constitution of Idaho he would have been deprived of becoming a candidate for such office.

Mr. CLAGGETT. The gentleman from Boise is mistaken when he says the constitution prescribes the qualifications of a United States senator. It certainly does not. It contains the prohibition that none but a citizen of the United States and who shall be thirty years of age, shall be eligible, but leaves it to the state to prescribe as to who shall have the qualifications to go there; except it is a prohibition on the states against sending a man there who is not a citizen of the United States or who is under thirty years of age, and that is all there is of it. The suggestion made by my friend from Latah that in Oregon the attorneys of that state

held, notwithstanding their constitution, that the legislature could go on and send a man there, if that is correct, it is certainly a remarkable kind of attorneys out there in Oregon, when they held it was competent for the legislature of the state to set aside the constitution of the state or any constitutional provision of the state. But, as I said before, the eligibility of members is not determined by the constitution of the state, but there is a provision against sending anybody there except some one who will answer the requirements that he shall be a citizen and thirty years of age. I think that answers the question made. Now I have limited the matter here to the governor by this motion. The motion, as has been suggested, may be amended, so as to cover the idea I had originally, to prevent this matter of skirmishing around between officers. I am thoroughly in sympathy with the idea that an officer elected to office shall be content with that office during the term for which he was elected, and as suggested by the gentleman from Bingham, it is a grave abuse for a man to receive an office, hold on to it for a month or six weeks, and then go skirmishing around until he gets a better one and resigns. It will tend to perpetuate what may be called the official class of the state, and it is a class which should not be encouraged.

Mr. McCONNELL. In defense of the legal provision of the state of Oregon, I wish to say that the United States senate permitted their contention by seating the Hon. J. H. Mitchell, who when first elected was a member of the state senate.

Mr. CLAGGETT. That may be; the United States senate would not kick about it, if the state did not kick against the violation of its own constitution.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone, to insert after the word "office" "nor the governor during the term for which he was elected." (Vote.) The chair is in doubt. (A rising vote shows 21 ayes, 32 noes.) The motion is lost.

Mr. BEATTY. I now renew the motion made first by the member from Shoshone, that the word "term" be put in place of "tenure."

(Seconded. Cries of "Question.")

Mr. AINSLIE. That has been decided by the last vote, I think. I don't see any use of renewing those amendments. The sense of the house has already been taken a little while ago, unless it is simply to delay the proceedings of the convention.

Mr. BEATTY. I did not consider this last vote decided this question. Many members may not have voted for this, because it was applicable to only one officer, whereas many members will vote for it if it is made applicable to all, and that was the view I took, in the event that it was a proper motion.

Mr. MORGAN. I rise to a point of order. The precise question was decided in the last vote. You must exclude the governor from the amendment, or else the question has been decided. We will be taking the vote right over again. We have just decided that the governor may be elected to some other office.

The CHAIR. The chair has to rule, and he has no power to construe the meaning of words. The point of order is not well taken.

(Cries of "Question.")

The CHAIR. The question is upon the adoption of the amendment proposed by the gentleman from Alturas, to strike out the word "tenure" and insert the word "term." (Vote.) The chair is in doubt. (A rising vote shows 27 ayes and 24 nays.) The motion is adopted. The question now recurs upon the adoption of this section as amended. (The question is put and the section declared adopted.)

The CHAIR. It is now in order to move that the committee rise and report back to the house, or that the report be laid aside for the amendments to be inserted, and that we proceed with the order of the day. What is your pleasure?

Mr. BEATTY. I move that the committee proceed

to the consideration of the next order of business, which is probably this report of the committee on Seat of Government.

Mr. GRAY. Should not we now adopt this bill here?

The CHAIR. The chair would suggest to the gentleman from Alturas, covering the inquiry of the gentleman from Ada, that the report be laid aside for the present and that we proceed.

Mr. MAYHEW. The question the mover means is, should not the committee now adopt this article as a whole, as amended?

The CHAIR. That is the motion of the gentleman from Alturas, that the whole of this report, which has been adopted, be laid aside now for the present, and be reported back to the convention, with the recommendation that it be adopted in the convention. Do you mean adopted as a whole?

Mr. GRAY. As a whole, now by the committee.

The CHAIR. I think your motion takes precedence of the other. Have you a second? (Motion is seconded.)

The CHAIR. The motion is that the committee adopt the report as a whole, as it has been read and adopted by sections, as amended. (Carried.)

The CHAIR. The question is now upon the motion of the gentleman from Alturas, that the report as adopted be laid aside for the present and reported to the convention when the committee rises, and that the committee now proceed with the next order of business, the report of the committee on Seat of Government. (Carried.)

ARTICLE 10—PUBLIC INSTITUTIONS.

Consideration of Bill No. 6. (Being report of committee on Seat of Government, Public Institutions, Buildings and Grounds).

SECTION 1.

SECRETARY reads section one, and it is moved and seconded that the same be adopted. (Carried.)

Section 2.

SECRETARY reads section two.

Mr. MAYHEW. I move to amend section 2, by striking out the word "twenty" in line two, and inserting the word "ten." (Seconded.) That limits the legislature from interfering with the seat of government for ten years. Ten years in the growth of this territory will be a great deal. We really cannot tell where the center of the population of the state will be at the end of ten years, and I think it would be better to limit the legislature for ten years from interfering with the seat of government. It is not necessary to say it shall not interfere with it for ten years, a dozen or fifty; it can remain there forever, so far as that is concerned, but this putting it at twenty is beyond the necessary limit, I think.

(Cries of "Question.")

Mr. GRAY. Why the committee put this in, it was deemed advisable that as considering the expense that had been incurred in public buildings, that it would probably be better for that term of years, that it would not be for the interest of the territory to incur further expense during that time, that the territory or the state might not be able so to do, and to keep the question from the legislature, and those who might, in spite or malice, not having the interest of the state at heart, keep this matter continually before the legislature, and thereby affect more or less the legislature of the state. They viewed at the same time that twenty years is not very long for incurring the expense we have in a new state, in the financial condition we are now in; and it was the unanimous view of the committee, as I understand it, that such should be the case,—to leave it where it is for twenty years, and that then it may be submitted by the legislature to the people.

Mr. MAYHEW. I cannot help what this territory has gone to work and done heretofore in relation to building a capitol buiding. I say that this is the only

territory perhaps among all the territories that has assumed to do anything of that kind, so far as my knowledge is concerned, and I did not believe that we should deprive the people of the state in the future for a greater length of time than ten years from saying as to where the capital should be. The territorial legislature, when they voted that we might expend $100,000 for the erection of public buildings,[1] had no right so to do, in my opinion, and create that indebtedness against the territory and the people. Because they have done that, which in my opinion,—I am only speaking now of my own individual ideas of this matter,—if they assumed to do this upon their own responsibility, they had no legal right to do it, they had no political right to do it, yet they have done it and the people of the territory have acquiesed in it, and because they have incurred this indebtedness in the erection of a capitol for this territory, having no legal authority in my opinion to do it further than assuming to do it,—it should not deprive the people in the future, ten years from now, through their legislature from saying that the capital should be removed. Mr. Chairman, it has generally been the case in all these territories that the United States government and the Congress of the United States has always donated land and money for the purpose of erecting public buildings in the state. This territory has gone on and done it, and could not possibly in the future, when they become a state, ask the government to refund the money that the territory has expended in erecting a capitol building. Congress would say; you have done so; it is your own business; you have built up your own state capitol, and you must take the consequences. I don't think it is any argument, because we have spent this money in a territorial matter that the people of the state should be deprived ten years hence from saying where the capital should be.

Mr. CLARK. The changes of the next ten years,

1—Referring to act of 1885, Terr. Sess. Laws p. 62.

or twenty years, it is impossible to perceive, and yet it is not wise that we should foster a spirit of change as regards the future of a great state. The city of Boise has no prior right upon the capital or upon any other privilege from the citizens of this state. Yet the citizens of this city have a right to a cessation from contention, so far as can possibly be provided for. If ten years are fixed, it will not be six years before the contention will begin, before plans will be made and entered upon, and the expense of money entered upon, to effect the result. It seems to me the limit of twenty years is sufficient. By that time the other public institutions of the state will be settled; the geographical distribution of these institutions, as may be required, will be settled upon, and the people can far more intelligently determine this question at the end of twenty years than they can at the end of ten.

Mr. HARRIS. Mr. Chairman, I have an amendment.

SECRETARY reads: To amend section 2 by inserting after the word "be" in the first line the word "permanently," and strike out all after the word "city" in line 2. It will then read, "The seat of government of the state of Idaho shall be permanently located at Boise City." (Seconded.)

(Cries of "Question.")

The CHAIR. The question is upon the amendment offered by the gentleman from Washington. (Pefley, "Aye", balance of vote, "no.") The noes have it. The question now recurs upon the amendment of the gentleman from Alturas to strike out the word "twenty" and insert the word "ten."

Mr. MAYHEW. I do not happen to be from Alturas. (Laughter.)

The CHAIR. I beg the gentleman's pardon. I thought the amendment was offered by the gentleman from Alturas; it is Mr. Mayhew. (Vote.) The chair is in doubt. (Rising vote shows 28 ayes and 23 nays.) The ayes have it and the amendment is adopted. The question now recurs upon the adoption of the section

as amended. (Vote.) the chair is in doubt. (Rising vote shows 34 ayes, 14 noes.) The ayes have it and the section is adopted as amended.

SECTION 3.

SECRETARY reads Section 3, and it is moved and seconded that it be adopted. (Carried.)

SECTION 4.

SECRETARY reads Section 4, and it is moved and seconded that it be adopted.

Mr. CLAGGETT. What are we going to do with the capitol, that is provided for in this section? I would suggest that the capitol building, and all other public buildings, the property of the territory, shall become the property of the state.

Mr. MORGAN. I think the penitentiary belongs to the United States; I don't know how we can do it.

Mr. GRAY. Mr. Chairman, it will be turned over, we can do it; it was put there upon condition of being turned over.

Mr. MORGAN. There should certainly be some amendment to this. We have nothing to do with the penitentiary at Boise.

Mr. GRAY. I can't see how it would do any harm.

Mr. MORGAN. We cannot give away the property of the United States.

Mr. GRAY. If it is given to us, it will become the property of the state.

Mr. AINSLIE. I would suggest that the state can rent a piece of property and use it for such purposes and continue it as an institution of the state, and still not own the realty. There is nothing which would prevent in that language.

Mr. GRAY. It would be under the management of the state.

Mr. CLAGGETT. I offer this amendment: Strike out all down to the word "shall" in the second line, and

insert the words "all property and institutions of the territory." (Seconded and carried.)

The CHAIR. The question now recurs upon the adoption of the section as amended.

Mr. AINSLIE. Let's have it read as amended.

SECRETARY reads: All property and institutions of the territory shall upon the adoption of this constitution become the institutions of the state of Ideho, under such laws and regulations as the legislative assembly shall provide.

Mr. CLAGGETT. I move an additional amendment, to insert after the word "become," in the third line the words "property and," so that it will read "All property and institutions of the territory shall upon the adoption of this constitution become the property and institutions of the state of Idaho, under such regulations as the legislative assembly shall provide." (Seconded and carried).

The CHAIR. The question is now upon the first amendment proposed by the gentleman from Shoshone. (Vote). The amendment is adopted.

The CHAIR. The question now recurs upon the adoption of the section as amended.

SECRETARY reads section as amended: All property and institutions of the territory shall upon the adoption of this constitution become the property and institutions of the state of Idaho, under such laws and regulations as the legislative assembly shall provide.

Mr. CLAGGETT. I further move to amend by striking out all after the word "Idaho" in the third line, making the transfer by the constitution complete, and not requiring the legislature to make the transfer from the territory to the state. (Seconded).

The CHAIR. The question is now upon the third amendment offered by the gentleman from Shoshone, to strike out all after the word "Idaho" in the third line, which embraces the words "under such laws and regulations as the legislative assembly shall provide." (The amendment is seconded and carried).

The CHAIR. The question now recurs upon the

adoption of the section as amended; the secretary will read it as amended.

SECRETARY reads: All property and institutions of the territory shall, upon the adoption of this constitution, become the property and institutions of the state of Idaho. (Carried.) The section is adopted as amended.

SECTION 5—(AFTERWARD STRICKEN OUT).

SECRETARY reads Section 5, and it is moved and seconded that it be adopted.

Mr. MORGAN. Mr. Chairman, if that amendment is adopted, it would not make any difference how much land Congress should give the territory of Idaho for university purposes; it would all belong to this university at Moscow, as I understand it; but I think it is making too sweeping an arrangement. I think the lands that should be given to the territory of Idaho for university purposes should be distributed according to the laws of this territory.

The CHAIR. Does the gentleman propose to amend?

Mr. GRAY. May I ask the gentleman, in the third line, in regard to the phrase "unto the said university?" I think it is "said university" in every case where it occurs.

Mr. MORGAN. Mr. Chairman, I move to strike out.

SECRETARY reads: I move to strike out all of Section 5 after the word "university" in line 3. (Seconded).

Mr. MORGAN. I do not wish to be understood as being against the university at Moscow. I hope there will be abundant donations given to that university, and I have no objections, of course, to any private donations being given to it. But it seems to me that to transfer in addition all of the university lands which will be given by the United States to this territory—which may include hundreds of thousands of acres—to one univer-

sity would be unjust to the balance of the state. We may desire to establish normal universities, or other universities in different parts of the state hereafter. Of course this donation to this university would make it immensely rich, and would prevent the state probably from building up any other institution in the country, unless they did so out of the funds of the state hereafter.

Mr. GRAY. It was not the intention of the committee, nor is it my desire—but I say it does not read so; it says to the said university, and it seems to me the object of this amendment is, that if any donation should by act of Congress be given to this university, the gentleman does not want it to go there. I don't know as it will prevent it, that is, its going there, and it says, to said university: "all donations are hereby perpetuated unto said university of lands granted hereafter by Congress, or other donations for said university purposes."

Mr. MORGAN. The language of the section, Mr. Chairman, is ambiguous as it is; I want to make it certain. As a matter of course, if this is stricken out, if Congress should grant lands to this particular university, they could do it notwithstanding this, so that the gentleman's ideas would be preserved after all. But it is certainly ambiguous—"for said university purposes." If lands should be granted for university purposes, there would be a question at least as to whether this university should not take the whole of it.

Mr. GRAY. Strike out the word "purposes."

Mr. CLAGGETT. That does not meet it; it reads: Shall vest in the institution referred to in this section; that is, it shall be vested in the institution of the university at Moscow.

Mr. HEYBURN. I propose an amendment.

SECRETARY reads: Amend by striking out the word "said" in the fourth line, and insert the word "state" after the word "the" in said line, and strike out all after the word "institutions" in said line, and insert instead "for university purposes."

The CHAIR. The clerk will make the amendment, and then read the section as proposed to be amended.

SECRETARY reads: "All the rights, immunities, franchises and endowments heretofore granted or conferred upon the university at Moscow are hereby perpetuated unto said university, and all the lands hereafter, etc., for the state for university purposes." (Seconded).

Mr. BEATTY. As I look upon it, all the rights, immunities, franchises, etc., to which that institution is now entitled by the laws of this territory, will be perpetuated by the schedule which is to be adopted to this constitution, and then it would be left to future legislatures to control these matters. Moreover, these rights and immunities cannot be taken away by any act of ours here or any future legislature. I take it that all the conditions of this section, as well as the following Section 6, are purely matters for legislative enactment hereafter, and I move you therefore to strike Section 5 entirely out.

The CHAIR. Sent up as a substitute.

Mr. HEYBURN. Mr. Chairman, the section does seem to be obnoxious to the criticism made upon it. The words "said university" in the last line, refer to the university named at Moscow, so that with the amendment of striking out the word "said" all of these lands and grants of Congress would belong to that university by name, because it is named in the section. Now as proposed by the amendment, it will confer upon them all the rights they have, and will confer upon them or vest in them all of the grants that are made directly to them, and grants that are made in general terms, for university purposes, will be grants that shall vest in the state for university purposes; that is the object of the amendment, so that the university fund of the state, outside of these matters that are specifically donated to this institution, shall go into the general university fund, to be subject to the direction and control of the state through its legislature. As has been

remarked, the people of this state might at some time see fit to institute some other institution of learning; they might think that one university was not sufficient for all purposes, and desire to establish one somewhere else. Then there would be a general university fund, the result of the donations of land, or whatever the donations may be in character, for the purpose of establishing that; and in the absence of any such other institution, then that of course would be applied to this institution. As a matter of necessity there must be some university in the state which will derive and receive the benefits of all these donations, but we don't want to mortgage ourselves by making it impossible to apply any donation to the university funds to the establishment and maintenance of any other university.

Mr. SWEET. I hope the amendment offered by the gentleman from Alturas will prevail. There can be but one state university, although there may be branches of that university all over the state. For instance, it is proposed that a board of regents, consisting of so many members, shall be appointed. That board of regents has charge of the state university. A school of mines, attached to the state university, may be established at Coeur d'Alene; it is nevertheless a portion of the state university. An agricultural college may be established in Boise City, it is nevertheless a part of the state university and entitled to a part of any donations given to the state university. I apprehend that Congress will not be appropriating lands to any one institution except a state institution, and if it is desired that it be left uncertain as to where that institution shall be located, I hope it may be done openly and plainly, so that the people may understand just exactly what is meant. I therefore hope that the amendment proposed by the gentleman from Alturas, which strikes out the whole business and makes it plain and clear, may be adopted.

Mr. GRAY. Mr. Chairman, the duties of this committee are described on page 8: (reading) "This committee to consider and report all matters pertaining to

the location of the seat of government, the character and location of public buildings and grounds, and the control and government of the same." Those would seem to be the duties that are prescribed by this convention for that committee. Perhaps it might seem that it should come under the Education Bill, but those are the duties that are prescribed there to the committee. I am not the chairman of the committee—the chairman does not seem to be present, but that was what was done, and it would seem from the directions there given that it was required to do what it did do.

Mr. MAYHEW. I am in favor of striking out all the section, as proposed by Mr. Beatty. That leaves these donations and grants of land by the Congress of the United States to be controlled and regulated by the state legislature for other institutions of learning. Now if this university is to have branches or institutions connected with it, to be located in other places in the state, then I am in favor of the prevailing of the motion that this section be stricken out, but if it is not to apply in that way, I would be in favor of the amendment offered by the gentleman from Shoshone (HEYBURN) because I think donations of every character and grants of land by the government of the United States to institutions of learning should be distributed to the different institutions of learning throughout the state, and not to one single university.

Mr. PINKHAM. I rise in support of the motion made by my colleague from Alturas county for this reason: That it appears that the committee who have made this report have gone beyond their jurisdiction in this matter, as their duties are confined to the seat of government and public buildings. We have another committee of this convention, known as the committee on Education, Schools and School and University Lands, where this proposition, in my way of thinking, properly belongs. In our report we have provided almost in the same language—a few discrepancies only, as to the rights, immunities and franchises made already by the

legislature of this territory to this university. We have also provided for the election or appointment of a board of regents. When this subject comes up and we are discussing the section in the educational report, I think we can discuss it more fully and understandingly in that place than we can in the report of the committee submitted here.

Mr. ALLEN. As I understood the amendment of the gentleman from Alturas, it was to include the striking out of Sections 5 and 6.

The CHAIR. Section 5.

Mr. BEATTY. Section 5. Section 6 is not now under consideration. I shall make the same motion, if this motion prevails.

Mr. GRAY. As the gentleman from Alturas says——

Mr. HOWE. I rise to a point of order. This is the third time, I believe, the gentleman has risen on this question. I object.

The CHAIR. The gentleman cannot proceed, then.

Mr. GRAY. I only want to explain one word.

The CHAIR. The gentleman cannot proceed without the convention's consent.

Mr. MORGAN. I hope he may be allowed to proceed.

The CHAIR. When gentlemen have objected, he cannot proceed without the order of the convention.

Mr. GRAY. What we may be sure——

The CHAIR. The gentleman is out of order.

Mr. MORGAN. I move that he be allowed to proceed. (Seconded).

The CHAIR. The question is, that the gentleman be allowed to proceed. (Carried).

Mr. GRAY. I want to ask the gentleman from Alturas what other committee had directions the same as this has? For they have had it under consideration and given it to this committee, and therefore this committee had nothing to say, when we were ordered to do so by the convention. I think there are things for the

committee on Revision to agree upon—that they may agree upon some of these things and make them harmonize; but it was our duty to report, and the idea that because it has been submitted by another committee, that that committee must have it, I can't see. We had nothing to do with the university lands in our report; that was given to the educational committee. We have only fulfilled the duties that were given us.

Mr. PINKHAM. I would like to ask the chairman of the committee who made this report how he can regulate public buildings when no public buildings exist? Go out here and cut up a few bunches of sagebrush to exercise your authority over that, but until there are public buildings to regulate, I don't see how this committee can prescribe rules and regulations for the government of something that does not actually exist.

The CHAIR. The chairman of the committee is not present.

Mr. GRAY. We have an insane asylum; we have university grounds; there is a prison we have something to do with. I don't know——

(Cries of "Question").

The CHAIR. The question is first upon the substitute of the gentleman from Alturas to strike out the entire section. (Vote). The chair is in doubt. (Rising vote shows 39 in the affirmative, 6 in the negative). The substitute is adopted. The adoption of the substitute carries with it the question of the other two amendments.

PROPOSED SECTION SIX STRICKEN OUT.

SECRETARY reads Section 6.

Mr. McCONNELL. I move to strike out Section 6. (Seconded and Carried.)

SECTION 5.

SECRETARY reads Section 7. (5).

Mr. HEYBURN. I have sent up an amendment.

Mr. GRAY. In this section of the bill this morning, it was made, instead of "state treasurer," "attorney general." If there is no amendment——

Mr. HEYBURN. I have sent up an amendment to put that in there. I would like to ask the educational committee if that is in their report? (Laughter).

SECRETARY reads: Amend Section 7 (5) by striking out in the first line after the word "state" the word "treasurer," and insert the words "attorney general." (Seconded).

Mr. CLAGGETT. I move that the word "prisons" in the third line of the section be stricken out and the word "penitentiaries" be inserted. As it now stands it covers the case, and makes the governor, secretary of state and attorney general a board to have charge of all prisons, that is, of all the county jails and calabooses throughout the state.

Mr. GRAY. I think the amendment should be accepted. I will speak for the committee, as the chairman is not here.

The CHAIR. The question then recurs upon the amendment offered by the gentleman from Shoshone, Mr. Heyburn, to amend Section 7 (5) by striking out in the first line after the word "state" the words "state treasurer" and inserting the words "attorney general."

Mr. GRAY. On the part of the committee I will accept that amendment.

The CHAIR. The question recurs upon the adoption of the section as amended.

SECRETARY reads: "The governor, secretary of state and attorney general,"—the word "and" was not in the original bill.

The CHAIR. The secretary will insert the word before "attorney general."

Mr. ALLEN. I think in line 3, this language should be changed to read: "the management of state prisons." There is no state penitentiary, and there may be more than one, if other institutions are established. I offer that as an amendment.

The CHAIR. The clause, as it will read after the committee has accepted the amendment of the gentleman from Shoshone, is "direction and management of the penitentiaries of the state." The gentleman from Logan moves to strike out penitentiaries and insert "management of state prisons." The chair hears no second to the amendment.

(Cries of "Question").

The CHAIR. The question then recurs upon the adoption of the section as amended. The clerk will read it.

SECRETARY reads: Section 7 (5). The governor, secretary of state and attorney general shall constitute a board to be known as the state prison commissioners, and shall have the control, direction and management of the penitentiaries of the state. The governor shall be chairman, and the board shall appoint a warden, who may be removed at pleasure. The warden shall have the power to appoint his subordinates, subject to the approval of the said board.

The CHAIR. The question is, shall the section be adopted as——

Mr. HEYBURN. I notice the word "and" instead of "who." It is not "and shall have," but "who shall have."

The SECRETARY. I think that was my mistake in reading.

Mr. MORGAN. I move to strike out the word "who" and insert the word "and" in the third line.

Mr. GRAY. I will accept the amendment.

The CHAIR. Then it will read "and shall have the control, direction and management of the state prisons." As many as favor its adoption as amended, say aye. (Vote and carried). The section is adopted.

Section 6.

SECRETARY reads Section 8 (6), and it is moved and seconded that the section be adopted.

Mr. HARRIS. I see it reads: "There shall be ap-

pointed by the governor three directors of the asylum, who shall be confirmed by the senate. They shall have the control, direction and management of the same"—which, of the senate or the asylum? is the question.

Mr. HAGAN. I would like to ask what asylum that refers to. The asylum mentioned heretofore has been stricken out. What asylum does this refer to?

The CHAIR. The only members of the committee present are Mr. Gray, Mr. McConnell and Mr. Mayhew. Perhaps——

Mr. McCONNELL. I move to amend Section 8 (6) by adding after the words "of said asylum" in line 3——

Mr. CLAGGETT. What is the object of that?

Mr. McCONNELL. The gentleman from Shoshone seemed to be in doubt whether it was mentioned.

SECRETARY reads Mr. Heyburn's amendment: Amend Section 8 (6) by inserting after the word "same" in the third line, the words: "under such regulations as the legislature shall provide," so that it will read: "They shall have the control, direction and management of the same, under such regulations as the legislature shall provide, and hold their offices for a period of two years."

The CHAIR. Now the amendment of the gentleman from Latah.

Mr. McCONNELL. I am not sending it up.

The CHAIR. Is there any support to the gentleman from Shoshone's amendment?

Mr. MORGAN. I suggest that the words should be inserted, after the word "management," "of the said asylum," instead of the word "same."

Mr. GRAY. We will accept the amendment. There is no asylum named there; it might be asylums. There is only one at the present time.

The CHAIR. Does the committee accept the amendment?

Mr. GRAY. We will; I don't know that it makes

any difference, because there is none named. Perhaps it would be well to put that in the plural.

Mr. HEYBURN. I will accept the suggestion of the committee, and put it in the plural.

Mr. CLAGGETT. I have an amendment.

SECRETARY reads: After the word "asylum" in the first line, add the words "for the insane." (Seconded).

The CHAIR. The question is now upon adding the words "for the insane" after the word "asylum."

Mr. GRAY. We will accept the amendment.

The CHAIR. How does the balance read, with the other two amendments accepted?

SECRETARY reads: There shall be appointed by the governor three directors of the asylums for the insane, who shall be confirmed by the senate. They shall have the control, direction and management of the said asylums under such regulations as the legislature shall provide, and hold their offices for a period of two years.

Mr. ALLEN. I understood that the word "asylum" was changed from the singular to the plural.

The SECRETARY. It is so.

Mr. ALLEN. Now it seems to me this whole matter is mystified to a certain extent. It seems to me this matter should be left to some other legislature. The proposition requires an amendment to the constitution.

(Cries of "Question").

The CHAIR. Does the gentleman offer an amendment?

Mr. ALLEN. No sir.

The CHAIR. The question is upon the adoption of the section as amended by the committee.

Mr. AINSLIE. Before that is put, I was going to suggest that the legislature may provide for another asylum in some other part of the territory. I think it should be put in the plural instead of the singular.

The SECRETARY. It is in the plural.

The CHAIR. So that it will read "asylums." The question is now upon the adoption of the section, with

the amendments as accepted by the committee. (Carried).

SECTION 7.

SECRETARY reads Section 9 (7), and it is moved and seconded that the same be adopted. Carried.

The CHAIR. If there be no objection, the clerk will insert the proper numbers. Two sections have been stricken out.

ARTICLE TEN ADOPTED.

Mr. HOWE. I move the adoption of this article. (Seconded and carried).

The CHAIR. The article is adopted.

Mr. CHANEY. I move that the committee now rise.

SECTIONS 18 AND 19, ARTICLE 4.

Mr. McCONNELL. Just a moment, please. I move that the vote by which Section 19 of the report of the committee on Executive Department was adopted be reconsidered.

Mr. SHOUP. I second the motion.

Mr. MAYHEW. I call the gentleman to order.

Mr. McCONNELL. I would like to explain my reasons.

The CHAIR. The gentleman cannot do it now; he may by proper motion in the convention.

Mr. McCONNELL. Very well; I would like to state my reasons, so that if I am not here it will not be overlooked. We have only provided certain offices, which may be filled by the governor, secretary of state, and so on, and in this bill I notice there is a prison commission to be appointed, consisting of certain persons as a board, and under the provision which we adopted in Section 19 it cannot be constituted.

Mr. AINSLIE. I will call the attention of the gentleman to Section 18.

Mr. MAYHEW. I move the committee now rise and report the two articles back to the convention. Do

I understand that we are not yet through with these two articles that have been considered this morning?

The CHAIR. The chair does not understand the gentleman. Numbers five and six have been completed. The first one was laid aside to be reported and this one has just been adopted. Now the question is, what will you do with it, lay it aside, or report it to the convention, with the recommendation that it be adopted?

Mr. MAYHEW. I move that the committee now rise and report the articles back to the convention, with the recommendation that they be adopted.

The CHAIR. Does the gentleman from Latah accept the amendment of the gentleman from Shoshone?

Mr. CHANEY. Yes sir.

The CHAIR. The question is now that the committee rise, and report the two articles, one on the Seat of Government and the other on the Executive Department, with the recommendation that they be adopted. (Carried). The committee will now rise.

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. REID. Mr. President, the committee of the Whole have had under consideration the report of the committee on Executive Department, and report the same back to the convention and recommend as follows:[1]

That sections 1, 2, 4, 5, 7, 8, 9, 10, 11, 13, 15, 16, 17, and 18 be adopted.

Amend section 3 by inserting the word "or" after the word "governor." In second line strike out the words "or superintendent of public instruction."

Amend section 6, by inserting after the word "of" in the sixth line, the words; "office of a justice of the supreme or district court," and by inserting in line 4, after the word "any," the words "state or district."

Amend section 12 by inserting before the first word in line 2 the word "treason," and the word "other" after the word "or" in line 2.

1—This report is taken from the Journal, p. 148, not being in the reporter's notes.

Amend section 14 by inserting after the word "of" in line 2 the word "treason," and after the word "or" first occurring in said line, the word "other."

That the committee on Revision be authorized to fill the blanks in section 19 in conformity with the action of the convention when it shall have acted upon the report of the committee on Salaries of Public Officers.

Amend line 16, section 19, by adding after the word "university" the words; "or member of the state board of land commissioners." Also amend by striking out the word "tenure" and insert "term" in lieu thereof, in line 16.

And that the report be adopted as amended.

Also the committee has had under consideration the report of the committee on Seat of Government, Public Institutions, Buildings and Grounds, and report the same back, and recommend as follows:

That sections 1, 3 and 9 be adopted.

Amend section 2 by striking out the word "twenty" in the second line, and insert instead the word "ten."

Amend section 4 by striking out all down to the word "shall" in line 2, and insert "all property and institutions of the territory", and after the word "become" add "the property and", and strike out all after the word "Idaho."

Strike out all of section 5.

Strike out section 6.

Amend section 7 by striking out the word "prison" and insert the word "penitentiary" in the third line; and by striking out in the first line, the words "state treasurer," and insert the words "and attorney general."

Amend section 8 by inserting after the word "same" in the third line, "said asylums under such regulations as the legislature shall provide," and after the word "asylum" in the first line add the words "for the insane."

And that the report of the committee be adopted as amended.

JAMES W. REID, *Chairman.*

Mr. REID. This report I now make, with the motion that the report lie upon the table, to be taken up at the pleasure of the convention. (Seconded).

The CHAIR. You have heard the motion made by the chairman of the committee. (Vote and carried).

Mr. MAYHEW. I now move that this convention take a recess until 2:30 p. m. (Seconded).

Mr. TAYLOR. I move to amend by making it two o'clock. (Seconded).

The CHAIR. It is moved and seconded that the convention take a recess until two o'clock.

Mr. TAYLOR. I will withdraw the amendment and leave it 2:30.

The CHAIR. The question is to adjourn until half past two o'clock. (Vote and carried).

AFTERNOON SESSION.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Mr. MORGAN. I move that the convention go into committee of the Whole upon the report of the committee on Legislative Department.

Mr. HEYBURN. I second the motion. (Vote and carried).

Mr. PRESIDENT. The gentleman from Latah, Mr. McConnell, will take the chair.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. McCONNELL in the Chair.

The CHAIR. The business before the committee is the report of the committee on Legislative Department.

SECTION 1.

SECRETARY reads Section 1.

Mr. KING. Mr. Chairman, I wish to introduce an amendment to Section 1. I move to amend Section 1 by striking out the words "senate and," in the first line.

Mr. HARRIS. I second the amendment.

Mr. MAXEY. I have an amendment.

Mr. KING. The section I want to amend will then read: "The legislative power of the state shall be vested in a house of representatives," doing away entirely with the senate. The reason which prompts me to make this amendment will require some explanation, as it makes a change in our form of government different from anything we have in the Union of the 38 states. It makes it different from any legislative body

in the civilized world that I am aware of. In all civilized nations that have adopted a constitutional form of government, they are composed of three branches, among which are the legislative, consisting of a lower house and a senate, under various names, and the executive.

In ancient times there were but three forms of government known, with slight modifications; the one established a monarchy, the second an aristocracy, and the third a democracy. In a democracy the whole power of the government was centered in the people; they made the laws and they executed the laws. In the aristocratic form of government the law-making power was in the aristocracy, and as a consequence they framed and executed all its laws; they were the government, in fact—the law-making power, the executive power. In a monarchy, then as now—in an absolute monarchy the law-making power was centered in the king; he made the laws and executed them. It was not until the adoption of the English constitution—or rather, it was not regularly adopted; it is a thing that has grown up, say in the last four hundred years. It was an attempt to combine in one government the three distinct forms of government that had hitherto been in existence. It was to create one branch of the legislature composed of the people, or a portion of them, another branch to be composed of the aristocracy, and a third to be composed of the king. Each one of these branches had a complete veto upon the powers of the other. No law could be enacted by the house of representatives, or the lower house, by whatever name it might be called. In England, from which we have adopted our system, it was called the House of Commons. The House of Commons could not pass a law, neither could the House of Lords pass a law, nor could the king pass a law; it required the concurrent jurisdiction of these three supreme powers, each having a check upon the other. We have adopted the same system. The people in their representative capacity are unable to pass a law without the

consent of the senate in any state in the Union, or in the United States. This thing has grown up by a slow growth in England in the courts of justice. England at the close of what might be called the dark ages, was like all the nations of Europe, governed by kings who had absolute power in their hands. They had the law-making power, with some slight restrictions. The aristocracy rose up against their kings, and wrested from their kings a part of their power. They wrested from King John a large part of what we call the prerogatives of the crown, among which was the right to a voice in making the laws. And there was also conferred upon the people a similar right in the House of Commons, but no power like what now exists. The lords, to secure themselves from the attacks of the people on the one hand, and from the attacks of the king on the other, who might interfere with their rights, procured a provision that there should never be a law passed without their consent. They had an absolute veto upon every law that might be proposed, that might affect their interests or the interests of the country. They were to be the judges, and there was no power provided by which their decision could be overruled. It was essentially an aristocratic government. They, by the laws of their government had almost the absolute control of the House of Commons, for no man could be a member of the House of Commons unless he was a land-holder. There was no man could vote for a member of the House of Commons unless he was possessed of the qualifications of a land-holder, or a renter of land to a certain amount. That excluded from the right of suffrage the great mass of the people of the country. For ages England was ruled exclusively by a king and an aristocracy—the whole power was in their hands. By the exercise of their rights as the great land-holders of the country, holding all the great mass of the people as their tenants, dictating to them how they should vote, with the privileges that had been conferred upon the landed aristocracy, and having the right of representation in what

has been termed in these latter days, rotten boroughs, where a single land-holder had sometimes the appointing of pretty near a score of the members of the House of Commons—for instance there was one borough with a single solitary voter, and he a tenant simply of one of the great land-holders—the land-holder then under that system could say to these men: Vote thus and so, or I will turn you off the land. The Duke of Sutherland, I believe, had seven of these rotten boroughs; there was not a member of the royal family but what had a large number of these rotten boroughs under his control, and by this means they could control the lower house of parliament. They practically had a negative upon all the laws that could be passed; nothing could become a law without their consent. It was an institution got up for the protection of the privileged classes; it never was pretended that it was for the interests of the great mass of the people. Yet our forefathers participated in this belief of the right of the aristocracy to have a voice, in adopting the same system, and we have adopted the same system in this country, only under a different name. The senate of the United States stands there, a body where 39 men have the absolute power in their hands to defeat all the legislation that Congress can enact. We have in every state of the Union a senate consisting of a few men where a majority of from ten to fifteen or twenty men have an absolute power to prevent the passage of any law, the amendment of any law, or the repeal of any law. What is this done for? Why invest a body of men so few in number with this vast power of controlling the laws of the country? Is it done in the interest of the great mass of the people? I think no man will claim that it is for the interest of the great mass. It is done in the interest of a class of men who have by law secured rights and powers and privileges inconsistent, in my opinion, with the privileges that should be conferred by a nation that professes to regard all men as equal. Now we are proposing a constitution here in which ten men are to be invested

with the absolute power to defeat the legislation of the legislature of this state by the house. Now a majority of the house of representatives who represent the people, knowing their wishes and their wants, can go and frame a law, and by this constitution ten men will have the absolute power to prevent it. If the representatives of the people think that there are laws upon the statute book that are against the great interests of the great mass of the people, ten men by this constitution can stop any law proposing to repeal them. If there is a proposition made and sanctioned by a great majority of the people of this state to amend a law in the interest of the people, there are ten men who by this constitution have the power conferred upon them to prevent the enactment of that law, and there is no appeal, no remedy. Should the governor refuse to sanction it, the law provides a remedy, that three-fourths of the houses may override the decision, but you are putting in this constitution precisely the same power that is conferred by the common law of England upon the House of Lords—the absolute veto of anything that does not suit their wishes. If we put that in, we cannot change it for years to come. If you elect a class of men that will not obey the wishes of the people you have got to wait four years to turn them out. In the meantime there is no doubt but a class of men possessed of vast wealth, who have secured rights, powers and privileges that enable them to amass wealth, they are interested in that—they are the men who would take a deep interest in securing the election of ten of their men when the time comes around. The people are scattered over a vast extent of country, having no special interest in the existence of this law, whatever it may be, either a new law or the repeal of an old law or the amendment of a law, and cannot combine against the great wealth of the country to secure the defeat of men who are in favor of keeping up this system. As it is in the senate of the United States, here are men—do they represent the people? It is a well known fact

and accepted by almost every man, that the great bulk of men in there have amassed enormous wealth. Compared with the nobility of England sitting in the House of Lords they have amassed in a few years more wealth than has been amassed by the aristocracy of England in hundreds of years, aided as they have been by the laws of primogeniture and entail; yet these men by the operation of laws that have been enacted in their interests, have acquired wealth that threw them entirely in the shade, and we have men in our midst who by the operation of these laws have secured fortunes such as the richest aristocrats of Europe cannot equal. Those laws can never be repealed so long as you put it into the hands of a few men who have been benefitted by those laws, who have the wealth to control legislation and say: All we want is that 39 men shall be in our interest seated in the United States senate, and we defy you people to repeal that law.

Another question comes up in regard to us in this state, and that is the apportionment of senators. If we do away with the senate you will do away with a very vexatious question that is about to trouble this convention, that is, how to carry out the district problem in this state. This proposition provides for the election of one senator from every county. You propose as republicans, as democrats, do you, to give to a county like Cassia with a population of 1,400 inhabitants——

Mr. BEATTY. Mr. President.

Mr. KING. —the same power in making laws as is given to the largest county in the state with a population, of ten or twelve——

Mr. BEATTY. I want to know whether the ten-minute rule shall be enforced this afternoon or not,

The CHAIR. I will call the attention of Mr. King to the fact that the gentleman's time has expired.

Mr. STANDROD. I move the gentleman have an extension of ten minutes. He is an old gentleman and labors under some disability. (Motion seconded).

Mr. MAXEY. I suggest that the gentleman con-

fine himself to the section under consideration.

The CHAIR. Is it the pleasure of the convention that the gentleman have further time? There is no objection; go on, Mr. King.

Mr. KING. I say, Mr. Chairman, that we will meet a great difficulty here. We are proposing to do a thing, I think, that is utterly unjust to the people of this state. We are proposing in the making of our laws to give to the smallest county in this state, with a population not one-fifth of some other county, equal power with us in the making of the laws of the state.

The CHAIR. That section is not under discussion, Mr. King.

Mr. KING. I know that, but I am just alluding to the principle involved. No matter what you do, you are going to give to a senate consisting of a few men, where ten men is a majority—you are giving them absolute power to defeat the passage of any law that may be proposed by the people of this state, whether it shall be passed by an absolute majority or a unanimous vote of the lower house of the legislature, ten men can defeat it. For instance, suppose that all the representatives there should vote in favor of a law, or the repeal of a law, or the amendment of a law; by this constitution, if you adopt it as proposed, you give to ten men the absolute power to put their veto upon it, to say that you shall not have that law as you want it. And you have no power under heaven by which you can change that until another election comes around. I say that is not a republican form of government if you do that. I do not look upon the government of the United States as a republican form of government. Why, you go into the senate of the United States, and the state of Delaware, with a population of less than 200,000, has got the same power in the senate as the state of New York with over five millions. You give the little state of Rhode Island, with only a population of 250,000, just as much power in the making of laws as you give to the state of Pennsylvania. You give to the state of New

Hampshire just as much power in the making of laws as you give to the big state of Ohio. You give to Vermont just as much power in the making of laws as you give to the great state of Illinois. You may say that one has got more representatives than the other, but what do your representatives amount to when you have an equal voice in the senate, where each state stands upon an equality—each state with two votes; and no man will say that if a big state, with all its members of congress, were to pass a law here, that the senators in there must pass upon, in every instance, taking a vote separate from them, that the big state and the little state would not be of equal force. I say it amounts to this. If you adopt a senate by the provision as it is in there provided, that they shall have an absolute veto, then ten men will have it in their power to prohibit, you may say, any change in our laws whatever. I do not consider that a republican form of government; it is the establishment of an aristocracy. The adoption of this clause in this provision, that is, the putting into this chapter of our having a senate—by that very act you confer upon these men this power. Just as it was in the republic of Venice, where the Council of Ten were chosen by another body, and when once chosen they were the most despotic government on the face of the earth, a body of men ten in number that had absolute power, the same as proposed here. Nothing could become a law wthout their consent; no man, you might say, could be one of the officers of the law without their consent. You give to the senate the right to say who the governor shall appoint to the offices that we incorporate in our constitution. They have that power and there is no way to take it from them; it is a power granted to them by this constitution; it is a power that has been granted by the constitution of every state in the Union, giving a few men the absolute power to put a check upon anything which they may consider against their interests, and they are the men that generally get there. Why, they are those men that have an ax to

grind; there will be a good many axes to grind in this state by and by, in all human probability. If congress should grant to this state large tracts of land, which is not improbable, as has generally been the case, there will be a necessity to frame laws for the disposal of those lands. Why invest ten men with absolute power to prevent the passage of any law unless it suits their own interests? Look at the chances there always are for men to make money, as we know from experience with this class of men, by doing this thing. We read the charges made in the democratic and republican papers in every state of the Union, almost, to the effect that a seat in the senate has been sought by different men to enable them to make money. These senators have been ready to stand in the interests of that class of men. Men seek for that office in preference to being a representative; why? Because they have double and triple the power. It is an encouragement, as I consider, to that class of politicians and men who make politics a trade, who strive in all ways possible to get a position in the senate of a state or the senate of the United States, that they may have a chance to make money. I do not look upon this system of the senate as founded upon anything but a desire to increase the wealth of the privileged class, to increase their power and their patronage. It was used for that purpose inevitably. There was no pretext that it was for any other class of citizens than to guard and protect the rights of the aristocrats, and we have followed in that path. It has been a very good thing for a good many men. Honest men in this country have been unable to secure the enactment of laws or to prevent their repeal when it suited their circumstances. That has enabled us in the short period of 25 years to establish an aristocracy of wealth such as this world never saw before, and there will be no chance in my opinion to repeal it as long as we give a few men in each state the absolute power to decree its legislation.

(Cries of "Question").

Mr. PARKER. Mr. President, the chief hostility

to a second chamber arises from a general belief that it is too exclusive and aristocratic a body to have any part in a republican or democratic form of government, and that the second chamber is ever opposed to the best interests of the people. This belief, this hostility against a second chamber, originated in English history, in the history of the House of Lords of Great Britain, which was a house of hereditary legislators, and as such it was always found in opposition to the best interests and wishes of the people. So too in our own United States we find the United States senate composed today largely of aristocrats and millionaires, and that too has added its influence in creating hostility against a second chamber. But in a state legislature, Mr. President, we go directly to the people to elect our state representatives and senators also, and I therefore claim that a state senator is as much a direct representative of the people as a state representative himself, and I think if you will turn back to national history you will find that the framers of our national republic were wise when they provided for two councils, because they were afraid to trust any one man or any one constituted authority with exclusive power. But, Mr. President, the majority of a single chamber such as is contemplated by this amendment, easily becomes despotic and arbitrary, because there is no authority over it to check that despotism.

Mr. MORGAN. I call for the question.

The CHAIR. The question before the committee is: Shall the amendment proposed by the gentleman from Shoshone (Mr. KING,) be adopted? (Mr. King says "aye"). Those opposed "no." (Vote). A majority vote in the negative; the motion is lost. The question is now upon the amendment offered by the gentleman from Ada, (Mr. MAXEY).

SECRETARY reads: Amend Section 1 by adding after the word "representatives" in the second line the following: "The secretary of state shall call the house of representatives to order at the opening of each new assembly and preside over it until a temporary presid-

ing officer thereof shall have been elected from that body and seated. Said presiding officer must be one of the representatives elect."

Mr. MAXEY. Mr. President, you will observe that my change of the wording of the original text is simply to add this provision in the middle of the section. The report of the executive committee provides for a senate and president of the senate, but nothing is said about a presiding officer or any officer to organize the house of representatives. It seems to me it is necessary that some one should be designated to call the house of representatives to order and get them started.

Mr. PIERCE. In Section 10 of this article the gentleman will find it says each house when it assembles shall choose its own officers, etc.

Mr. MAXEY. The gentleman will observe that this is only to set the house in motion; it does not prohibit them from electing their own officers.

The CHAIR. The question before the committee is on the adoption of the amendment offered by Mr. Maxey of Ada. (Vote). The motion is lost. The question now recurs upon the adoption of the original section.

SECRETARY reads Section 1.

The CHAIR. The question before the committee is upon the adoption of the section as read. (The motion is carried and the section declared adopted.)

SECTION 2.

SECRETARY reads Section 2.[1]

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[1]—Sec. 2. The senate shall consist of one senator from each county, and the house of representatives of double the number of the senate: *Provided*, the legislature may increase the number of representatives from time to time, but the number of representatives shall at no time be more than three times the number of senators: *Provided*, also, that the number of senators shall never be greater nor less than the number of counties. The senators shall be chosen by the electors of the respective counties, and the representatives shall be chosen by the electors of the respective districts into which the state may from time to time be divided by law.—(As given in the *Idaho Daily Statesman* of July 16th.)

Mr. MORGAN. I offer the following substitute for Section 2.

Mr. HARRIS. I move the adoption of the section as read. (Motion seconded).

The CHAIR. It is moved and seconded that the section as read be adopted. The gentleman from Bingham offers the following substitute.

SECRETARY reads substitute for Sec. 2. The senate shall consist of twelve members, and the house of representatives of twenty-four members. The legislature may increase the number of senators and representatives: *Provided,* That the number of senators shall never exceed twenty-four, and the house of representatives shall never exceed sixty members.

The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Mr. MORGAN. I move the adoption of this substitute.

Mr. HEYBURN. I second the motion.

The CHAIR. Are you ready for the question.

Mr. AINSLIE. I would like to know how the senators and representatives will be elected to the first state legislature under that provision. There is no apportionment or any provision made for it. There should be an apportionment immediately made re-districting all the territory for the district judges and prescribing what counties shall constitute the First, Second, Third and Fourth districts, etc.

The CHAIR. The Apportionment committee has provided for that I suppose; they have not reported yet.

Mr. AINSLIE. I think I should prefer the original draft as it stands.

Mr. MORGAN. I would say, Mr. Chairman, that the committee on Legislative Department did not think it was in their province to make any report with reference to the apportionment of the territory. That is en-

tirely in the hands of another committee; they, of course, will make that arrangement.

Mr. REID. Before the vote is put on the substitute I would like to call the attention of the convention to one fact, that under the substitute some counties may be left both without a senator and a representative. You may search all the constitutions and you will always find a provision that a county shall have a senator or representative. I prefer the original section as it is embodied in the report of the committee on Legislative Department, and I believe it will hold them in check better than the substitute.

The CHAIR. The question is upon the adoption of the substitute.

Mr. AINSLIE. I move as an amendment to that substitute to strike out the whole section.

Mr. MAYHEW. I am rather inclined to think it would be better not to do that. As one of the members of this body I do not know what the committee on Apportionment is going to do. We have had no report or any intimation what the provisions will be in the article on apportionment. It may be necessary even after we hear the report of the committee on Apportionment to enact or pass just such a section as we have in here. I am opposed entirely to the substitute as offered by the gentleman. I do not know who did offer it. And I am opposed to striking out this section as it stands. I am of the opinion of Mr. Reid on the subject, that it will leave the matter so that some of these counties will be without representation in the senate.

Mr. REID. The way we have got it now every county is bound to have a representative.

Mr. MAYHEW. Certainly; it may be changed of course, but this section 2 provides absolutely by this article in the constitution that each county shall be represented with one senator and one representative, and may be increased according to the number of inhabitants. We are going out of this colonial form of government into state government, and my own opinion

always has been, Mr. Chairman, so far as the legislature is concerned, that it has not been sufficiently represented in the legislative halls. I think our representative apportionment by the organic act of Congress has been too small, and my experience has been that the larger the representation, so long as it is not a burden to the people, the better laws we have enacted and better men get into the legislature. You have a few persons in the legislature every session that had better stay at home and if you have a larger number the state will be better represented.

The CHAIR. Is there any second to the motion of the gentleman from Boise?

Mr. SHOUP. Mr. Chairman, as regards the duties of the committee of Legislative Apportionment, I take it the rules direct this committee to consider and report the apportionment of members of the legislative body of the state to the several counties, and to district the state. I do not understand that this committee is authorized to fix the number of members in either house. That belongs to another committee, and if it had been decided how many members we shall have in each branch of the legislature, then the apportionment committee could make an apportionment; consequently there will be nothing for that committee to do until that question is decided.

Mr. MAYHEW. I do not understand that this is the view of it. I think this section does provide,—it does not say it shall not be increased, but it says, as I consider the point, Mr. Chairman, that they shall be represented in such manner that each county shall have a senator, and that the representation shall be increased according and in the manner prescribed by law,—by the legislative body shall be increased. Now I think as a foundation for the legislative body that some law, some act, should be incorporated in the constitution, and I cannot conceive any arrangement that meets my approbation any better than the section in this article. I can't say that I should be in favor of

each county having a senator, because that would put the counties that have a very large number of inhabitants and the counties that have a small number of inhabitants on an equal footing, but as a foundation I think it is necessary that this article should remain in the constitution subject to any amendment. That substitute the gentleman offers, I cannot conceive what the reason for it is, and I have heard no reason on this floor for its support, and I think we should be careful in adopting any such measure as that substitute.

Mr. AINSLIE. The reason I made that motion was that it had been decided by the committee of the Whole on several occasions prior to this time, that where matters have been referred to other committees organized under the direction of this body, that the particular committee should report those measures and not the other committee. This morning in passing upon this report of the committee on Seat of Government, Public Buildings and Grounds, there were two provisions, five and six, in regard to franchises and endowments of the university at Moscow, and those provisions were stricken out for the reason that the committee on Education claims they covered those sections in their report, and it properly belonged to them; they were stricken out almost unanimously. Now this question of apportionment under these rules is left to the committee on Apportionment, on page 7 of our rules; which is constituted the largest committee of this convention, as I think. Now the committee on Legislative Department, it would seem, usurped the functions of the committee on Apportionment in placing in the second section of their report the apportionment of state senators of the legislature. Now, we have heretofore sustained the immunities and privileges of every committee in the committee of the Whole that has legitimately considered the subject for which that committee was organized by the house. Now I insist this belongs to the committee on Apportionment, and we have the largest committee

of the convention to consider that subject. I say strike out Sec. 2 and let them report that matter.

Mr. REID. I hope that will not prevail. I do not see any lack of harmony between this section and the duties of the committee on Apportionment. This provides a number of officers, how they shall be elected, and where from and how the representatives shall be apportioned, would be all that was left to the committee on Apportionment. They can apportion the representatives, but this section should fix the senators. Now when they come to fix the number of representatives, they may make it two or three in large and populous counties, and they may take a small county and attach it to a large one, but this assures to large and small counties one member in these bodies, and I am opposed to the substitute as stated by the gentleman. We have been living under the organic act; we have been used to twelve men in the senate and twenty-four in the house. If we have sufficient resources and sufficient importance to become a state, I think our senate should be larger than twelve, so as to have representation for the entire territory and its diversified interests; we should have as large a body as we can support without burdening the taxpayers, and I think the original section is a good one. If we try it and it does not work well, the people are going to revise it.

Mr. CLARK. I have an amendment to the substitute which I have sent up.

SECRETARY reads: I move to amend and substitute by increasing the number of senators to eighteen and representatives to thirty-six, and adding; "provided, each county shall have at least one representative."

Mr. PARKER. I second the amendment.

The CHAIR. It is moved and seconded that the substitute be adopted.

Mr. HARRIS. I shall heartily oppose both the substitute and the amendment, because I don't think there can be a more equitable distribution of the sena-

tors than that proposed by the original text. It gives to each county a voice in the confirmation of the governor's appointments,—not that the senate is a higher body than the house. That gives to each of the counties an equal voice. In this territory, of eighteen counties, there are fourteen of them of very nearly equal voting strength; there is not a great deal of difference judging by their representation in this body. There are, of the other four, three which are very nearly equal. Now that matter can be adjusted, so as to make them equal in the whole legislature, by apportioning to them a larger number of representatives. I contend, as a member from one of the smaller counties, for the original bill as reported.

Mr. CLAGGETT. Mr. Chairman, I certainly do hope this section 2 will not be adopted, and that the substitute offered by the gentleman from Bingham will be. We are now laying the foundation of the political power of the state; I am not talking about power in the abstract, but the political power,—that power which each subdivision of the state is to represent and exercise in the councils of the state. And if it be true that all power is of right derived from the people, and if it be further true that the majority of the people should govern and express the will of the whole, then it is perfectly plain,—at least to my mind, that equality of representation should be the controlling factor in the solution of this problem of apportionment, or rather of representation. The proposition which is here embraced in this report of the committee on Legislative Department, is a proposition to this effect, that each subdivision by counties in this state shall have an equal representation in the smallest and most select body of the two houses of the legislature. When we get down to the merits of the proposition, it is nothing more or less than a proposition to give one county that votes 500 votes the same political strength as another one that votes ten thousand. Whatever may be the difficulty of representation now,—and it is now very

greatly unequal, we are making a constitution here for all time, so far as this convention is concerned, and these inequalities will become more and more glaring in the different counties as we proceed. If this convention shall be of the opinion that each county shall be represented in one house or the other, then by all means the most equitable proposition would be to give each county a representative in the lower house, which will consist of from two to three times as many members as the senate. When you get right down to the proposition and analyze it, you will find that the proposition embraced in this section 2 reported by the committee on Legislative Department, amounts to this; that about one-third or two-fifths of the voters of this state are to have control of one of the co-ordinate branches of the legislature, and I say it is in direct violation of every rule and principle upon which representative government is based in the United States. I think I am not exposing any secrets when I say that both political parties on this floor have substantially agreed upon one proposition, although as yet it has not come before the convention freely for discussion, and that is, that a large portion of our population,—or certainly a respectable portion in numbers,—the Mormon population, is to be disfranchised. I will take one of the counties which does not poll one hundred legal votes, with that proposition here, and it has the same political power in that small and select body as would be had by the largest county if it had ten thousand votes. If my friend from Washington should advocate it upon the true ground he has in his mind,—not upon the ground that it is fair and just, but upon the ground that it gives his county an advantage it is not entitled to, then at least his advocacy of this proposition would be intelligible.

Mr. POE. Mr. Chairman, I favor the measure as originally presented. I am of the opinion that it is a fair and equitable division of the political power of this territory. I take it that each county of this terri-

tory is a sovereign within a sovereign, and that the people within that sovereign have rights in legislative bodies, and they are entitled, before any of those rights can be taken away from them, to a representation in that body. Now let us see as to the equality of representation. We take as a basis that each county, irrespective of the amount of population it may have, shall have in the legislature at least one representative,—absolutely one representative. Now the idea is fair that the representative shall be a senator. That county which sends a senator may have enough population to entitle it to a representative also. If it has not enough population to entitle it to a representative, then of course all the representation it has in the legislature is confined to a senator alone. The gentleman from Shoshone, (Mr. CLAGGETT) thinks it would not be fair for a little, insignificant county, that had but a few hundred population, to have the same representation in power in the senate that the larger county would have. Now I say that it would be equally unfair for that large county, the county with vast population and diversified interests, to have absolute control and power over the legislature and over the people of that little county, so that they might pass any laws they saw proper, without this other county having proper representation in that body. As it is, we, in every state of the Union, have prospered under this theory of two senators from every state in the Union. The least state in population, according to the size of its representation in the senate of the United States is the greatest; and it was recognized as being according to the justice of the thing, because they are entitled absolutely to a voice there, Now when we come to the larger states, the constitution has wisely provided,—and so does the provision in this wisely provide, that these larger counties shall have a representation in proportion to their population in the lower branch of the legislature. I therefore can-

not conceive where there is anything unfair in allowing the smaller county an absolute representation in the form of a senator, and the larger county the same representation. To the larger county having more population, give two, three, four or five representatives, in proportion to its population, in the house of representatives. When it comes to a joint ballot, as it would upon the election of a senator, that larger county has got its advantage in its vote over the smaller county, yet that county has got a representation there, and as was wisely suggested, whenever the question arose of an appointment by the executive that requires the confirmation of the senate,—when we say the confirmation of the senate, we mean the confirmation of the people through their representatives,—I say that that county is entitled to a voice in that council to say whether that appointment shall be confirmed or not.

Mr. HEYBURN. Mr. Chairman, it seems to me the gentleman entirely misapprehends the principle upon which states are represented in the United States senate. There is a certain sovereignty about a state; it may frame its own constitution, within certain limits it has its own separate government, and it is in its essential being a state. No such character can be attached to the existence of a county. We have heard of state sovereignty, but I never heard of county sovereignty. I suppose next we will have township and village sovereignty, so that they will have to be represented, each as an integral thing of itself, in our legislative bodies. But the principle that applies to the one does not apply to the other at all. These counties are not unrepresented, as one might be led to infer from the arguments of the gentleman,—they are not unrepresented. They are to be attached together until a sufficient number of them comprise a sufficient number of voters to entitle them to a representative, and the person who represents the other counties represents each one of those counties, just as though he was the

sole representative from that county. It seems to me it is so manifestly unjust upon the face of the statement, that a county that only casts a hundred or two legal votes, should have the same power in the councils of the state as a county that casts several hundred. It is un-American, it is a violation of the principles that underlie our government of equal representation to all the people, based upon the number of people themselves.

(Cries of "Question.")

The CHAIR. The question is before the committee on the adoption of the amendment offered by Mr. Clark of Ada to the substitute offered by Mr. Morgan of Bingham. (Vote.) The motion is lost. The question recurs upon the original motion, the adoption of the substitute. (Vote.) The chair is in doubt. (Rising vote shows 31 in the affirmative, 20 in the negative.) The motion to adopt the substitute is carried, and the substitute is adopted in the place of section 2.

SECTION 3.[1]

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[1]—Section 3. The senators shall be elected for the term of four years and the representatives for the term of two years from and after the first day of December next following the general election: *Provided*, however, that when the senators elected at the first election after the adoption of this constitution shall assemble at the seat of government, they shall, on the first day of the convening of the legislature next thereafter, draw numbers for long and short terms.

Numbers corresponding with the number of senators elected shall be placed on separate pieces of paper, which shall thereafter be carefully folded so as to hide the number and placed in a box.

The senators shall then, in the presence of the governor, secretary of state and state auditor, or any two of them, draw the numbers from said box. Those drawing the odd numbers shall serve for the term of two years; those drawing the even numbers shall serve for the term of four years, so that thereafter one-half of the senators shall be elected every two years, and in case of an increase of the number of Senators, the same proceedings shall be had to determine the long and short terms of the senators first elected from the new districts.—(Convention Journal, p. 202.)

SECRETARY reads section 3.

Mr. REID. Mr. President, I have an amendment.

SECRETARY reads: Strike out the figure "4" in section 3, line 1, and insert the figure "2". (Seconded.)

Mr. REID. After the adoption of this substitute for section 2, I don't think the senator's terms should be extended to four years; it should be two, the same as the terms of the members of the house of representatives. After the adoption of this substitute a moment ago, the giving of four years to the senators will practically put the political power of this new state in the hands of two counties, unless they are divided. We have in this body to-day about one-third of the representatives of the territory coming from Shoshone and Ada counties, to-wit sixteen members. Now, under the principle announced by the gentleman from Shoshone, that representation should be based upon the population and voting strength, at least four of those twelve senators,—and you limit it to that number as I understand the substitute, it limits the senators to twelve, and therefore you will have one-third of the senators from two counties, and in for four years. Now if you apportion the representation according to population they will take one-third of the representatives, and you will have in here for two consecutive terms two large counties, and all the smaller counties, as joined for voting, must take their chance that any representation will be left, and of being controlled by these two larger counties. For instance, Kootenai, Custer, and Idaho, and those other counties where the Mormons have been disfranchised and you can only count the Gentile vote, they will be practically disfranchised, if these two counties choose to do it, after the first meeting of the legislature. Why? Because the power is given to the legislature after the first apportionment. We make the apportionment now, but when the legislature meets they may change it, and think you the majority won't change it to suit themselves in order to keep the power? There is no doubt that you will find representatives

willing to keep power. And coming in under this apportionment, that is, the basis upon which the gentleman announced it should be done,—if you carry that out, then these larger counties will come in with a larger representation, and the smaller counties, some possibly represented here, can be practically without representation. In other words, all the governor's appointments will be subject to the say-so of these larger counties, and it may be,—I didn't hear the gentleman put in any proviso, that every county would have a representative, but it would not if we increase in counties. We have eighteen now, and he only proposes twenty-four members. Suppose we grow as we hope to grow, gain as much as Washington Territory, and have 24, 34 and 50 counties; we will have one house composed of twenty-four members, and one of twelve, and some will go altogether unrepresented. And now they have stricken out "2" in section second, and put in the same old system we have under the organic act of the territory. I say we should have them all elected at the same time, every two years. If the people want to change their representatives or change any law they have upon the statute book, or adopt new measures, let them have a chance to do so every two years.

Mr. MORGAN. I believe this is a very common provision in the constitutions of nearly all the states in the Union, that one-half of the senators should be elected every four years, and I believe it is almost universally the case in the older states; they are elected in nearly all cases for four years. One-half of the number go out every two years, so that a portion of the body all the time may be men of experience. That is the only object probably in this provision, so far as I know. So far as the number of senators and representatives being limited to twelve and twenty-four, it is not done. The substitute which has been adopted makes it within the power of the legislature to change it the very next session, if it sees fit to do so, and to increase the number of senators and representatives;

as the population of the counties increases in the territory they may increase the senators and representatives both, and the section provides for that; it does away with the objection the gentleman urges: I do not think any county or two counties can control the politics or appointments of the state under this section. It does not seem to me it is possible for them to do so. The main object in making one-half of the senators elective every two years is, as I stated, to have experienced men in this body all the time.

Mr. MAYHEW. I don't know what the gentleman means by experienced men. I have had a little experience in that way in two legislatures of this territory. I have known portions of this territory in the legislature, where they had an equal vote to their counties, absolutely deprived of more than one-half the representation they were entitled to. Now I say, Mr. Chairman, that any legislature in the world that has the power they have themselves, acts the king,—any men that have the power,—they will if possible prevent a change in that representation. I don't think because we are forming a state government, that you are going to change the character of the men that come into the legislature. I don't believe you will change their political ambition to work for the different sections they represent and to hold political power in the way of representation. I observed three years ago in the legislature of this territory that it was within the power of two counties of this territory to prevent a correct representation in the legislature, and it was done. Bingham County, which had a very limited representation in the legislature, joined with Alturas county and prevented the other counties from having a just representation, and members of this body now can bear testimony that the statements I make are correct. And even in the last legislature it was very hard to give every county in this territory a representation in the representative body. They wrangled, fought and abused one another to that extent that men became so

disturbed in their political sentiments that they had no communication with one another as members of the legislature, trying to keep the political power in a certain section, and for that reason I support the amendment that the senators shall be elected every two years, as the others are. Experienced men in the legislature! The experience of these past members who are to remain over as senators,—their experience only goes to the extent by which they can maintain political power in their hands, and not that the people shall be well represented. I think the amendment offered is a good one. It is a strange thing to me, Mr. Chairman, that that bill was reported to this body, and reported in the manner it was, and the first thing that happened the chairman of that committee should desire its alteration. It seems to me you can see politics sticking out of this question so plainly and strongly that it must arouse the condemnation of every man in this convention.

Mr. BEATTY. The member from Nez Perce stated that two strong counties would be enabled under this proposition to practically control the legislature. Now my observation has been that where one strong county or two strong counties undertake to control a body, unless they have an absolute majority, they invariably fail. Any two strong counties not having a majority, because this bill would not give them a majority, cannot control the legislature, unless all the members, or unless the members of the smaller counties concede that right to them. The members of the smaller counties have the control in the aggregate, and it is utterly impossible that two of the larger counties can make such a combination as to control the legislature, unless by the consent of the smaller counties.

Now the member from Shoshone has been pleased to make a reference to what he claims transpired three years since, when the counties of Bingham and Alturas undertook to control this legislature and prevent a new apportionment. I happen to know something of that myself, Mr. Chairman, for I had the honor to be asso-

ciated with my friend from Shoshone in that legislature. I undertake to say that the reason the apportionment was not made at that legislature was not on account of any combination between Bingham and Alturas counties, but because the gentlemen from the north could not themselves agree upon what apportionment should be made. I remember very distinctly about two different bills being introduced, but I undertake to say here that it was not the fault of Bingham county nor of Alturas; I undertake to say those counties did not join together; I have no recollection of it, but I do remember where the difficulty occurred, and it was largely in the northern part of the territory. But whether that be so or not, if the counties of Alturas and Bingham attempted to join, or if in the future the counties of Shoshone and Ada, to which the member from Nez Perce referred, should attempt to join, how easy it is for the other counties of the territory to prevent injustice being done. Now I think there is nothing in that argument, but there is much in the proposition that the gentleman here are now advocating, in not having a senator allotted from each of the counties. That is to give the small counties with small population a power they are not entitled to, and I can see no special justice in it; in fact the proposition is so plain upon its face that they are left without argument for it.

As to politics appearing in this as suggested, simply because the chairman of the committee has reported an amendment, there is nothing strange in that. A great many members upon this floor have objected to that bill, and the chairman of the committee understands that; he understands that the bill as he reported it could not pass, or will not meet the approbation of a large majority of the members of this convention, and that is why the chairman of that committee has reported this amendment. It has been suggested to him to my certain knowledge that amendments similar to this would be offered, but we allowed the chairman to pre-

sent those amendments himself instead of taking it out of his hands. That is the only politics I know of in the matter, for I know as one member of this convention that I made myself the suggestion to the chairman that unless he made or offered some amendment in his report as here presented to us, that objections would be made, and the suggestion was made to him to allow him as chairman of that committee to offer this amendment. If there is any politics in that, it is so fine that I for one am unable to see it; but certainly; Mr. Chairman, whether there be politics in it or not, there at least is justice in the amendment proposed by the chairman of that committee, and there is injustice in the bill as first reported.

Mr. REID. In order to make my amendment harmonious, I will ask permission to add to it,—strike out the word "four" in line 1, as stated, and then strike out all after the word "provided," because if that is adopted all this proviso will fall to the ground and be useless; strike out all after the word "election." The balance of the section is simply a provision put in to allot the senators to their terms if they are elected for four years.

Now in the politics alluded to by my friend from Shoshone,—I did not suppose he meant partisan politics, but I can see some politics in it. You take the legislature constituted that way, and we want to elect two United States senators,—I don't care whether it be democratic or republican. These two counties, with a little support from one or two neighboring counties having the same interest, can do doubt come in and practically control the election of United States senators, no matter whether they be democratic or republican. But if you have a representative to every county, they will not only have a voice in that, but a voice in the confirmation, as the gentleman said, of all the appointments. I do not believe in centralizing power in these counties,—give every county a chance. We

haven't so much need for partisan politics as we had in the development of the territory, and if every county, —I don't care how small it is, has a voice here, and you can't apportion it so they will all be apportioned alike, but they provide for that in the house of representatives. I don't expect when you come to the house of representatives that a little county with 700 voters will get the same representation as Ada or Shoshone with 2500 or 3000 voters; but I will feel secure if we have a voice in the senate. I will feel that whenever the governor sends in his appointments the representative we have there will see that they are proper men. I will feel that whenever we vote for United States senator they will take a man that will look out for the development of our agricultural interests as well as the opening up of our river up there. I won't feel that these two counties who represent two distinct interests of this territory will be the only ones represented, but throughout the territory every county will have a voice, and that you are going to do the fair thing, what is right and proper, for equal representation gives them all a voice in the senate. Eighteen members is large enough; twelve is too small; but they have given the larger counties the control they are entitled to on account of population in the lower house, just as Congress is constituted. Suppose that you apply it to the senate; Delaware has as much representation as New York, Nevada as much as California, but when you come to the House it is not that way. The people's House,—they are representing us there; we like them are both elected by the people, but we are sure that these little counties frequently suffer from mere lack of fit representation, whereas they have large wants, they need to be developed, they need some one here to stand up for them and tell the legislature their wants and interests and call attention to it. The larger counties are sure to be heard, but, as I said, give representation to the smaller and weaker counties, and you will find our new state will develop far more rapidly than if you

centralize the senatorial power in these larger counties.

Mr. BEATTY. It seems to me that the gentleman, as well as myself and some of the rest who have preceded him, have got off the question. The question we have before us is whether the word "four" shall be stricken out instead of "two." I was following my distinguished friend from Nez Perce, and also from Shoshone, in what I said.

Mr. CLAGGETT. Mr. Chairman, I am perfectly willing to concede that legitimate reasons can be given; whether they should be of controlling character I do not think appears,—but there are good and cogent reasons for the motion made by the amendment offered by the gentleman from Nez Perce. And when that amendment was first suggested, it struck me that I would support it. I came to the contrary conclusion, largely upon the reasons given by the gentleman himself in support of his motion. Now I want to correct the statement of the figures involved, in which he states that two counties in this territory can control the senate. He bases it upon the representation each has here upon this floor, Ada and Shoshone, which amounts to sixteen. A majority of this convention is thirty-seven in number. If you were to take the delegation from Ada and Shoshone together, you will still lack twenty-one of having a majority. In other words it will take five of the counties to control the senate, instead of taking two, as stated by my friend from Nez Perce; he was incorrect——

Mr. REID. How many gentlemen did we admit to this floor on credentials; was there not 69?

Mr. CLAGGETT. 69; I am taking your number.

Mr. REID. Isn't 16 nearly about one-third of 69?

Mr. CLAGGETT. O, no sir, no sir; it is one-third of 48; between 48 and 69 there is a difference of 21 votes. My friend had better go to school and learn addition and subtraction. But, Mr. Chairman, going back to what is the question before the house; this provision here is one that exists in almost every legisla-

tive body I know anything about, in fact, all of them, that the senators shall be elected for double the length of time the members of the house are. There must be some reason for the uniformity with which this practice is kept up in every state in the Union, and foreign countries as well as here. I think the reason lies upon the surface of things. It is not designed to bar any door, one way or the other, but it is designed to maintain in the legislature the retention of a certain number of the members of the legislature who had participated in the debates of the preceding session of the legislature, in order that information arising or growing out of the proceedings of the preceding legislature may be left in the hands of representatives upon the floor of the succeeding one, and by that means aid in the legislation of the two new houses of the legislature. That I have always understood is the reason for the senators holding over for one term. You go to Washington, you may change your administration, and there may be a general overhauling and turning out of the clerks in the departments and bureau offices, and yet there are men, and plenty of them, in every department in Washington City, who have been there under all administrations, until they have grown old and gray and incapable of labor. No administration dares turn them out. Within their knowledge lie reposed the secrets, information and knowledge of twenty to fifty years,—information absolutely necessary to enable the incoming administration to get at their hands the threads of all political transactions, in such shape that the incoming administration can go off smoothly and without trouble, and that is one reason why the senators hold over. There is reposed in them, as historians, as it were, things relating to the immediate past, and essential to be understood by the new house or the new legislature when it comes into existence.

Mr. CLARK. I support the motion of my friend from Nez Perce, but I want to express at the same time my astonishment that he should make the argument he

has. After the iron hand of the caucus is in action, why make motions, and why make speeches? This gentleman from Alturas, who says he sees no politics in this, is as innocent as that Chinese who secreted the possessions of Mr. William Nye. The committee on Legislative Department, eminent republicans, unanimously agreed to report the change we had under consideration, and upon a vote, a unanimous vote, the members voted to change this clause. There is some power behind this throne, or no doubt this change would not have been agreed to by such a vote as this. Thus in a non-partisan convention has raged the zeal of republican enthusiasm for statehood, and the side of my democratic friends will go down as rapidly as the snows of winter go under the summer's thermometer.

Mr. HARRIS. Mr. Chairman, I rise to the support of the amendment offered by the gentleman from Nez Perce, and I assign as one reason for supporting it the fact that two small counties may be combined. In drawing lots one may get the four years' term. That gives one of the small counties four year's representation through two sessions of the legislature, and the other one perhaps none. By electing a senator every two years, they can change about from county to county, and that gives each one of them alternate representation in the senate. The other way one is wholly out for four years.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Nez Perce.

Mr. MAXEY. We would like to hear the amendment read.

SECRETARY reads: Strike out the figure "four" in section 3, line 1, and insert "two."

Mr. REID. And also strike out all after the word "election" in the third line, the balance of the section in addition to that. The balance relates to the arrangement if elected for four years.

Mr. SECRETARY. And then the section reads: The senators shall be elected for the term of two

years and representatives for the term of two years, from and after the first day of December next following the general election. Cries of "Question." (Rising vote shows 29 in the affirmative, 17 in the negative.)

The CHAIR. The amendment is adopted.

Mr. BEATTY. I desire now to amend it so as to avoid repeating. As it now reads it is; "Senators shall be elected for the term of two years and representatives for the term of two years. I desire to put it in one clause, and say that the members of the legislature shall be elected for the term of two years, or that senators and representatives shall be elected for the term of two years each.

Mr. MORGAN. I have no objection to that, Mr. Chairman.

The CHAIR. The amendment is accepted.

Mr. REID. I now move the adoption of the section as amended. (Seconded and carried.)

The CHAIR. The section is adopted.

SECTION 4—(STRICKEN OUT.)

SECRETARY reads section 4: The legislative assembly shall in the year 1895 and every ten years thereafter cause an enumeration to be made of the population of the state.

Mr. HARRIS. I move that the section be stricken out. (Seconded.)

Mr. MORGAN. The object of this section is simply this. Every ten years the government of the United States has a census taken of the whole country, all of the states. If we take a census every ten years also, it will give us the number of the population every five years; that is the object of it.

Mr. REID. Let me ask the question, did the committee estimate what that would cost the state; have you any information?

Mr. MORGAN. No sir. It is done in almost all the states, I think every state in the Union.

Mr. REID. I will state to the gentleman that we

found it was going to cost from ten to twenty thousand dollars a year, and so reported to your committee.

Mr. MORGAN. I have no idea what it will cost. The census of the United States will be taken in the year 1890 and every ten years thereafter; and this being provided for in 1895 would give us a census every five years.

Mr. HARRIS. I move to have it stricken out, for one reason, the excessive cost of taking the census. We can get at the average population of each of the counties every two years by the election returns. From that we can approximate the population of the county. This legislative apportionment is generally made on voting strength, and should be at least, and not on the number of inhabitants generally of the county; so it is unnecessary. We get it every ten years without cost when the census is taken by the general government, and I think it is a needless expense, and that the section should be stricken out.

The motion to strike out section 4 is put and carried.

SECTION 4.

SECRETARY reads section five.[1] (4).

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[1]—Section 5. The number of representatives shall, at the next session following the enumeration of the inhabitants by the United States or this state, be fixed by law and apportioned among the several counties according to the population, exclusive of persons not eligible to become citizens of the United States. And the ratio of the representatives shall be determined by dividing the whole number of the population by the number of representatives; and the number of representatives to which any county or district shall be entitled shall be determined by dividing the whole number of the population of such county or district by such representative ratio; and when a fraction shall result from such division greater than one-half of said ratio, such county or district shall be entitled to a member for such fraction; and in case any county shall not have the requisite amount of population to entitle such county to a member, then such county shall be attached to some adjoining county or counties for representative purposes.—(As given in the *Idaho Daily Statesman* of July 16th.)

Mr. MORGAN. I offer the following substitute for section 5, (4) in order to make the article harmonious as a whole, as the convention has already adopted the substitute for section 2.

SECRETARY reads: Substitute for section 5, (4). The members of the first legislature shall be apportioned to the several legislative districts of the state in proportion to the number of votes polled at the last general election for delegate to Congress, and thereafter to be apportioned as may be provided by law.

Mr. MAYHEW. I move the adoption of the amendment. (Seconded.)

Mr. REID. I would like to ask the chairman of the committee one question. Why did the committee change the phraseology from "population" to "number of votes"?

Mr. MORGAN. Because it was thought it would not be proper to give the Mormon counties which cannot vote so large an amount of representation as it would give them if the representation was given in accordance with population.

Mr. REID. Then it was not on the theory of my friend from Shoshone that——

Mr. MORGAN. There is an additional reason now for changing it. You have stricken out section 4, which authorized the taking of a census to ascertain the number of the population, and there is no means now of making any basis for representation whatever.

Mr. REID. I desire to offer an amendment.

Mr. WILSON. I would suggest that the gentleman change the word "delegate" to "representative in Congress."

Mr. MORGAN. The gentleman will notice that it is the last census that determines the apportionment for the first session of the legislature; after that it is to be regulated by law.

Mr. REID. I make it as an amendment to the substitute, by adding, if the substitute which was read is

adopted, and if it is not adopted I propose to add it to the original section.

SECRETARY reads: Amend section 5 (4) by adding; "Provided that each county shall be entitled to one representative."

The CHAIR. The question will be on the substitute first.

Mr. REID. I propose to amend the substitute before it is voted upon.

The CHAIR. It is moved and seconded that the amendment to the substitute be adopted.

Mr. REID. Now, Mr. Chairman, they started out as if they wanted to be sure to give each county a representative, yet now they want to leave it uncertain,— leave it to the legislature. Now I want gentlemen to understand how this matter is coming on. I don't know whether there is any politics in it or not; I don't make any insinuations, and I don't know; but a member, a gentleman of the committee, stated here that for some purpose there has been a decided change. My idea in supporting it originally was, for the reason I expressed, that each county should have representation. Now it is changed here, and each county is to be represented according to voting strength. It does not make any difference how large it is, or anything of that kind,— not a particle. The old principle, no taxation without representation, is not regarded here. It will change the very foundation principle of the whole thing, and then in addition to that my amendment says that each county shall be sure to have a representative. Now you will find that, gentlemen, in nearly every constitution,— I won't say every one, because I have not examined them all,—but you will find that in nearly every constitution in this whole land, that they are represented in the popular branch of the legislature. We have 24 provided for, in only 18 counties, and he says that the legislature may increase it according as the population increases. Now it can be arranged for the larger counties, for the apportionment is to be made so the

larger counties will, as they must if you apportion it according to population and voting strength,—so as to give them the senate. I say, gentlemen, give these smaller counties at least one representative in this other house.

Mr. MAYHEW. I would like to inquire, Mr. Chairman, if in these matters this amendment offered by the chairman of the committee on Legislative Powers was discussed since the sending in of the report.

Mr. MORGAN. I will say in answer to the question, that a great many of the members of this convention have come to me privately in reference to this matter, and have insisted that the representation should be according to the voting strength and not according to population. It was very much against my own views, for the reason that we have a population of 2000 in our county that could not vote, and there is also a population in Bear Lake county of 2500 to almost 3000 that cannot vote, and only 150 who can vote, and it was because I could not get sufficient support in the convention to carry the measure through in the form in which it was first presented that I wanted to offer this substitute. That is the only reason. I was in favor, personally, of the other way.

Some remarks have been made in reference to the number of senators and representatives. The number was fixed at 12 and 24. I wish to explain to them that we have passed this section because it was thought it would not do to increase the number at the present time, or the people would object to the increased expense that the legislature would be. It was thought that the people of the territory would think that 12 members of the senate and 24 members of the house was a sufficient number. If any larger number had been proposed by any gentleman upon this floor I should not have opposed it, because my own idea was individually that the numbers of the senate and house should be greater than 12 and 24 respectively. And personally I do not now

rise to oppose the amendment offered by the gentleman from Nez Perce.

Mr. REID. Well, does the gentleman offer this amendment as coming from the committee or on his individual motion?

Mr. MORGAN. On my own individual motion, sir.

Mr. PEFLEY. It is most surprising to me to see the change that has occurred on the part of the gentleman who proposed this. And how he knows that the convention would not adopt it with this clause in there giving each county an equal representation, I have no means of knowing; perhaps he has. But I can only say this, so far as I am concerned, I have never been consulted since the committee got their report ready; and of course it was not necessary. For he knew that there was a majority that could carry this through, for some reason or other which I am not in the secret of, and of course he had the power to do so.

Mr. MORGAN. I want to explain to the gentleman as a member of the committee, that I just stated I did not offer it as coming from the committee. I had become satisfied that the measure could not be carried through, as I said, in the form in which it had been introduced or passed in the committee, and that is the reason I offered this substitute, personally, in view of that fact. And further I would say that some very strong opposition to the section as reported came from the gentleman's own county, Ada.

Mr. POE. I would ask the gentleman whether he had been consulted by any of the democratic members of this convention, requesting or stating to him that such a measure could not pass, whether any democratic members——

Mr. MORGAN. I do not know that any democratic members said to me that the measure could not pass. I said it was my own conclusion, from talking with members on both sides of the house.

Mr. POE. Both sides of the house; that was just the question I asked him, whether any democratic mem-

ber of the convention had stated to him that could not pass, for the reason it was stated that the population——

The CHAIR. I think this is out of order.

Mr. POE. ——whether the population should govern or the number of votes. He would not say that any democratic or republican member stated to him that the measure could not pass.

The CHAIR. The gentlemen are called to order, and will confine themselves to the matter under discussion.

Mr. HEYBURN. Mr. Chairman, I desire to call the attention of members to the result of this proposed amendment. We have already passed upon the number of members of the house of representatives,—24. Now you take from that number 18, in order to supply each county with one, and you will have six members to be distributed among counties that outnumber, three, four or five times, some of the counties in this state. Will that be equitable and fair? If you do this thing, in fairness you will have to increase the number of representatives, because that would be so manifestly unfair that I doubt if any gentleman would support it. You take for instance, without referring specially to any particular county, but I will take the county of Bear Lake; give it a representative. Now you have exhausted the other six members by giving them to the six largest counties, and you have a county like Bear Lake represented in the lower branch of the legislature with just one-half the representation that a county like Shoshone or Bingham or Ada or any other of the larger counties has. In other words, you have a few hundred men represented by a representative, and you have a few thousand represented by two representatives.

Mr. SWEET. Mr. Chairman, I think the difficulty here arises very largely upon the point suggested by the gentleman from Shoshone, Mr. Mayhew. The absolute fact is that 24 members of the house and 12 members

of the senate does not fairly represent the various industries and interests of this territory, and consequently I shall move to reconsider the motion by which it was adopted, and substitute 36 members for the House and 18 for the Senate, and then the Territory can be represented on that basis; but it cannot on the basis of 12 and 24.

Mr. SHOUP. If I understand this substitute in regard to the basis on which apportionment is made, it only applies to the first legislature; then the legislature may change it in any way reasonable, either by population, or leave it the way it is. Now I cannot conceive of any other means by which we can arrive at an apportionment for the first legislature except by voters. We have no census and will have none.

Mr. MAYHEW. That would cut no figure, Mr. Chairman. We know what the vote was last session,—if this constitution should be adopted at all. We know what the vote was last fall in each individual county, and we can regulate that now by the vote and the return of the vote in the Secretary's office, and increased representation in the legislature can be reckoned on that basis, as has been pointed out, without a census being taken.

Mr. CLAGGETT. I call for the reading of the substitute.

SECRETARY reads: Section 5. (4) The members of the first legislature shall be apportioned to the several legislative districts of the state in proportion to the number of votes polled at the last general election for delegate to Congress, and thereafter to be apportioned as may be provided by law.

Mr. REID. I ask for the reading of the amendment.

SECRETARY reads: Provided, each county shall be entitled to one representative.

The CHAIR. The question is upon the adoption of the amendment to the substitute.

Mr. SWEET. It is perfectly evident from the remarks made by the gentleman from Shoshone, (Mr.

HEYBURN) that giving to each county one representative would not be a fair representation here for the larger counties. It is also equally clear, from the statement made by Mr. Reid of Nez Perce, that it would deprive the smaller counties of any representation, or anything like a fair representation if we only have 24 members of the House. I therefore hope the amendment will be voted down and that we may yet reconsider the other and have a larger representation in the House.

Mr. REID. I shall join my friend from Latah heartily when that question comes up in the house, to return to the old basis, in order that we can have a representation in the counties as he states; but for the present,—we can move to reconsider now, but when we get into the house we can move it just as well. If the gentleman moves a reconsideration now we will proceed to go back to that section and vote more, but I think while we have 18 now there will be six,—if you give each one of these counties one apiece,—there will be six left over for these larger counties; but you will be sure to have some representation. I hope you will vote for the amendment.

The chair puts the question on the adoption of the amendment. (Vote.)

The CHAIR. The chair is in doubt. (Rising vote shows 32 ayes; nays not given.) The amendment is adopted. The question now recurs on the substitute as amended. (Vote.) It is carried; the substitute is adopted.

Mr. CLAGGETT. If it is in order, and that we may proceed in an orderly manner,—the committee has expressed its sense to the effect that each county shall have in the lower house one representative, and that evidently was no doubt done upon the proposition of reconsidering the fixing of the number of senators at 12 and——

Mr. MAYHEW. What is the question?

Mr. CLAGGETT. I propose to make a motion, but I am now explaining,—and a house of 24. I now move

to reconsider that vote at this time,—it is section 2,—so that we can now increase it, after this committee rises and goes to the——

The CHAIR. The chair, following the precedent of this morning, will have to rule it out of order. We cannot reconsider in the committee of the whole.

Mr. CLAGGETT. I don't know as I am out of order.

The CHAIR. The motion was made this morning and was ruled out of order.

Mr. CLAGGETT. By simply acting upon an adverse decision this morning from another chairman, I will have to appeal from the decision. Our rules provide that a motion to reconsider,—that the same rules shall govern in committee of the Whole as in the convention, and there is no reason,—and the place, I believe, to reconsider, is in the connittee of the Whole and not in the convention.

The CHAIR. I shall follow the precedent adopted by the learned parliamentarian this morning.

Mr. CLAGGETT. Well, I have——

The CHAIR. But the gentleman appeals from the decision of the chair. The question before the committee is: Shall the judgment of the chair be sustained as the judgment of this committee?

Mr. MAYHEW. One moment; we have some authorities for this, and I call on my friend Mr. Shoup to read the authorities, Cushing himself, on that point.

Mr. REID. I think my ruling this morning was wrong, and I ask unanimous consent that the gentleman be allowed to move to reconsider the motion that was made. I hope no gentleman will object. We want to dispose of this matter. It will not save time if we go into convention. I ask unanimous consent that the gentleman from Shoshone be allowed to move to reconsider section 2.

Mr. SHOUP. I object.

Mr. CLAGGETT. I insist on my appeal then.

The CHAIR. Is the gentleman's authority produced?

Mr. SHOUP. I will read one our own rules first, No. 60. (reading) Cushing's Manual and Law of Legislative Assemblies shall be received as authority in all cases not provided for in the foregoing rules. The rule at 276 of Cushing's Law of Legislative Assemblies, reads: "It is a general principle also in regard to this matter that there can be no reconsideration of an order the execution of which is already commenced, ... Nor can reconsideration take place in committee or committee of the whole."

The CHAIR. The opinion of the chair is that the same rule would prevail as provided by our rules, in the committee of the whole as in the convention.

Mr. MORGAN. I call the attention of the chair to Rule 50, that rules for proceeding in committee of the Whole shall be the same as in the convention.

The CHAIR. I ruled that way contrary to my own judgment. At the same time, when it was ruled against this morning, I think it was done at the instance of some gentlemen who did not desire to reconsider the matters. I am glad to give this committee an opportunity to vote to reconsider any matter that was wrongly decided. The chair will entertain the motion; the motion is in order. Did the motion have a second?

(The motion is seconded.)

The CHAIR. Will you please state the motion again?

Section 2.

Mr. CLAGGETT. That we now reconsider the vote by which the second section,—that portion of the second section was adopted fixing the number of senators at 12 and representatives at 24. The motion is that the committee reconsider the vote by which they adopted that portion of section 2 which fixed the number of senators at 12 and representatives in the house at 24. (Vote.)

The CHAIR. The chair is in doubt. (Rising vote, ayes 41, nays 6.) The motion is carried. The question now recurs on the original motion.

Mr. REID. Now, Mr. Chairman, the matter being re-

considered, I move that section 2 as originally reported by the committee be adopted in place of the substitute that was adopted.

Mr. CLAGGETT. I rise to a point of order. The vote of reconsideration was to reconsider that portion of that section.

Mr. REID. Then I offer Section 2 as originally constituted, as a substitute for that portion of the section. (Seconded). I will give my reasons. The chairman of the committee states that he reported the report upon his own individual notion of the matter.

Mr. MORGAN. No, the substitute.

Mr. REID. I mean the substitute. Now the report came in here supported unanimously by a committee representing both sides of the house—if there are two sides, that is, by the republicans and the democrats, and that committee after carefully considering it brought in a report that it should be this way; and then it lay over until today, and now the proposition is to change it. There has been no meeting of the committee. It was carefully discussed, carefully considered, the report made, printed, etc. There were some articles in one of the papers about it; whether they emanated from members or outsiders I do not know.

The CHAIR. Will you state your motion again?

Mr. REID. I move to substitute Section 2 for that portion that has been reconsidered by the house.

The CHAIR. Section 2? There was no part of Section 2 adopted; the substitute for Section 2 was adopted.

Mr. REID. That was my motion. The gentleman from Shoshone moved to reconsider so much of Section 2 that was adopted—it was Section 2 after it was adopted as a substitute—as referred to the number of members of the house and of the senate. That is being reconsidered. Now as a substitute for that portion I move that the original Section 2 of the bill as reported be adopted in place of that, which brings the whole matter back before the committee.

The CHAIR. The gentleman moves that the original Section 2, as originally printed, be adopted in place of the substitute which was adopted for Section 2.

Mr. MORGAN. I rise to a point of order. The section has already been deliberated upon, a vote taken in this house and the substitute adopted in place of it, which disposes of it, without voting right over again.

Mr. REID. Then I make the point of order that the convention has reconsidered that vote, which leaves the matter as it stood before; his substitute is gone and the original section is before the convention. That cannot be the case, but the gentleman says he limits it as to the number—the vote limited it to the number. I moved to substitute the section in place of the number. If he had moved to reconsider the whole section his substitute would have been lost entirely and it would have stood upon the adoption of the original section, but the gentleman avoided that, so as to only move the reconsideration of the numbers 12 and 24. Now after he gets that vote for reconsideration, I move as a substitute for that part of it, that Section 2 of the original bill be substituted for it.

Mr. CLAGGETT. I rise to a point of order. It is out of order to make a motion under the rule in regard to a section or substitute that is not germane before the house. The proposition before the house is to fix the number; that is all the question there is before the house. On that proposition the gentleman offers a substitute, which will be a complete substitute for the substitute that was adopted, which stands unreconsidered by the convention.

Mr. REID. I ask that the substitute be read as adopted.

Mr. MAYHEW. I think the position assumed by Mr. Reid is right. I never heard at all of this until this reconsideration was offered. I understood the whole thing was to be reconsidered, and reconsidered in committee. Now if the reconsideration is made and the vote is taken, then I call the attention——

The CHAIR. Mr. Reid calls for the reading of the substitute.

SECRETARY reads substitute for Section 2: The senate shall consist of 12 members and the house of 24 members. The legislature may increase the number of senators and representatives; *Provided*: The number of senators shall never exceed 24, and the house of representatives shall never exceed 60 members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Mr. REID. Now, Mr. Chairman, I take it that it would take a very metaphysical mind of a very high and delicate order to say that there was anything more in this section than fixing the numbers of the house and senate; that is all it does. Take Section 2 as originally reported, and if he moves to reconsider the number there, that is everything that is in it. Section 2 proposed to do that, and he moves the reconsideration here of so much of it as fixes the number, when in fact there is nothing but the number in it, and when I move to substitute a section that does the same thing and only increases it, it is not germane. Both fixing the number and not germane! I reiterate that it is not only germane but identical with the part reconsidered, and if you take the number out there is nothing left in it.

The CHAIR. Will the clerk read the original section?

SECRETARY reads. Sec. 2. The senate shall consist of one senator from each county, and the house of representatives of double the number of the senate: *Provided*, the legislature may increase the number of representatives from time to time, but the number of representatives shall at no time be more than three times the number of senators: *Provided*, also, that the number of senators shall never be greater nor less than the number of counties. The senators shall be chosen by the electors of the respective counties, and the representatives shall be chosen by the electors of the respective districts into which the state may from time to time be divided by law

The CHAIR. I shall decide the point of order not well taken.

Mr. MORGAN. The duty of the presiding officer of an assembly like this is simply to execute the will of the majority; that is his whole duty. He has got to do that by parliamentary rules. This convention voted simply to reconsider the vote by which the first——

Mr. REID. I rise to a point of order. The chair has decided the point, and there can be but one question, whether the appeal is from the decision of the chair to the convention.

Mr. MORGAN. I want to state, Mr. Chairman, my position. My proposition is this; that the only matter reconsidered by this convention was that part of this section by which it was fixed that the first session of the legislature should consist of 12 senators and 24 representatives. That was the only thing this convention proposed to change. There can be no question about that whatever. The section goes on to provide that hereafter the number may be increased by the legislature, and also the number shall never exceed 24 senators and 60 representatives. Now it is not proper for this committee to take up anything in the order of business except what was voted to be taken up by the convention itself.

Mr. REID. In reply to his point of order, the only thing this section does is to fix the number. The substitute did that, that the gentleman offered; the original article did it, and having recorded it and the chair having ruled on it, we are all out of order.

Mr. CLAGGETT. Mr. Chairman, the chair has made its ruling upon the question, and therefore I shall not refer to it. As my friend from Nez Perce says, there is nothing in this original section or substitute or in this matter here which is now offered except what is in the substitute, as to the matter of number; I wish to read from the amendment that is proposed: "The senate shall consist of one member from each county, and the house of representatives of double that number." When this question was up, it was objected to giving equality of representation, but one member in the senate, on account of its being the smaller body, and

the proposition was adopted, that is, to substitute the motion that was made, the section offered by the gentleman from Bingham for the section reported by the committee on Legislative Department. On the theory that the proper place to put it—it was evidently the question of equality—was in the house having the largest number. Now the gentleman, having secured that by the vote of men on the floor of this convention who want to do what is right and give every county a representative in the legislature, turns around and under the guise of parliamentary rule offers a proposition to give every county also a representative in the senate. In other words, you are proposing not only to turn over one branch but both branches of the legislature to a minority of the people, and you can figure it from now until the day of doomsday, and that is precisely what this motion amounts to—just simply that. If you adopt the amendment offered by the gentleman from Nez Perce, that is the effect of the section. I would like to know what opportunity or what chance this constitution is going to have of being ratified by the people of this territory, when it comes in here and the whole rule of majorities is stricken down in that way.

Mr. REID. I will meet the gentleman on that question. He tries to make it appear that we are trying to take advantage in some way. The members of this convention are intelligent enough to read that section and see if it regards all this original matter, and if this convention had not understood that the whole matter was to be brought up and reconsidered again, on the suggestion of the gentleman from Latah, they never would have voted to reconsider it, but would have let it stand where it was, and taken their rights in the convention when the matter was up there, and they want to fix it—the number. I want the convention to vote on this subject again, and one or two members have said since the vote was taken that they did not understand they were depriving their counties of representation by a senator. They are in favor of the proposition. If we

are voted down—all well and good, we stand in the minority. But the gentleman has set up his part of the plan that we want to reconsider. There is no gentleman will acquiesce any more cheerfully than I will do, but it is understood, and the gentleman expresses it, that he wants the number reconsidered, and if he does not want that every county shall have a senator, he can amend it. I am not asking for a hasty vote on this; all I can hope is to have my motion considered. The gentlemen are trying to strike that out by raising a point of order on it, to keep that part of the question from being considered. I want it all considered, and if gentlemen want to vote down that amendment or strike out that part that gives each county a senator, let them do it; we will take a vote on it. If it is voted out, also well and good; then we will take the next best thing we can get—we will take 18 members of the senate and 36 members of the house, instead of 12 and 24, but as I understood it, they want to go back to the original proposition and vote to reconsider again, instead of taking up the time of the convention in which to obtain that. I know two gentlemen have expressed their opinion since they voted, that they did not understand the original proposition, or they would have voted to have the counties each have a senator.

Mr. GRAY. If this motion prevails now it would stand thus: We have passed one section which gives to each county a representative. Then we pass now, if this motion prevails—then we give to each county besides, a senator.

Mr. REID. The gentleman will pardon me; if this motion prevails, I shall move then that the amendment I offered be stricken out.

Mr. GRAY. I am saying, as it stands upon the record.

Mr. REID. I say that if that is adopted I will——

Mr. GRAY. I say I am stating the facts as they appear upon the record—that this is the fact and as it will appear, if this motion prevails.

Mr. MAYHEW. Will you let me ask you a question?

Mr. GRAY. Yes sir.

Mr. MAYHEW. Would not we have the same right, and is it not policy, to reconsider the subsequent section, if this is reconsidered?

Mr. GRAY. I am stating what appears upon the record; that is the way it stands. It can all be amended when we go into convention too, but I say that would be the condition of the record if this motion prevailed—one county is to get positively a senator and positively a representative.

Mr. BEATTY. I confess I am surprised at the turn that the gentleman from Nez Perce makes of this matter. I voted, for one, to incorporate his provision, and I voted then for the reconsideration, but I voted for the reconsideration with the understanding—and I am sure I did not misunderstand the member from Shoshone, Judge Claggett, who made this motion, that we reconsider so much of that substitute for Section 2 as referred to the number of members—as referred to the number of senators and the number of representatives, and the whole question did not come into reconsideration at all. And I venture to say that if we would take the record from the reporter's notes, you will find Judge Claggett's motion was in those words. Now if that motion had been to reconsider the whole of that section which we have gone over I should not have voted as I did, but I voted with just that understanding.

Mr. REID. May I ask you a question? Did not the gentleman from Latah state especially that he moved to reconsider that part?

Mr. BEATTY. My conclusion was not taken, Mr. Chairman, from any motion of the gentleman from Latah, but upon that of the member from Shoshone, Judge Claggett, and I do not think I made a mistake in the way I understood that he stated the motion. For I am pretty sure he stated it conditionally, that he moved to reconsider so much of that substitute for Section 2

as provided for the number of senators and the number of representatives. My friend from Shoshone here asks me if that can be done. I have no doubt it can be done; it is a divisible question. We can take up and consider a part of this substitute and not consider it all; but as to what the member from Latah referred to—that was not the motion. Now if there is any more dispute about this question, I ask that we appeal to the reporter's notes upon that question and see what it was—what Judge Claggett's motion was; and if his motion was as I stated, then I claim this committee has no right now to entertain the motion of the gentleman from Nez Perce. It is taking advantage of what many members understood, and we have acted in good faith in trying to grant to each one of these counties a member of the legislature. I for one, have been in favor of that from the start; I have advocated it wherever I have been, and I do not propose, for one, to be cheated out of my motion or my vote. I voted in good faith for the reconsideration of so much of his substitute as refers to the number. Now if the gentleman proposes to drag in something else, go into a reconsideration of the whole matter which was decided understandingly by this committee, I am opposed to the whole thing.

Mr. REID. I do not propose to be put in a false——

Mr. GRAY. I object.

Mr. REID. I have a right to speak again.

Mr. GRAY. He has spoken four times.

Mr. REID. Not on this proposition; and the gentleman here says he does not propose to be cheated, that I am trying to take advantage of this convention.

Mr. GRAY. I insist upon my objection.

The CHAIR. The objection of the gentleman from Ada is sustained.

Mr. SWEET. I do not think the equitable disposition of the convention to do what is fair will be shaken by any hocus pocus in parliamentary rules. The fact is that when this question first came up, I think I stated I was in favor of a reconsideration of that portion of

this section which gave but 36 members to the legislature in all. And then Judge Claggett moved that, inasmuch as the motion to give each county in the territory a representative was evidently voted upon the theory that we could reconsider the other question and make the total number of representatives 36 and of senators 24, he therefore moves to reconsider that portion of this other section which should increase the number of representatives, but say nothing as to where they should come from. Now that was evidently the question raised on the motion made by Judge Claggett. I apprehend, Mr. Chairman, that the members of this convention intend not to say where these senators shall come from, but that they do intend to say that the representation of the legislature shall consist of 36 representatives and 18 senators, and leave the committee appointed for the purpose of apportioning these members to do their work and report it to this convention. Now I do not think it is exactly fair to raise this question in this way, but inasmuch as the chair has ruled it in order, we have nothing to do but to take this vote, and then vote on Mr. Reid's substitute and vote it down—as we ought to do, and then vote that the legislature shall consist of 36 representatives and 18 senators.

(Cries of "Question.").

The CHAIR. The question is whether the substitute proposed by Mr. Reid be adopted. (Vote. Division asked for. Rising vote shows ayes 20, nays 27). The motion to adopt the substitute is lost.

Mr. CLAGGETT. Mr. Chairman, I will yield to the gentleman from Latah to make that motion, if he desires to bring it up, or I will make it myself.

Mr. SWEET. Go on, Judge Claggett.

Mr. CLAGGETT. I move that the number of senators shall consist of 18 and the number of representatives shall consist of 36, for the first session.

Mr. MAYHEW. Won't it be necessary to have it inserted in the substitute, or amended substitute?

Mr. CLAGGETT. I move to amend that portion of

the substitute which has been reconsidered, by striking out the word "twelve" and inserting the word "eighteen" for senators, and striking out the word "twenty-four" and inserting the word "thirty-six," for representatives.

Mr. SWEET. I desire to second that motion.

Mr. REID. I would like to hear it read as amended.

SECRETARY reads: The senate shall consist of 18 members and the house of representatives of 36 members. The legislature may increase the number of senators and representatives: *Provided,*. The number of senators shall never exceed 24 and the house of representatives shall never exceed 60 members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Mr. REID. I desire to offer this amendment:

SECRETARY reads: *Provided,* Each county shall have at least one representative.

Mr. MORGAN. That is already adopted in the other section.

Mr. REID. Well, if it is adopted—I just wanted it in—I will withdraw the amendment.

The CHAIR. Gentlemen, you have heard the question. (Vote, not given). The motion is adopted. The question will now be on the adoption of this substitute as amended.

Mr. SWEET. I move the adoption of the substitute for Section 2 as amended. (Seconded and carried).

The CHAIR. The committee now returns to the consideration of Section 6. (Sec. 5).

SECTION 5.

Mr. MORGAN. I move the adoption of the section. (Seconded).

Mr. POE. I have an amendment. In the first line, after the word "representative," I desire to substitute "or senatorial districts." The district may be plural. And strike out the word "a" also; so as to read: "Rep-

resentative or senatorial districts when more than one county shall constitute the same."

Mr. MORGAN. I have no objection to the amendment.

The CHAIR. It is moved and seconded that Section 6 (5) be amended by inserting before the word "representative" the words "senatorial or." (Vote). The motion is carried.

Mr. BEATTY. I now move that the section as amended be adopted.

Mr. MYER. I would ask if there will ever be a representative district composed of more than one county. We have already more than one representative for each county.

The CHAIR. It is quite likely there will be.

The CHAIR. As many as are in favor of the motion say aye. (Carried.)

SECTION 6.

SECRETARY reads Section 7 (6), and it is moved and seconded that it be adopted.

Mr. MAYHEW. I move to strike out in the last section in the fifth line of said section, the word "five," and insert the word "one," so as to make it twenty-one instead of twenty-five years old. (Motion seconded; division called for. Rising vote, ayes 23, nays 23).

The CHAIR. The chair votes no; the motion is lost.

Mr. HEYBURN. Mr. Chairman, I move to amend.

SECRETARY reads: Amend Section 7 (6), by striking out the word "inhabitant" in the third line and insert the word "elector." (Seconded).

Mr. HEYBURN. The object of that is, that a man might not live in the county at all, he only needs to be an elector of the state and inhabitant of the county; inhabitant is not the term we should use, but a man who is going to be a candidate for the legislature should be an elector in the county and district he seeks to represent. (Vote and carried).

The CHAIR. The amendment is adopted.

Mr. MAYHEW. I move the adoption of the section as amended. (Seconded and carried).

Section 7.

SECRETARY reads Section 8 (7), and it is moved and seconded that the same be adopted.

Mr. REID. I move to strike out in the fifth line all after the word "thereof," being the words: "nor shall a member for words uttered in debate in either house be questioned in any other place." I think this would give members of the legislature too broad a field. It carries with it liberty to say anything they please and not be questioned in any other place for it. A man may handle reputation and character as he chooses in debate and cannot be questioned in any other place, if you put that in the fundamental law.

Mr. CLAGGETT. Can't be anyhow, unless it is specially provided by law. It is only thus provided in nations which protect him under the law.

The CHAIR. It is moved and seconded that Section 8 (7) be amended by striking out all after the word "thereof" in line 5.

Mr. CLAGGETT. I don't suppose this convention proposes to muzzle freedom of speech in the legislature, after having adopted in the Bill of Rights that the privilege of freedom of speech outside, and of the press, shall remain inviolate. If there is any one place in the world where freedom of speech should be allowed, going almost to the verge of license, it is in the legislature. The rules of all parliamentary bodies provide that scandalous matter shall not be indulged in, but if any member of the legislature, who may be called upon to expose any scheme of corruption, is to be sued in an action for slander on the outside, I think you will muzzle your representatives in such a way that you will not have a very good government.

Mr. REID. I dislike to take issue with such a distinguished gentleman, but in the very Bill of Rights

it is reported as though they should be liable for slander only in such cases—when they published the truth it was all right. I don't want any uncertainty about this. If legislators expose corruption, they cannot be held to answer in any other place, but I don't want by a constitutional provision to allow them, as is sometimes done, to abuse their privileges. Of course they always have rules, outside of that, to restrain them; frequently men are expelled from such bodies for using language they ought not to. They are indictable under the law, and the privilege of free speech should and will protect them; but I don't want to put that clause in the fundamental law and make them secure from being questioned in any place if they choose to abuse their privileges. If they do not abuse it they will not be molested.

Mr. HEYBURN. I object to this sentence being in here, because it gives a right to the legislator that it does not give to the citizen outside, and the legislature is composed of a good many people, and their audience is generally pretty large, and it would be very difficult to find a better scene in which to disseminate a slander through the general public than in the legislature, if there is a man there malicious enough to do it. And they are protected by law to a reasonable extent. They cannot be questioned for any statement that is in the interest of the public welfare, or exposing fraud or crime in which the legislature is interested, but a man should not be allowed, under the guise of debate in the legislature to cast aspersions against some members there in the body or out of it, and refer to something that the law would not permit him to refer to if he were not a member of that body, and I am in favor of protecting the community against legislators as well as themselves. By the ordinary rules of parliamentary debate the protection thrown around members of that kind of body is sufficient to enable them to say all any man ought to want to say about any subject or any man's individual character.

Mr. MORGAN. You will find those words in almost

every constitution in this country. If the convention sees fit to strike them out, however, I have no objections. That is the reason they are put in.

Mr. PEFLEY. I will say that those are the sort of words that occur in the Constitution of the United States.

Mr. SWEET. I hope members will remember that those words do not apply to any sort of scandal members may see fit to promulgate. Those words are for the protection of members in debate, and it is so stated specifically, and it is simply intended in this clause, as it is in all other constitutions, to leave men free in the legislature in their debate, and I hope that it will not be stricken out. (Vote).

The CHAIR. The motion to amend is lost. (Division called for. Rising vote shows ayes 12, nays 25). The motion is lost—seems to be lost. (Laughter.) The question now recurs on the adoption of Section 8 (7). (Vote, and carried).

Section 8.

SECRETARY reads Section 9 (8), and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 9 (8) by inserting after the word "shall" in the first line, "after the first session thereof," and strike out in the second line the words "in the year," and strike out in the third line the figures "1891," and "on the same day," so that the section shall read: "The sessions of the legislature shall, after the first session thereof, be held biennially, at the capital of the state, commencing on the first Monday after the first day of January, and every second year thereafter, unless a different day shall have been appointed by law, and at other times when convened by the governor."

Mr. MORGAN. That time provides for the first session.

Mr. HEYBURN. The words cannot provide any

time very safely. We do not know when Congress will act on this, and it may be deferred much longer than we think, and, the way it is drawn, there is an arbitrary date fixed, so that it would be for the best there should be no time fixed. Congress will no doubt, or the governor may, provide for the calling of the legislature together for the first time, and after that it will be fixed by law. But the time when the first legislature may be called together is too uncertain to attempt to fix it, it seems to me.

Mr. MORGAN. The section is as it is for this reason. That is about the time our legislature would be convened anyway, if we remain as a territory. If we are admitted into the Union, the governor is authorized by this constitution to call the legislature together at any time he sees fit, and the first session will be after that time is fixed. By the substitute it is not fixed, there is no time fixed for it, for the second time—the following legislature, no time is fixed. Either Congress can appoint a day for the holding of the first session of the legislature, or, if it does not do so, the governor is authorized to convene the legislature at any time within a month if we are admitted, and then the organization comes in 1891, about the time it would come anyway, and every two years thereafter.

Mr. GRAY. I think that should provide that the first session shall be called by the governor; doubtless the enabling act will fix the time; then let that session of the legislature fix the time for future legislatures.

Mr. MORGAN. That is what this bill does.

Mr. GRAY. No, this convenes the first one. I say let the governor, with the enabling act which they will give us with the passage of our constitution, fix the first session of the legislature; and then that session will fix the time of future sessions.

Mr. MORGAN. I would say in reply then that we would have the time for the meeting of the legislature subject to be changed at every meeting of the legislature. I think the time for the meeting of the legislature

ought to be fixed in the constitution. It is easy to have that say, convene every two years, commencing at 1891. If you do not want to fix it at that time, of course that figure can be changed, but I think the constitution should provide that the legislature should meet every two years, the first session of its organization being in 1891. If we should be admitted, any time, the governor under this constitution—the executive department, has the right to call the legislature together for any purpose.

Mr. HEYBURN. Mr. Chairman, the amendment was suggested to my mind this morning, and when we were passing on this executive bill, it was provided that the governor in calling this legislature together must specify the objects, and it can consider no other questions than those specified, and with the additional provision, in another bill already acted on, that it can only remain in session twenty days. Now that is impracticable, unless we release the legislature from that restriction, because the first one convened in this city will have considerable business to do, and it would be impossible for the governor in calling it together to specify with safety all that it may be called upon to consider, because there may be many other things devolved upon it by reason of any action of Congress that may be taken in regard to our admission; and for that reason I sought to exempt this first legislature from the provisions of the executive bill, that it can only be called to transact that business specified in the call, and also the limitation of twenty days upon it, and it seemed to me it met every requirement confronting us. Now if that amendment is adopted, when the constitution is adopted and accepted by Congress and we become a state, the governor may call this legislature together without any limitations, and it goes into session, and it may be in January, or next August, or it may be in October, but it goes into session, and after that I leave the provision of the gentleman, that after that it shall assemble bien-

nially, as he has drawn it. It seemed to me that was necessary.

Mr. MORGAN. I would like to hear the amendment read.

Mr. MAYHEW. Your idea, Judge Morgan, is, that the governor convenes an extraordinary session of the legislature?

Mr. MORGAN. Certainly.

Mr. MAYHEW. But in all extraordinary sessions the governor is compelled, or rather required, that he shall specify for what purpose it shall be convened.

Mr. MORGAN. Yes.

Mr. MAYHEW. But at the organization of any legislature, the governor delivers a biennial message to that legislature upon the general subjects.

Mr. MORGAN. I understand it in that way, generally.

SECRETARY reads Mr. Heyburn's amendment.

Mr. MORGAN. That does not fix the time for convening the first legislature; it still remains with the governor.

Mr. HEYBURN. That is the intention, to leave it with the governor or Congress.

Mr. MORGAN. So that it is left exactly as it was.

Mr. CLAGGETT. I have drawn another section. (Reading). "The first session of the legislature shall be held at such time as may be prescribed by Congress, and if no time shall be prescribed by Congress, then at such time as the governor may designate by proclamation. The first legislature shall fix the date for the sessions of the legislature thereafter, which will be once every two years."

Mr. HEYBURN. I would suggest to the mover that he should relieve the legislature from the terms imposed on the ordinary call of the governor, because it has been restricted. You simply say the governor may call it, and if he calls it, he calls it with the restrictions, unless you release him from them.

Mr. CLAGGETT. We have got to be admitted by

an act of Congress, and that act of Congress will no doubt prescribe the time for the first call of the legislature. But in case the act of Congress does not prescribe the time, then the governor may fix the time himself by proclamation, if the state has been admitted into the Union, and then the first legislature that convenes under the proclamation of the governor or at the time prescribed by Congress, fixes the regular date for the organization.

Mr. HEYBURN. I think the gentleman misunderstood me. That is good so far as it goes, but suppose the governor does have to call that extraordinary session. Then, unless some exception is made, it will have to be subject to the limitation of twenty days and the consideration of the questions specified in the call.

Mr. MORGAN. I should like to hear the proposed amendment read.

SECRETARY reads: The first session of the legislature shall be held at such time as may be prescribed by Congress. If no time shall be prescribed by Congress, then at such time after the admission of the state as the governor may designate by proclamation. The first legislature shall fix the date for the regular session thereafter, which shall be once every two years.

Mr. MORGAN. The amendment, or proposed amendment, makes no change from this section other than the first part of it. If Congress fixes the time for the first sitting of the legislature, it does not interfere with this section, nor does this section interfere with that law, and could not if it wanted to. In any case the governor can call the session together, notwithstanding this section, as I before stated. That disposes of the first two points offered in the amendment of the gentleman from Shoshone, Mr. Claggett. The objection to the latter part of the amendment is the one stated before, that the legislature would be continually changing the time for the convening of its own sessions, which I think should be fixed in the constitution, and placed in this law to be on the first Monday after the first day

of January in 1891, and every two years thereafter.

Mr. HEYBURN. I would like to ask the gentleman a question. Would it not be a fact, if that section is unchanged, that the legislature could not meet before the first day of January, 1891?

Mr. MORGAN. I think so; except on the special call of the governor.

Mr. CLAGGETT. Certainly.

Mr. MORGAN. It can meet in either of the cases suggested, in the amendment suggested by the gentleman from Shoshone, Mr. Claggett, if Congress should authorize the meeting of it, it certainly can meet notwithstanding this, and if the governor should call a session, it can meet; this does not interfere with it.

Mr. HEYBURN. Suppose Congress fails to call it, and the governor calls it, then it will be subject to the restrictions of the business for which he calls it.

Mr. MORGAN. No doubt, but the amendment does not change this section at all, except it leaves it for the legislature hereafter to fix the time of their meeting.

Mr. GRAY. Suppose the call of the governor or by Congress was in 1890, the latter part of the season Perhaps we need no session then, and you only put the state to the expense of a session in 1891. If Congress granted it, it might grant us the authorization to transact all kinds of business, and then we will have to come again in 1891.

Mr. MORGAN. That is the only objection I have heard to this section yet, Mr. Gray.

Mr. GRAY. Thanks.

Mr. MORGAN. That we would have a session so soon after the one authorized by Congress. If any gentleman has a proposition to fix that any better than this, I would be glad to listen to it. I think if we are admitted at all at this session of Congress, we will be admitted next winter, which will give abundant time for the meeting of the legislature. We must have a meeting of the legislature almost immediately upon our admission into the Union.

Mr. HEYBURN. How will we get it?

Mr. MORGAN. Either by the act of Congress or a call of the governor.

Mr. HEYBURN. If it is by a call of the governor, won't it be improper under these restrictions to transact any other business than that specified?

Mr. MORGAN. Yes.

Mr. MAYHEW. How are you going to call the legislature when you haven't got any provision for its election? How do you know who are going to be elected? I would like to call my friend's attention to this matter; if this constitution is to be approved by Congress, Congress will provide for the election of members of the legislature. I don't think we can provide in this constitution for the election of members of the legislature; but the enabling act itself, after Congress approves this constitution and admits us into the Union, will provide for the election of members of the legislature, and perhaps all state officers—state officers and members of the legislature. Now Congress may admit us by an enabling act, and authorize the governor to call an election for the election of certain officers. I don't see how it will follow that Congress will call an election in this territory or in this state for the election of state officers and members of the legislature immediately. It would be like the enabling acts in Montana and Washington and Dakota; it makes the election for members of the legislature late this fall, may be way in October.

Mr. MORGAN. Then there would be no necessity for the session to meet until the first Monday in January in 1891.

Mr. MAYHEW. That might be, but we can't determine when that session shall be.

Mr. MORGAN. There certainly can't be an election called this fall in October.

Mr. MAYHEW. No, I don't think we are going to be admitted so quick as all that. Congress does not meet until December.

The CHAIR. The question is on the amendment offered by Mr. Heyburn.

SECRETARY reads Mr. Heyburn's amendment. (Vote).

The CHAIR. The ayes seem to have it; the amendment is adopted. The question is now upon the amendment as amended. There is a substitute offered by the gentleman from Shoshone, Mr. Claggett. The question now is upon the adoption of the substitute offered by Mr. Claggett.

Mr. CLAGGETT. I call for the reading of the substitute.

SECRETARY reads Mr. Claggett's substitute.

The CHAIR. It is moved and seconded that the substitute as read be adopted. (Vote). The motion to adopt the substitute is lost. The question now recurs on the adoption of the section as amended. (Vote and carried). The section is adopted.

Mr. HARRIS. I move that the committee rise, report progress, and ask leave to sit again. (Seconded and vote).

The CHAIR. The chair is in doubt. (Rising vote shows 26 ayes, 15 nays.) The motion is carried and the committee rises.

CONVENTION IN SESSION.

President in the Chair.

Mr. McCONNELL. Mr. President, your committee of the Whole have had under consideration the report of the committee on Legislative Department, have come to no conclusion, and ask leave to sit again.

It is moved and seconded that the report of the committee be adopted. (Carried).

Mr. POE. I move that when we adjourn, or that when we take a recess, it be until half past seven this evening. (Seconded).

Mr. MAYHEW. I offer the amendment, that we adjourn until Monday morning at 10:00 o'clock.

The CHAIR. It is moved and seconded that we

now take a recess until half past seven o'clock; to that there is an amendment made that we adjourn until ten o'clock Monday morning. (Vote). The chair is in doubt. (Rising vote shows ayes 19, nays 26). The motion to adjourn is lost. The question recurs upon the motion to take a recess until half past seven.

Mr. BEATTY. I move to amend by making it eight o'clock.

Mr. MAYHEW. I move to amend to make it nine o'clock.

Mr. GRAY. I second the amendment of nine o'clock.

Mr. AINSLIE. Too late; it would mean that we would be here until twelve o'clock at night. I move to amend by making it seven o'clock.

Mr. HEYBURN. I second the last motion.

The CHAIR. The last motion was at the tail end of four or five, and it is out of order to go beyond the second. The first is to take a recess until half past seven; to that there is an amendment to take a recess until eight; the last is to take a recess until nine. (Vote). The chair's in doubt. Those in favor of taking a recess until nine o'clock rise and be counted. (Rising vote shows 14). The motion is lost. Those in favor of taking a recess until eight o'clock say aye. (Vote). The chair's in doubt. (Rising vote shows 25 ayes, 20 nays). The motion is carried, and the convention will take a recess until eight o'clock this evening.

Evening Session 8:00 P. M.

Convention called to order by the President.

APPOINTMENT OF RECEPTION COMMITTEE.

The CHAIR. In response to the invitation that was extended by the convention to the congressional party at Salt Lake, the chair received this afternoon the following reply: (Reading) "Our party heartily accepts the invitation of the constitutional convention extended from Gov. Shoup, and will spend Tuesday in Boise City. Signed, George E. Dorsey." This morning a motion was made for the appointment of a committee of three

for the reception of this party, in case they should accept this invitation. The chair did not appoint the committee at the time, not knowing whether the gentlemen would be here or not. The motion was to the effect that the governor should be the chairman of the committee, and I will now appoint the mover of the motion, Mr. Ainslie of Boise, Mr. Reid of Nez Perce and Mr. Hays of Owyhee, as the three members of that committee.

Mr. AINSLIE. Mr. President, I desire to make a motion, if the house concurs, and that is, that the president of this convention be added to that committee. (Seconded).

The CHAIR. It is moved and seconded that the president act with the committee. (Carried).

LEAVES OF ABSENCE.

Mr. CAVANAH. Mr. President, I ask for indefinite leave of absence. I ask for unanimous consent for it.

The CHAIR. Is there any objection?

Mr. CLARK. The reasons should be given.

Mr. CAVANAH. Well, I have a case in court that comes up next Tuesday, and my counsel, Mr. R. Z. Johnson, says it is absolutely necessary that I should be there; otherwise I would not ask such leave.

The CHAIR. Is there any objection? If not, indefinite leave of absence will be granted the member by the convention.

Mr. HAMMELL. I am requested by Major W. W. Woods of Shoshone to ask indefinite leave of absence for him, on account of physical disability.

The CHAIR. Is there any objection? If not, it will be so ordered.

COMMITTEE CHANGE.

Mr. CAVANAH. Mr. President, I would ask unanimous consent that my colleague, Mr. Sinnott, should be placed on the committee on Apportionment. Our county should be represented, and on account of being away myself, I think it is nothing but right.

The CHAIR. If there is no objection it will be so ordered. Is there any objection? It is so ordered.

Mr. MORGAN. I move that the convention now go into committee of the Whole upon the report of the committee on Legislative Department.

Mr. HEYBURN. I second the motion. (Carried).

COMMITTEE OF THE WHOLE.

Mr. McCONNELL in the Chair.

ARTICLE 3—LEGISLATIVE DEPARTMENT.

The CHAIR. The first thing now is Section 10 (9).

SECTION 9.

SECRETARY reads Section 10 (9), and it is moved and seconded that it be adopted. Carried.

SECTION 10.

SECRETARY reads Section 11 (10), and it is moved and seconded that the same be adopted. Carried.

SECTION 11.

SECRETARY reads Section 12 (11), and it is moved and seconded that the same be adopted.

Mr. BEATTY. Mr. Chairman, I have an amendment.

SECRETARY reads: If any person elected, or who is a member of either house of the legislature, offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into the legislature, in consideration of or upon condition that any other person elected to or who is a member of the same legislature, will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced into such legislature, the person making such offer or promise is guilty of solicitation of bribery, and if any such person give his vote or influence in favor of or against any measure pending in such legislature, upon condition that any other member will give, or promise or assent

to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced into such legislature, or in consideration that any other member has given his vote or influence for or against any other measure or proposition in such legislature, he is guilty of bribery. Any such person who is guilty of either of such offenses shall be expelled and shall not thereafter be eligible to the legislature or the right of suffrage, and on conviction of such offense in the courts shall be liable to such further penalty as may be prescribed by law.

Mr. BEATTY. Mr. Chairman, I move the adoption of that amendment. (Seconded).

The CHAIR. It is moved and seconded that the amendment be adopted. Are you ready for the question?

Mr. BEATTY. Mr. Chairman, that is not original with me; it was first used in the constitution of the state of Colorado.[1] Montana,[2] in the constitution prepared by it some time ago adopted the same section, and I know of nothing that is more important than some provision of that kind, either in the constitution or in the laws of the territory. Any one who has ever attended a legislature in this territory, or in any other state or territory, knows that the great bane of legislation is this manner of obtaining votes, and the evil that results from it—it results in more corruption than any other thing that exists in legislation. This is intended to guard against that, and while members perhaps could not catch exactly the drift of it, I say it is carefully worded—is worded from this Colorado section. There are one or two little changes in phraseology, but the sense is precisely the same as in Colorado. I think it is an important section, especially if it results in the end designed, which is to stop that pernicious practice of trading votes and making combines upon dif-

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1—Sec. 40, Art. 5, Colo. Const. 1876.

2—Sec. 41, Art. 5, Mont. Const. 1889.

ferent bills. It is not worth while for me to spend the time of men who know anything about legislative bodies and what is done there, and the evils that result from it.

Mr. SWEET. Mr. Chairman, I did not perhaps catch that amendment, or substitute, or whatever it may be. It seems to me it went to the extent of forbidding members or candidates for the legislature from pledging to the people their support of men or measures. If it goes to that extent, it certainly should not be adopted.

Mr. REID. Before the gentleman proceeds with his argument, I would like to have the substitute read.

SECRETARY reads Mr. Beatty's amendment again.

Mr. MORGAN. Mr. Chairman, I would be in favor of this section as the law of the land in this territory, or in this state after it is admitted. I think it ought to be upon the statutes, but I think it is a thing that should not go into the constitution. If we are going to undertake to embody all the criminal law, there are many other offenses that are equally heinous, and perhaps more so than this, which we might embody in the constitution, but I don't think this is the place for those laws which we put upon the statute book. Another reason is, the section is so long and so worded that it is impossible for us to tell anything about it; it needs careful consideration, and should be referred to some committee. If it is desired to put it in this legislative department, it should have been referred to the committee on Legislative Department, or some other committee should have carefully examined the bill, to see if it could not have been made up in briefer terms and better language. I am opposed to its being introduced into the constitution at any rate, for the reason that I think it should be in the law and not in the constitution.

Mr. REID. I agree with the gentleman that the amendment ought not to go in here but to go in the statute law, but I would like to ask him a question as to Section 12 (11). Each house may, with the concurrence of two-thirds of all the members, expel a member.

I would ask the chairman if he does not think the cause should be stated there—for good cause shown? With that broad statement there, for any reason, they might attack a man and expel him with only a two-thirds majority against him. Suppose the vote for United States senator was depending upon the expulsion of a man—one vote—on some question of that sort; for some slight cause they might fire the member out. Without this statement there they might do it—just two-thirds; it does not state any cause. Shouldn't there be some limit on that?

Mr. MORGAN. I think the experience of the country is that it is a very difficult thing to expel a member from either house of the legislature in any of the states of the Union. It is a thing that is hardly ever done, I believe, in general, excepting on conviction of a most heinous offense.

Mr. REID. I would ask the gentleman if in the last senatorial fight—I am reminded of it by the member from Shoshone—if a member was not expelled and it turned the scales in Indiana?

Mr. MORGAN. In Indiana?

Mr. REID. Yes, that is what brings it to my mind. They needed one vote and expelled a man without any cause, or slight cause, and turned the tie. I think some limit should be placed upon that.

Mr. MORGAN. It may be so, but I will suggest the difficulty in changing the section in the manner proposed; if we say "for good cause," then the section will be as broad as it is now.

Mr. REID. I ask the gentleman to accept this amendment: "Each house may, with the concurrence of two-thirds of all the members, for good cause shown, expel a member."

The CHAIR. We are discussing the substitute.

Mr. REID. That is an inquiry.

The CHAIR. The substitute is offered by the gentleman from Alturas.

Mr. REID. That is an amendment to the main prop-

osition; that and the main proposition all came up together.

The CHAIR. Well, go on.

Mr. MORGAN. I don't understand.

Mr. REID. I ask the gentleman to accept this amendment: "Each house may, for good cause shown, with the concurrence of two-thirds," etc.

Mr. MORGAN. Yes, I have no objections to that at all.

Mr. REID. I move that that be incorporated, after the words "Each house may," "for good cause shown." It was the amendment suggested by the gentleman from Shoshone to cover the case.

Mr. BEATTY. I have a word further to say in support of the amendment I have offered. It has been suggested that this ought to be enacted by the legislature. Well, possibly it ought to be, but it never will be if it is left to the legislature. Legislatures are not in the habit of enacting provisions of that kind to tie themselves up. It has been found wise to insert it in constitutions in other states, and I can see no objection to its going in here. It is not any more legislation than hundreds of other provisions that we have put in the constitution. I want it put in here by this convention, because I believe it will not be put in by the legislature, and I believe it is an important measure to have incorporated in the laws in some place, to bind the legislature. Now the suggestion that the gentleman from Bingham makes, that it is long, is not a valid objection—it is lengthy, and so forth. As to its length, it is I think, pretty near as brief as we can make it if we worked at it all night. It is not my language; it is the language of the convention of the state of Colorado, and I did not introduce it carelessly. I copied it, after looking over the section as carefully as I could, in the short time I have had. There are one or two words changed. Instead of using the words "legislative assembly," I have used the word "legislature," and there are a few little changes of that kind, but nothing to change in any part of the

sense of the section. I believe it is an important section, and I believe if it is embodied it may prevent a great deal of unjust legislation and a great deal of trading votes in the legislature.

Mr. AINSLIE. I think the proposition suggested by the gentleman from Alturas would meet the approbation of almost any man. I don't think you could get a legislature together in this territory that was mean enough, or had so many mean members in it, that they would not adopt that provision, and I think members of the legislature voting against it would be sufficient cause for them to be expelled, but I think, like the gentleman from Bingham, that the proper place for it is in the code of criminal procedure. If we are going to put in all these little provisions proposed, we shall have a constitution so long that Congress will never get through reading it, and I believe in making a constitution as short as possible. I don't think any person will object to any such provision. A man that will object to it is not fit to sit in the legislature.

Mr. HEYBURN. I would make the inquiry whether or not it would be competent for the legislature in a criminal statute to prescribe the terms on which the legislature should expel one of its own members.

Mr. AINSLIE. Of course it can. It defines what is and what is not a crime.

Mr. HEYBURN. But they are not vested with that kind of judicial power or powers over their own members, and they are not a criminal court.

Mr. AINSLIE. They can expel a member after he has committed any crime, without this provision here you have brought into the committee. They can make a crime and a member of the legislature a criminal, the same as anybody else in the territory. The criminal laws act with equal application over all classes.

Mr. CLAGGETT. As stated by the gentleman from Alturas, any one who has attended a legislative body or any member of them, recognizes the fact that bad legislation is had by this system of trading votes. Combines

are formed upon local measures. It has not only blocked the wheels of legislation, but assists most powerfully in the passage of bad legislation of all sorts. I don't know that I need to go any further than to refer to the last session of the legislature, where combines upon the question of the division of Alturas county and the promises of votes absolutely destroyed, to all intents and purposes, the labor of four years of legislation. I know that it was so two years ago, for I was here and saw the proceedings of the legislature. It may be claimed, just as it is claimed by the gentleman from Boise, that any legislature would adopt it. I have seen substantially this matter presented to two or three legislatures, and I have seen it scouted with scorn every time. If a legislature has a good many crooks in it, they won't have it, and if it is made up of honest men, they feel that the presentation of such a bill is an imputation upon their integrity. And another thing I have noticed, and that is, that there are a large number of members of the legislature who look upon votes in legislation substantially as they look upon votes in the convention, that is, a thing which they can trade off in any way they see fit, and it needs just such a provision as this in the constitution to teach them and call their attention to the fact that it is really a perversion of the powers given to them as members of the legislature. One thing is certain, in my judgment, that if you put it in the constitution it will be a very great check to one of the most dangerous evils today so far as legislation is concerned.

Mr. HEYBURN. I desire to say to the convention what I said in substance in the inquiry to the gentleman. I am not convinced that it is competent for the legislature to enact a criminal statute and call upon the legislature to enforce it in its own body. Criminal statutes are enforced in courts organized for that purpose, and it would be a vain and useless thing, I think, for the legislature to enact a criminal statute and say that the legislature itself should enforce it. I believe

that the proper place to provide for this thing is in the constitution. I am in hearty accord with the gentleman who proposed that measure. I do not believe that legislatures would enforce it, or that they would ever adopt it, rather, or that they would enforce it if it was in the nature of a criminal statute.

Mr. MORGAN. One word more with reference to this matter. I have no objections to this clause whatever. As I stated before, I think it is not the proper place to put it in the constitution. But I do not think there is any question but that the legislature would have the right to pass a law; inasmuch as they have the right to judge upon the qualifications of their own members and of the causes for which they should expel a member, they would certainly have the right to pass a law denominating a crime, upon the commission of which the legislature should expel a member. I do not think there is any question about that at all; so long as it relates to the conduct of one of their own members they would certainly have a right to enforce a law of that kind. As to the question whether a legislature can be obtained that would pass a law of that kind, I don't know, I'm sure. I think, as Mr. Ainslie has well said, that any member who would vote against such a provision in the statute would certainly be left at home in the next legislature; I think there is no question about that.

There is another serious objection I have had, and that is that this expression of the one reason for the expulsion of a member—would the question immediately arise whether the expression of the cause does not exclude every other cause, when you put it in this section, so that the legislature would be practically prohibited from the expulsion of a member for any cause excepting the one named in this section?

If however the convention desires to insert this as a part of the constitution, it must recommend that it be referred to a committee. It is certainly three times as long as it ought to be to express anything there is in

it. I think with a little time it can be made much briefer than it is.

The CHAIR. The question is upon the adoption of the amendment to Section 12 (11). (Vote). The chair's in doubt. (Rising vote shows ayes 30, nays 12). The amendment is adopted. The question now recurs upon the adoption of the section as amended. (Vote). The ayes have it; the section is adopted.

SECTION 12.

SECRETARY reads Section 13 (12), and it is moved and seconded that the same be adopted. (Vote and carried).

SECTION 13.

SECRETARY reads Section 14 (13), and it is moved and seconded that the same be adopted. Carried.

The SECRETARY. Mr. Chairman, there was a matter sent up by Mr. Parker which the page laid on my desk; it was intended as an amendment to Section 14 (13).

Mr. CLARK. My friend from Idaho county is quite deaf, and finds it quite difficult to put in his motion. The chair did not see him and he did not speak loud enough.

Mr. REID. I ask unanimous consent that his amendment be now considered.

The CHAIR. The section has already been adopted.

Mr. MORGAN. I call for the reading of it.

SECRETARY reads: To amend Section 13 (12) by leaving out all in line 2 after the word "openly," and insert "during the sittings of the legislature."

Mr. HOWE. I move to reconsider the vote whereby the section was adopted. (Seconded and vote).

The CHAIR. The chair's in doubt. (Rising vote shows ayes 15, nays 17). The motion is lost.

SECTION STRICKEN OUT.

SECRETARY reads Section 15, and it is moved and seconded that the same be adopted.

Mr. AINSLIE. That provision will not stand the test of the courts.

Mr. REID. I move that the section be stricken out. It is unconstitutional. (Seconded).

Mr. SWEET. I hope that no part of the criminal code will be stricken out of this constitution. (Laughter).

The CHAIR. As many as are in favor of striking out Section 15, say aye. (Vote and carried).

SECTION 14.

SECRETARY reads Section 16 (14), and it is moved and seconded that the same be adopted.

Mr. PARKER. I have sent up an amendment.

SECRETARY reads: To amend section 16 (14) by adding after the word "representative" in line 3, "Bills appropriating money from the state treasury shall require a majority in both houses of two-thirds of the members present."

The CHAIR. Is there any second to the adoption of it?

Mr. HOWE. I second it.

Mr. REID. Let's hear the amendment again.

SECRETARY reads Mr. Parker's amendment again. Cries of "Question."

The CHAIR. As many as are in favor of the adoption of the amendment say aye. Absolute silence. (Laughter.) Those opposed no. (Vote.) The motion is lost. The question recurs upon the adoption of section 16 (14). (Vote.) It is carried; the section is adopted.

SECTION 15.

SECRETARY reads Section 17 (15) and it is moved and seconded that the same be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Strike out in the 9th line all after the word "members" and substitute the word "present."

Mr. HEYBURN. Mr. Chairman, I understand that

we have provided that a quorum shall consist of a majority of the members present. This provides that a majority of all persons elected shall concur in every bill. It is an unusual provision in a legislature, I think, contrary to every rule. A majority of a quorum present is sufficient to pass a bill, I think.

The CHAIR. Are you ready for the question?

Mr. MORGAN. I think the section ought to be adopted as it reads. I think a majority of all elected to each house ought to concur in the passage of each bill. I call the attention of the gentleman to the result of his amendment. We have concluded to have 18 members in the senate. Ten will constitute a quorum for the transaction of business. Six of the ten can pass any bill, so that six, one-third——

Mr. HEYBURN. Suppose, under the authority given, it does attempt to do business with a bare quorum; what business could it do?

Mr. MORGAN. Any business.

Mr. HEYBURN. It could not pass a bill, because a quorum is not a majority of all members elected.

Mr. MORGAN. But in the bill as it is——

Mr. HEYBURN. Yes, so I think it is a useless bill.

Mr. MORGAN. They could pass a bill to a vote with six, one-third of the members elected.

Mr. HEYBURN. That is the way all legislative bodies act, I understand.

The CHAIR. The question is on the amendment offered by the gentleman from Shoshone. (Vote.) The chair is in doubt. (Rising vote shows ayes 31, nays 10.) The amendment is carried. The question now recurs on the adoption of section 17 (15) as amended. It is moved and seconded that it be adopted. (Vote and carried.)

SECTION 16.

SECRETARY reads Section 18 (16) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 17.

SECRETARY reads Section 19 (17) and it is moved and seconded that the same be adopted. (Carried.)

Section 18.

SECRETARY reads Section 20 (18), and it is moved and seconded that it be adopted.

Mr. AINSLIE. It will cause a great deal of trouble and expense to the state. It says "No act shall be revised or amended by mere reference to its title," etc. It will cause a great deal of expense in public printing, it seems to me. To amend half a dozen sections in the act of civil procedure, it would be an unnecessary expense to the state to go to printing the whole act of civil procedure. I think that can be arranged with less expense in the way of printing.

Mr. MORGAN. I would say that this provision is now in force in our state. It was put in by the revisers after very careful consideration. The difficulty of amending acts by their title is, it leaves it uncertain as to what act was amended, leaves it for the court to construe, and makes it difficult to find. If the section as amended is stated and published in full there is no difficulty about it then. The statute book that we have now in force is numbered for this purpose, leaving certain numbers out to be added to the chapters, and it is a provision of our present statute, and I think a very wise one.

Mr. POE. Mr. Chairman, it seems to me if this is adopted, that if we undertake to amend one section of the act of civil procedure, or criminal procedure, it would require the publication of the whole act to get that one amendment in. It seems to me that by referring to the title of the section, and stating that title so and so, chapter so and so, is amended by a certain statement, would be sufficient. But I don't think there is any necessity for it at all, and the statute can regulate that, and I move to amend it by striking the whole of that section out. (Seconded.)

Mr. MORGAN. You will notice in the second line of that section that it only provides for the publication of the section that is amended, when there is only one section amended.

Mr. POE. I don't understand it that way.

SECTION 16.

Mr. AINSLIE. I will call the attention of the gentleman from Bingham to section 18, (16) which was not in force at the time of the adoption of the Revised Statutes of Idaho, and that does away with the necessity of section 20. Section 18 (16) provides; "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Now if a member of the legislature cannot draft a bill to amend an act, and provide as closely for its identification as it is in section 18, (16) he has no business in the legislature.

Mr. BEATTY. Mr. Chairman, I hope that the provision, if not exactly like this one, yet one somewhat similar will be adopted. The great difficulty with legislation in Idaho has been that the legislature has simply passed an act, put in it what it pleased, and at the end repealed everything in conflict with that. Now laws are made not for lawyers alone; they are made for the people. A lawyer can take that act and find what particular statute has been repealed by it, but I defy any layman to take up the acts of the state of Idaho and tell what the laws are. Now the committee on Revision, which undertook to revise the statutes a few years ago, put those statutes, as you are aware, in sections, and they embodied a provision in those statutes that they should be amended section by section, respectively, as passed and something of that kind should be retained. Otherwise, when legislatures meet, they will go ahead and put in an act what they please, and at the end of it say they repeal everything in conflict with that. That throws the old statutes in a few years into utter confusion, and you are compelled again to appoint another committee on revision to revise the old statutes to find out what the laws are. Now I believe always the laws should be so drawn that the layman shall understand what the laws are, and not

have to go to an attorney and pay him five dollars or a hundred dollars to tell him what the laws are. If something like this provision is put into the constitution, it will require legislatures in amending a law to refer to it so that you may understand what the law means. But I am inclined to think the word "acts" should be stricken out, and that it should apply to sections, so that when any section is amended that will be repeated, and that will meet the difficulty. We all know of private acts passed by the last legislature. Now if you wish to amend some act of that kind under this provision you will have to repeat the whole act, and I suggest that it be amended to confine it to the section.

The CHAIR. If you have an amendment, prepare your amendment and send it up.

Mr. REID. While the gentleman is writing his amendment, I will call the attention of the committee to these two sections 18 (16) and 20, (18) taken together. They are going to cause the state a great deal of unnecessary expense in the way of public printing in that way. I will illustrate it. The legislature meets and wants to amend the code of civil procedure. Some member will introduce a bill, and it will be referred to the committee on Judiciary. Now it is usual for that committee, when amendments are proposed to the act of civil procedure, by one act, to propose they become one bill, and all be printed as one bill and incorporated in the general law, and it is the business of lawyers to find out and see what amendments are made. Under this section 18 (16) which you have adopted, you can embrace but one subject in the bill. It has got to go through several revisions and printings, and you have got to pay the expense incident to all of it, and when you get down here you have to reproduce every one of those acts as sections every time you amend it, and giving the measure out to the printer,—all those matters would take, you will find, three-fourths of the session of every legislature on account of those two sections.

Mr. ALLEN. I think the trouble began in section

17, (15) which says, "Any bill" and so forth. I think if we are going to cure it, we should go back to the origin of this difficulty. The legislature have some discretion.

Mr. REID. I will add to what the gentleman says that all this is a matter either for the code or the work of the legislature themselves. It does not belong to the constitution; it is statute law.

Mr. MORGAN. These statutes, or the same sections, were introduced into the constitution of the state of Illinois at the time they drafted a new constitution in 1870.[1] I did not get them from that constitution, but they are adopted there, and I will explain the reason why they are adopted in this new constitution. It had been found to be the case in these log-rolling schemes in the legislature, to which reference has been made here, that they would embrace a dozen bills in one act, by getting together and agreeing upon what bills they would pass; they would pass a whole batch of them together in what was called an omnibus bill. In that way they would get through the legislature that which never ought to have been enacted into statute, because they would get such a combination that nobody could resist it,—every fellow that wanted a bill passed would agree with every other fellow and put it in the omnibus bill and pass it all together.

Now with reference to section 18, (16) the object of that is this: Another difficulty has arisen. They would conceal provisions in a bill relating to one subject,—they would conceal provisions relating to an entirely different subject, and the members of the house or senate, looking over the bill hastily, would not see that they had concealed provisions not belonging to it at all, and in that way they could enact that which, if expressed in plain terms in its title, the members would not vote for. That was done in regard to the abuse which was sought to be covered by this provision. The provision in section 18,

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1—Art. 4, Sec. 13, Ill. Const. 1870.

(16) does not refer to the same matter as the one in section 20, (18) at all,—doesn't refer to it. It simply means this; that when a bill is drafted for the purpose of enacting a statute the title of the bill shall express the substance of it, the subject upon which it treats, so that the attention of the members of the legislature shall be called to the subject which is under discussion and which it is proposed to enact into a law. But if the title does not express the whole subject embraced in the bill, as I said before, they would conceal other measures that ought never to be enacted and that members of the legislature would not vote for, and I regard it as a very important provision. Now section 20, (18) is to cure another defect, as Mr. Beatty has well said. If you revise sections of a statute at various sessions of the legislature simply by enacting a bill which strikes out any particular word of the section, or two or three words, after three or four sessions of the legislature it is almost impossible to tell what the statutes are; but if every time a section is amended it is required to be stated in full in the act as amended, it then goes into the new statute as amended, and the old section is repealed, and everybody at a glance can tell how the section has been changed and what the law is. Otherwise you will have to hire a lawyer or two to tell you what the laws are, and ten chances to one he will get it wrong himself after there has been four or five sessions of the legislature.

SECTION 18.

Mr. AINSLIE. I have an amendment.

SECRETARY reads: Amend section 20, (18) so as to make line 2 read; "The section as amended shall be set forth and published at full length."

Mr. MORGAN. I have no objections to that.

Mr. AINSLIE. I think that covers the whole thing.

Mr. MORGAN. I accept the amendment. Would it be well to change the word "act" in the first line also?

Mr. AINSLIE. No. It will then read; "No act shall be revised or amended by mere reference to its title,

but the section as amended shall be set forth and published at full length."

Mr. MORGAN. I have no objections to it.

Mr. HOWE. I would like to ask if this would apply to the codification of the laws.

Mr. MORGAN. O, certainly; they would then publish it at any rate.

Mr. HOWE. Then I think it would make a volume so voluminous that it could not very well be handled; if in the codification every section that had been amended should be repeated it would make too voluminous a volume altogther.

Mr. MORGAN. I think you misapprehend the section, Mr. Howe. The section as amended, the one amended, is to be published in full in the act. There would be nothing published except the laws that were in force.

The CHAIR. By consent, I understand, section 20, (18) has been amended. The question now recurs on the adoption of the section as amended. (Vote.) The chair is in doubt. (Rising vote, but result not declared.) The ayes have it, the section is adopted.

SECTION 19.

SECRETARY reads Section 21, (19).

Mr. REID. I would ask the chairman of the committee if line 37 of this section will conflict with the judiciary report, wherein they allow special courts for incorporated cities and towns.

Mr. MORGAN. No sir; not at all.

Mr. REID. Mr. Chairman, I move to strike out lines 37 and 38. I think that conflicts; (it is page 8). My reason for doing it is this. This prohibits the legislature from passing,—I read; "The legislature shall not pass local or special laws in any of the following enumerated cases: . . . . Creating offices or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts." Now in the judiciary report it is provided that the legislature may establish criminal courts in incorporated cities and

towns. For instance, suppose Boise City or Hailey, or any city in this territory becomes a large city, of 15, 25, or 50,000 inhabitants or less, and it becomes necessary to establish a city criminal court with a judge; under the provisions of lines 37 and 38 I do not believe that can be established, and the very clause,—the very protection the committee seems to desire by enacting these two lines is secured in the judiciary act. It says that the laws to govern all the courts shall be uniform throughout the territory, and I think this will conflict with the power we propose to give in the judiciary act to the legislature to establish criminal and other police courts in the incorporated cities and towns.

(Motion seconded.)

Mr. MORGAN. I think the gentleman's objection is not well taken to the section.

Mr. REID. Before the gentleman proceeds, if he will just accept an amendment to strike out "cities," I think it will meet it.

Mr. MORGAN. I think we can obviate the difficulty in this way. It is a very common thing in other states which have a provision of this kind in their constitutions. If a law is passed authorizing all cities of a certain size or certain population to establish city courts, it covers it, and all cities, as fast as they get to be that size can adopt the provision; and of course it is not necessary to establish police or city courts unless in cities and towns where they are necessary, that have attained a population which requires the establishment of these courts. Then the legislature can say that all cities of a certain size or certain population may establish police courts, and they can go on and regulate the jurisdiction of these courts, specify the duties and qualifications of the judges, and everything. It is then a general law, and applies to all towns and cities that have arrived at that point where they need them. They can make this the number of population.

Mr. REID. If the gentleman will allow me to interrupt him, that is the very language we had in the

judiciary act. We made it uniform, except that the legislature may, in incorporated cities and towns, provide for special courts. I do not believe that it ought to be applied to a certain number of inhabitants or property. I think whenever,—no matter what the size of the town is or the city,—whenever there is special need or necessity requires, that there should be a special court for the protection of law and order, and when it is made to appear to the legislature that that necessity exists, they ought to establish a court there, and that is the reason I want cities stricken out here, because they could not establish a special court.

Mr. MORGAN. This covers a great deal of ground that is not covered by the judiciary act; creating offices and prescribing the powers and duties of officers in counties, and so forth.

Mr. REID. I will withdraw my motion to strike it out, if he will allow the word "cities" to be stricken from that.

Mr. MORGAN. Then it would allow the legislature to pass special laws creating offices, prescribing the powers and duties of officers in cities.

Mr. REID. Will the gentleman accept this amendment; except as otherwise provided in this constitution, at the end of the line?

Mr. MORGAN. Yes, I think that is all right.

Mr. REID. "Except as in this constitution otherwise provided."

Mr. MORGAN. Yes.

The CHAIR. Mr. Parker has an amendment.

SECRETARY reads: Amend section 21; (19) after the word "state" in line 12, insert: "Provided, that the legislature may appropriate money for the purpose of constructing or aiding in the construction of wagon roads through two or more counties, where the necessity for such exists."

Mr. CLARK. Mr. Chairman, the gentleman from Idaho will address you upon this amendment. While he is doing so I wish the chairman of the committee would

look over the amendment and see if it is in proper form. The gentleman from Idaho has devoted his best energies for two years to the great project for a wagon road from some point on the Oregon Short Line, through Washington, Boise and Idaho counties to Lewiston. An enabling act was passed through the last legislature, and some action is before Congress in regard to the matter, and he does not wish his project forbidden in this constitution, and I trust it will be examined carefully by the chairman.

Mr. PARKER. I hope the gentlemen of the convention will give my amendment good consideration. We have a great deal of development in the central territory of this state of Idaho, which requires to be opened up by wagon roads. My county, Idaho, is a county 200 miles in extent east and west, and 200 miles in extent north and south. Its western boundary is the Snake river, and its eastern boundary is the mountains, taking the whole extent of the Territory, and it is bounded on the north by the Clearwater river, and on the south by Custer, Lemhi and Washington counties, and in all that great stretch of rich country there is only about 90 miles of wagon road. As I have stated, we are bounded on the south by Custer, Lemhi, Washington and Boise counties, and the only way citizens of those counties can get into Idaho is to travel hundreds of miles over a wagon road. Now during your last session of the legislature a bill passed[1] appropriating $50,000 of the territorial money to build a wagon road to connect northern and southern Idaho,—one of the most necessary and beneficial acts the legislature ever enacted. But under the act of Congress which prohibits the territorial legislature from increasing their indebtedness, we had to go to Congress to get that appropriation ratified, and it is now pending. But if this section 21 (19) as reported by the committee is adopted we shall be in a worse condition than we are now, because as a territory we can

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1—Sess. Laws 1889, p. 30.

appropriate money and get Congress to ratify it, but under this clause of section 21 (19) we are absolutely prohibited from so doing, and I say therefore that my amendment is necessary to give the state legislature authority to appropriate money to such objects, when we are no longer in a state of territorial vassalage like we are today.

Mr. MORGAN. I do not think the amendment should be adopted. One of the objects of this section is to prevent different parts of the state, or persons interested in different parts of the state, from going to the legislature and lobbying through bills for the purpose of appropriating money for laying out, altering or changing roads in different parts of the territory. There is a continual pulling at the legislature to get them to appriate money to those purposes. The legislature might appropriate money generally for the construction of roads throughout the territory, but to appropriate money for the construction of particular roads in particular parts of the territory,—I do not think it is a good plan, and therefore I am opposed to the amendment.

Mr. ALLEN. I think there are some good reasons why the material interests of this territory should have some care taken of them. The criminal code and the civil code are discussed, until it is almost beyond the reach of any lawyer in this body to know where they are going or where they are stopping at the present time. I think there should be some latitude given to the legislature and the people themselves, that, when such important measures come up, that the people of the territory have the right to express their will through the legislature, and I shall move at the proper time to strike out another line which covers the same proposition, which limits the power of the legislature to grant charters or privileges of any character specially for the construction of bridges or toll-roads or ferries. I think this is a time when we should consider these things in a little broader and more liberal spirit than this section

indicates, and that we should have some faith in the fairness and intelligence of the legislature.

Mr. SWEET. As I understand it, there is to be a provision in this constitution which prohibits the state from contracting any indebtedness beyond a certain amount, or from levying taxes beyond a certain amount. That provision will certainly guard the state against unreasonable indebtedness, and it seems to me, Mr. Chairman, that we have a provision here that does go almost too far to protect the people of this state against internal improvements.

Mr. REID. I would ask the gentleman from Latah also, if the inhibition put in the article on municipal corporations does not prevent the state from contributing to private enterprises?

Mr. SWEET. I am not familiar with that. I know the report of the committee on Finance provides that we shall not levy taxes beyond a certain amount, and that certainly protects the state from unreasonable indebtedness, and I do think we ought not to place ourselves in the position that we could not open up these mountain counties.

Mr. AINSLIE. It seems to me that the amendment proposed by the gentleman from Idaho county is covered by 10, 11 and 12, already passed. I understand this road is going to be built at the expense of the state; it is going to be state property, and would not come under this inhibition here.

The CHAIR. The question is upon the adoption of the amendment. As many as are in favor of it say aye. (Not one.) Those opposed no. (Vote.) The motion is lost.

Mr. ALLEN. I move to strike out line 34. I will state one reason——

The CHAIR. It is moved to strike out line 34.

Mr. ALLEN. I will state as one reason that possibly this may be changed, by a little investigation, that we have within the borders of Idaho one of the most scenic points on this continent,—that of Shoshone Falls. Now

it is to be hoped that a bridge or other facilities may be secured, but it is beyond the reach of an ordinary individual,—there is no profit in it,—yet by a charter which might be desirable to secure through the legislature for that purpose, it is presumed at least that some company may be secured to build it and make the improvements, and I think they ought to have the right to grant a ferry or toll-bridge at that point.

The CHAIR. The question is upon the motion to strike out line 34. All in favor of the motion say aye. (Allen, aye.) Those opposed no. (Vote.) The motion is lost.

The question now recurs upon the motion to adopt the section.

Mr. HOWE. Lines 37 and 38 have not been acted upon.

Mr. REID. Yes, he accepted the amendment.

Mr. HOWE. I would like to hear it read.

SECRETARY reads: Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts, except as in this constitution otherwise provided.

The CHAIR. The question is upon the adoption of the section as amended. (Vote and carried.)

Section 20.

SECRETARY reads Sec. 22 (20), and it is moved and seconded that it be adopted. (Carried.)

Section stricken out.

SECRETARY reads Section 23.

Mr. REID. That matter is provided for in the judiciary act, which provides that parties having claims against the state may bring their suits in the supreme court, and they shall ascertain and report them to the legislature, and I move to strike out the section. (Put to vote and carried.)

The CHAIR. It is stricken out.

SECTION 21.

SECRETARY reads Section 24 (21), and it is moved and seconded that the same be adopted. (Carried.)

SECTION STRICKEN OUT.

SECRETARY reads Section 25.

Mr. HEYBURN. I would like to ask the chairman of the committee, is not that the ordinary rule in the conduct of legislative bodies, without enacting it into the constitution? It seems to me an ordinary rule of order.

Mr. MORGAN. I think it is ordinarily the rule, but I am not certain upon that subject. I think it ought to go into the constitution itself.

Mr. HEYBURN. It seems to me it is about enough to have the legislature in, without having the rules of legislative bodies in there. I move to strike that section out.

The CHAIR. It is moved and seconded that the same be stricken out. (Vote.) The chair's in doubt. (Rising vote shows 19 ayes, 18 noes.)

The CHAIR. The motion is carried; the motion prevails and the section is stricken out.

Mr. SWEET. Mr. Chairman, I think the majority voted against the striking of this section out. I think the majority are opposed to striking anything out of that bill.

The CHAIR. Well, it is a matter of taking another vote.

Mr. HEYBURN. I rise to a point of order, Mr. Chairman; it has been voted upon and the vote announced.

Mr. HOWE. I move to reconsider.

Mr. REID. I move to lay that motion on the table.

Mr. HEYBURN. I second the motion.

The CHAIR. It has been moved and seconded to lay the motion to reconsider on the table.

Mr. REID. I withdraw the motion to lay on the

table, in courtesy to my colleague, if he wants to have it heard.

Mr. HEYBURN. I rise to the point of order that the——

The CHAIR. It is moved and seconded that the motion to strike out section 25,—that the motion by which section 25 was stricken out be reconsidered.

Mr. REID. The gentleman, (Mr. HEYBURN) rose to a point of order, and the gentleman, (Mr. HOWE) who moved the reconsideration voted in the negative, and was not entitled to make it.

The CHAIR. If that is a fact, that he voted in the negative, the point is well taken.

Mr. HOWE. I voted in the negative. (Laughter.)

SECTION 22.

SECRETARY reads section 26 (22), and it is moved and seconded that the same be adopted. (Carried.)

SECTION 23.

SECRETARY reads Section 27 (23).

Mr. MORGAN. I move to strike out the words "legislative assembly" in the first line of the section, and insert the word "legislature."

Mr. SINNOTT. I move to strike out the words "three hundred" in the third line, and insert the words "four hundred and twenty." The reason is that this constitution already provides for a legislature of the number of 84 members.

The CHAIR. Is there a second to the motion? (Seconded.)

The CHAIR. It is moved and seconded that——

Mr. SINNOTT. Mr. Chairman, we have provided eventually a number of 84 senators and representatives altogether, which would at five dollars a day amount to $420.

Mr. REID. The way it reads now, all the money they will get, the whole business, shall be $420 a day. "The legislature shall receive for their services a sum not exceeding five dollars a day from the commencement of the session, but such pay shall not exceed the aggre-

gate sum of $420." That is the way that is, with the amendment put in; it says originally "legislative assembly."

The CHAIR. I did not hear any second to his amendment as offered.

Mr. REID. Well, I will second it now.

The CHAIR. But in the meantime there is another motion made and seconded before the house.

Mr. REID. They are both before the house and seconded. I am discussing both amendments together, having obtained the floor for that purpose,and am preparing now to introduce a third, to amend the word "the" to read as "each." It reads that the entire legislature, the members of the legislature, shall receive for their services a sum not exceeding,—it does not say each one of them, but the whole of them,—not exceeding five dollars a day from the commencement of the session, but such pay shall not exceed the aggregate sum of $420 per diem for any one session. If it is left that way I shall be opposed to it.

Mr. HEYBURN. I move an amendment, and I will send it up. I will state to the committee that I move to strike out the word "the," the first word in the section, and insert the word "each," so that it will read; "Each member of the legislative assembly shall receive," etc. and insert "for his services."

The CHAIR. I think it would be in order to put the other motions and amendments first.

Mr. HEYBURN. This is the third amendment to the section; in the third line, after the word "exceed," say "for each member," so that it will read; "but which pay shall not exceed for each member the aggregate of $420." I will reduce it to writing.

Mr. BEATTY. I move that we select a grammar school teacher for the Legislative Committee hereafter. (Laughter.)

Mr. REID. I amend it by moving that the gentleman from Alturas be made that teacher. (Laughter.)

Mr. SWEET. I believe we have found out at last

what place the gentleman from Alturas is seeking. (Laughter.)

SECRETARY reads: To amend by inserting the word "each" after the word "day" in line 2.

Mr. MORGAN. Read the other amendment, proposed by Mr. Heyburn. If the gentleman from Alturas is to be added to the committee on the subject of grammar, I move that some members be there to tell him what words he shall insert, so that he will know. (Laughter.)

Mr. REID. I ask the chairman to accept the following amendments, in lines 5, 7, 8 and 9. "When convened in extra session by the governor they shall receive each five dollars per day; but no extra session shall continue for a longer period than twenty days. They shall also receive each the sum of ten cents per mile by the usual traveled route. The presiding officers of the legislature shall each by virtue of his office receive an additional sum equal to one-half of his per diem allowance."

The CHAIR. Any objections to the amendment? There are three amendments offered to this section, and under the rule I believe the one offered first has the preference. The gentleman from Elmore, (Mr. SINNOTT), offers to amend by inserting the words "four hundred and twenty" instead of "three hundred" in the third line. Are you ready for the question? (Vote.) The motion is lost.

SECRETARY reads: To amend section 27 (23) by striking out the word "the" in the first line and insert the word "each." Strike out the word "they" in the first line, and insert "his." After the word "exceeding" in the third line, insert "for each member." Insert the word "each" after the word "day" in the second line.

Mr. HEYBURN. I would ask the chairman if this amendment, the last part of it, is good English?

Mr. MORGAN. I would say, Mr. Chairman, that the amendment can be corrected in accordance with the provision we have already adopted, if there should be more members.

Mr. SHOUP. Mr. Chairman, it seems to me these

two sections are a little inconsistent. It is provided that no member shall receive more than $300 for the entire session,—for a session of 60 days, but the speaker must receive more than $300.

Mr. MORGAN. Those are construed together.

Mr. HEYBURN. I would suggest a very slight amendment; make the word "member" singular instead of plural.

Mr. MORGAN. The amendment will be accepted.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Shoshone. Are you ready for the question?

Mr. HOWE. Let's have it read.

SECRETARY reads: To amend section 27 (23) by striking out the word "the" in the first line and insert the word "each." Strike out the word "they" in the first line and insert "his." After the word "exceeding" in the third line, insert "for each member." Insert the word "each" after the word "day" in the second line.

Mr. SHOUP. I move to amend by inserting after the word "member" the words "except the presiding officer."

Mr. WILSON. I would like to ask the chairman of the committee on Legislative Department if under this provision any mileage is given to the members when convened in regular session. It seems to me to read that they only get mileage when convened in special session.

Mr. MORGAN. They are getting mileage in both. The period cuts off the sentence from the rest.

Mr. HEYBURN. I would call the attention of the chairman of the committee further,—in line 5 the same error we have corrected before also appears. It reads: "When convened in extra session by the governor they shall receive five dollars per diem."

Mr. REID. I changed that.

The SECRETARY. It has been changed by writing the word "each" after the word "shall" in that line; the word "each" after the word "receive." "They shall also receive each the sum of ten cents per mile," and the

word "each" after the word "shall"—"the presiding officers of the legislature shall each, in virtue of his office——"

Mr. BRIGHAM. I am opposed to this amendment, because I am afraid the gentleman has left the word "each" out in several places.

Mr. HEYBURN. Mr. Chairman, I will send up an amendment.

SECRETARY reads: Amend section 27 (23) by inserting after the word "days" in the sixth line the words; "except in the case of the first session of the legislature."

Mr. MORGAN. I have no objections.

Mr. HEYBURN. That makes it conform to what we had earlier in the bill.

Mr. SHOUP. I have an amendment to the amendment of the gentleman from Shoshone.

SECRETARY reads: Insert after the word "member" in the third line the words "except the presiding officers."

The CHAIR. The amendment which was read is an amendment to the amendment offered by the gentleman from Shoshone; is there a motion to adopt it?

Mr. HEYBURN. I accept that amendment.

The CHAIR. The question is now upon the adoption of the section as amended.

Mr. BEATTY. Mr. Chairman, I am completely lost in the maze of amendments, and if the clerk can read the whole of it, or any of it, I would like to hear it.

The SECRETARY. There is an amendment upon the table, sent up by Mr. Morgan, that has not been acted upon. Strike out the words "Legislative Assembly" in the first line, and insert the word "Legislature."

Mr. MORGAN. I move its adoption. (Seconded.)

The CHAIR. It is moved and seconded that the amendment just read be adopted. (Vote and carried.) It is adopted.

Mr. MORGAN. Let's have the section read now, as amended.

SECRETARY reads: Each member of the legislature shall receive for his services a sum not exceeding five dollars per day each——

Mr. MORGAN. O, leave that "each" out.

The SECRETARY. Well, gentlemen, you have it just exactly that way. (reading) Insert the word "each" after the word "day."

Mr. HOWE. I move to strike that word out.

The SECRETARY. It reads: Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such pay shall not exceed for each member, in the aggregate three hundred dollars for per diem allowances in any one session.

Mr. SHOUP. I think that is not correct; it should read; "for each member except the presiding officers."

The SECRETARY. Yes, there was another amendment. (reading) Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such such pay shall not exceed for each member, except the presiding officers, in the aggregate three hundred dollars for per diem allowances in any one session. When convened in extra session by the governor they shall each receive five dollars per day, but no extra session shall continue for a longer period than twenty days, except in the case of the first session of the legislature. They shall also receive each the sum of ten cents per mile each way by the usual traveled route. The presiding officers of the legislature shall each by virtue of his office receive an additional compensation equal to one-half his per diem allowance as members.

Mr. MAYHEW. As a member.

The SECRETARY. As a member.

Mr. HEYBURN. I move the adoption of the section as read. (Seconded.)

The CHAIR. The question is upon the adoption of

section 27 (23) as amended. (Vote.) The section is adopted.

SECTION 24.

SECRETARY reads section 28, (24) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 25.

SECRETARY reads section 29, (25) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 26.

SECRETARY reads section 30, (26) and it is moved and seconded that the same be adopted. (Adopted; afterwards stricken out in convention.)

Mr. MORGAN. I now move that the article be adopted as a whole. (Seconded.)

SECTION 8.

Mr. CLAGGETT. Mr. Chairman, I have been sitting here figuring on some things with regard to this legislature, by the action of the house this afternoon. I want to preface these remarks to explain what I mean. We changed the number of senators from 12 to 18, and the members of the house from 24 to 36. Then we have a provision for biennial sessions of the legislature. I have figured up the cost of this legislature, and I find that the pay of members alone every two years will amount to $16,200.

Mr. MORGAN. For one session?

Mr. CLAGGETT. Yes, for one session. For printing,—the average territorial printing has cost about $2000, and attaches and the other expenses, with a session of the legislature of even 40 days, or 60 days, amounts to an average of $2000 more, making an expense of $21,000 every two years for legislative purposes. Now I want to suggest to the committee this proposition; that two years on general principles is too often to hold a regular session of the legislature. It should

not be held oftener than once in three years, which will diminish this cost by one third; and if we reconsider the vote by which we established the biennial session at two years, and fix it at three, and then adopt the suggestion of the gentleman from Nez Perce to have the senators and members of the house of representatives elected for the same time, and each for three years, and no hold-over senators, we will save one-third of this expense and avoid a great deal of the objection on account of expense that is made to the adoption of this constitution, and for that reason I want to bring the matter before the committee, and offer this resolution. I do not really know where it comes in, but I offer this resolution, that the vote on so much of the sections adopted as established biennial sessions of the legislature, and also so much of the section as adopted as provided for the election of senators for four years and their classification, be reconsidered,—these two questions. If the committee shall upon discussion of this resolution conclude that that reconsideration should be had, the whole matter can be covered by a recommendation that when the committee rise they report the bill back with this resolution attached to it for reconsideration, with instructions to recommend that it be referred to the committee on revision to go over it and change the phraseology and make it fit in wherever in this constitution this provision for three years for the sittings of the legislature and for the election of representatives properly belongs. I offer that resolution for the purpose of getting at the sense of the committee.

Mr. HOWE. I second the amendment.

The CHAIR. What is the resolution?

SECRETARY reads: Mr. Claggett moves to reconsider the vote on so much of the sections adopted as established biennial sessions of the legislature, and also so much of the section adopted as provides for the election of senators for four years and their classification.

Mr. REID. I think the object the gentleman desires to attain can be reached under section 9, (8)—until otherwise provided by legislative enactment, the sessions of the legislature shall be biennial, and so forth. I do not think that in a new territory, where conditions change sometimes in six months, much more in two years, we ought to limit the sessions of the legislature to triennial sessions; I think they ought to be biennial sessions. The governor can only call them together in extraordinary session, and then for a single purpose. We do not know what may take place. The river may be opened up and we may have a boom; new mines may be discovered, new counties desire to be formed, new irrigating ditches, and a great many things that we cannot foresee. I agree with the gentleman that after the law gets settled, and everything of that kind, we shall not need the legislature so often, but as soon as we adopt this constitution, and as soon as it goes into effect, there will be a hundred questions coming up in the application of the law that we do not anticipate or think about now, that we will have to go to the supreme court upon, or that will have to be remedied by legislative enactment, and we have provided that when the judges see any defect, or any remedy necessary, they shall report it to the governor, and he to the legislature. We are starting out to make experiments in some directions. I think we can come back to that by constitutional amendment, or authorize the legislature so that they can do it themselves, and that this object can be obtained by putting at the end of it,—by providing, until provided by other legislative enactment. Just try it a few years, and if we come to find out that we don't want a session every two years, and the people say so, the legislature has power to change it.

The CHAIR. It would be necessary to reconsider the vote.

Mr. REID. Yes, this is out of order, but I am not bound by that; it is the most direct way to get at it. If we raise the point of order, we will waste more time to

get back to it. In that way of proceeding it requires unanimous consent, but I don't think we should put it in the constitution so that we will have to leave it there. Let's try it with biennial sessions, and if we find out,—after experiencing the necessities that spring up, the developments in law, the creating of enterprises, the making of new counties and so forth, with the assurance of bringing in railroads and water by canals,—if we find we do not need our legislature to meet every two years, we can easily raise the issue in political campaigns, and bring members here to provide for quadrennial sessions; but until we get up to the plane of the old states we ought to have biennial sessions. They in all probability like to have them there, where the country has become settled, and do not need them, and there they do not want the law disturbed because they have had it adjudicated, their constitutions and statutes settled, and there is no new development requiring it, but in our state there will be, and I do not think we ought to make a limit, make a hide-bound rule, but leave it to the legislature themselves, and if the people find that they want it, they can easily elect a legislature that will give it to them.

Mr. HEYBURN. I would suggest another difficulty in attempting to consider this at this hour. We have provided the terms of the officers there, that they shall be for the length of time prescribed to suit the sessions of the legislature, that is, two years. Now if the legislatures are not going to meet every two years we have got to change that system all around that has been prescribed in the legislative and judicial bills presented to this body, so that it seems to me to attempt to consider that subject now will take longer than this body can sit here at this time. I therefore move that the committee rise and report progress to the house.

Mr. CLAGGETT. I rise to a point of order. We have a question before us that must be disposed of. My object in the matter is this; I think the expense is too great. I am opposed on principle to biennial sessions of

the legislature, and have been all my life. We have had sessions of the legislature in this territory every two years——

Mr. HEYBURN. I rise to a point of order. There is a motion that the committee rise, which has precedence over other matters.

Mr. CLAGGETT. I think not. The motion to reconsider under the rules takes precedence of everything except a motion to adjourn.

Mr. REID. I make this point; that in the committee of the Whole the only motion we can make is to rise, and that is the same as the motion you make in the house or convention to adjourn, and that takes precedence of everything. And we have to proceed in committee of the Whole, as far as applicable——

Mr. CLAGGETT. The rules provide specifically that a motion to reconsider takes precedence of everything except a motion to adjourn.

The CHAIR. Does not a motion to rise have the same effect as a motion to adjourn?

Mr. CLAGGETT. No sir, it does not.

The CHAIR. Can't I put the motion to adjourn in committee of the whole?

Mr. CLAGGETT. No sir. (reading Rule 39) "A motion to reconsider must be made by a member voting with the prevailing side, and such motion, to be in order, must be made within the next day of actual session of the convention after such vote is taken, and the same shall take precedence of all motions except a motion to adjourn." And we have another rule which is applicable, that those rules applicable to the convention apply to the committee. I rise for the purpose of supporting the suggestion made by the gentleman from Nez Perce. It will have a very great deal to do in assisting the carrying of this constitution, to be able to say that in the constitution, the constitution does not in an iron-clad way fix biennial sessions,—the principle of biennial sessions, but if it is modified in that way, that after the first session of the legislature, the legislature may ex-

tend the time, it will do away with a very great objection to this constitution, and I think the legislature will do it, and it will result in great saving to the people.

Mr. REID. Will the chairman of the committee on Legislative Apportionment,—or the legislative article, accept that amendment?

Mr. MORGAN. I do not understand it.

SECTION 8.

Mr. REID. It should be adopted in section 9. (8) That has already been adopted, but by unanimous consent we can take it up, if the chairman of the committee does not object. It will read this way: "Until otherwise provided by legislative enactment, the sessions of the legislature shall be held biennially," and so forth.

Mr. MORGAN. I have no objections whatever.

Mr. CLAGGETT. That phraseology is not good. That might be construed to say that the legislature may allow a session of the legislature every year. I was going to say "that until otherwise provided" on the theory that if that was ever changed the legislature might provide to extend the regular sessions to every three years. We will put it in shape, that the legislature may provide for holding——

Mr. REID. At the end of the section?

Mr. CLAGGETT. Yes, at the end: Provided, the legislature may hereafter extend the regular sessions of the legislature to three years. The objection to holding a session of the legislature every four years would be this; that if you make it four years, then it will make trouble with regard to our elections of United States senators, because they will fall into classifications of three years each, but you will have to call an extra session of the legislature, or else you must elect a man three years before he takes his seat under the four-year plan; but if you have a session of the legislature every three years it makes no trouble on that score.

Mr. REID. How could we have triennial or quad-

rennial sessions of the legislature with the other officers only two years?

Mr. CLAGGETT. It is a mere matter of phraseology.

Mr. REID. Suppose we let the matter go over and pass the bill; we have agreed upon the principle. We can insert it on its final passage.

Mr. MORGAN. I think the article now should be adopted as a whole, with the understanding that this correction should be made.

The CHAIR. It is moved and seconded that the article be now adopted. Are you ready for the question? (Vote, and the article is adopted.)

The CHAIR. It is moved and seconded that the committee now rise and report progress. (Vote and carried. Committee rises.)

CONVENTION IN SESSION. MR. PRESIDENT IN THE CHAIR.

Mr. McCONNELL. Mr. Chairman, your committee of the Whole desires to report progress, that they have had under consideration the report of the committee on Legislative Department, and report the same back with sundry amendments, and recommend its adoption.

Mr. HEYBURN. I move that the report of the committee be received. (Seconded and carried.)

Mr. MAXEY. I now move that we adjourn until nine o'clock Monday morning.

Mr. AINSLIE. I move to amend by making it ten o'clock Monday morning.

Mr. SHOUP. I move to amend the amendment by making it eight o'clock.

Mr. PRESIDENT. There is no second to the other amendments. It is moved and seconded that the convention now adjourn until nine o'clock Monday morning. (Carried; adjourned.)

FIFTEENTH DAY.

BOISE CITY, *July 22, 1889, Morning Session.*

Prayer by the Chaplain.

Roll-call, and quorum declared present.

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Batten, Beatty, Bevan, Blake, Brigham, Campbell, Chaney, Coston, Crutcher, Gray, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lemp, Lewis, Maxey, Mayhew, McConnell, McMahon, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Sinnott, Shoup, Standrod, Steunenberg, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Beane, Cavanah, Clark, Crook, Glidden, Hagan, Hammell, Henrdyx, Lamoreaux, Robbins, Savidge, Stull, Woods.

Journal of Saturday ordered read.

The CHAIR. The secretary announces that he is unable to complete the reading until he can complete the report.

Mr. MORGAN. I move that the further reading of the journal be dispensed with. (Seconded and carried).

Mr. BALLENTINE. A great many amendments have been made to the report of the committee on Legislative Department from the committee of the Whole, and I think very few delegates understand the provisions that have been inserted in that bill, and I now move that one hundred copies with the amendments of the committee of the Whole be printed for the use of the convention.

Mr. HEYBURN. I second the motion. (Vote and carried).

Presentation of Petitions and Memorials—None.

Reports of Standing Committees—None.

Final Readings—None.

Mr. AINSLIE. Mr. President, I ask that the journal of this morning show that Mr. Reid of Nez Perce, Mr. Hays of Owyhee, and myself, be recorded as present to-

day, we composing the special committee selected to meet the governor in regard to the reception of the Congressional party.

The CHAIR. There being no objection, it will be so ordered. The regular order of business being exhausted, what is your pleasure?

Mr. MAYHEW. Mr. President, I think it would be prudent for the convention to take up and consider the different articles that have been reported by the committee of the Whole, before this convention resolves itself into the committee of the Whole upon another subject. My object in doing so, if it meets with the approbation of the convention, is this: I presume every member of this convention desires to make this the last week of our labor, if possible, but unless this convention does consider the matters that have been passed upon in the committee of the Whole, in convention, the committee on Revision will be kept busy eight or ten days after this week is passed, and I propose that these matters that have been considered in committee of the Whole be now taken up and considered in the convention, so that they can be referred to the committee on Revision and corrected and disposed of, according to the duties of that committee. I therefore move that we take up the different articles that have been considered in the committee of the Whole and act upon them in the convention.

Mr. BEATTY. Mr. President, I was about to make a similar motion to that, but I desire to amend that in part. It will be noticed that in most constitutions the first matter, of course, is the declaration of rights generally, so far as I have examined. The next subject and the one which naturally comes in here, is that of elections and suffrage, and then follow the different departments of the government. Now that report—the majority and minority report of the committee on Elections and Suffrage, has been returned and printed and is now upon the tables of the members this morning, and I know it is very important that the committee on Revision should be at its work; otherwise the convention

will be delayed here for a long time, and I wish to make a motion to take up this subject this morning and dispose of it, so that the committee on Revision can get to work on its report in the regular order in which they will appear in the constitution, or should appear in the constitution. I desire to amend that motion to the effect that the majority and minority report on elections first be disposed of, before we take up the other matters in the convention, and for that purpose that we go into committee of the Whole to consider the minority and majority report of that committee. I think it is very important that that should be considered now, that it may take its place in the regular order, as it ought to appear in the constitution, and with that amendment I heartily agree with the gentleman from Shoshone.

RESOLUTION OF EXPUNGEMENT.

Mr. PEFLEY. I rise to a question of privilege, with regard to a certain resolution that was introduced here on Saturday last. I hope it will be taken up now and considered.

The CHAIR. The chair is at a loss to know what resolution is referred to.

Mr. PEFLEY. It was a resolution, Mr. President, reflecting upon me as a member of this convention; that I had introduced certain matter into this convention that was not proper to be introduced. There was a resolution to have it stricken from the record of the convention.

Mr. MORGAN. Introduced by Mr. Cavanah?

Mr. PEFLEY. Yes.

The CHAIR. Was there any second to the motion?

A MEMBER. I seconded the motion.

The CHAIR. I think the motion at this time is out of order. It is not a question of privilege on anything that is pending before the body, and the motion made by the gentleman from Alturas that we now go into committee of the Whole takes precedence of it.

Mr. REID. I rise to a point of order. The gentleman

is entitled to it under the rule. The motion was made, and it went over, under the rule, until the next day. We could not call it up on the next day or at any day thereafter.

The CHAIR. Provided it had been made a special order by the house.

Mr. REID. No sir, but it was introduced, and the gentleman from Boise made the point of order that it would go over one day under the rule; the chair sustained the point and it did go over, but it would have come up Saturday, wouldn't it?

The CHAIR. I don't think it is proper for it to come up in the regular order, like a privileged question.

Mr. REID. As I understand it, there is another motion pending, to go into committee of the Whole. The gentleman from Shoshone made the motion to take up the matter that had been disposed of, in convention, that we have passed on in committee of the Whole. That has been part of the regular business and takes its place on the calendar; that motion should have been printed on the calendar, because it was unfinished business and went over, and its place properly was on the calendar as unfinished business which had to go over under the rule. Not being called up on Saturday, I make the point that he can call it up on any other day after the regular order is through.

Mr. PEFLEY. Mr. President, I am not particular.

The CHAIR. I am compelled to hold for the present that this is out of order, and I hold that the motion of the gentleman from Alturas is in order, namely, that we now go into committee of the Whole, as a substitute for the motion of the gentleman from Shoshone.

Mr. HEYBURN. Mr. Chairman, I move to amend the motion of the gentleman from Alturas by making it, on the regular order of business, in the committee of the Whole.

Mr. REID. I second the motion.

Mr. MAYHEW. There is too much confusion back here to hear anything.

The CHAIR. It is moved and seconded by the gen-

tleman from Alturas that the convention now resolve itself into committee of the Whole for the purpose of considering the report of the committee on Elections and Suffrage. To that motion an amendment is offered by the gentleman from Shoshone, that the convention go into committee of the Whole on the regular order of business as appearing upon the calendar. (Vote). The noes seem to have it. (Division called for. Rising vote shows 30 ayes, 17 noes). The amendment is carried. The convention resolves itself into committee of the Whole on the general order of business as it appears on the calendar.

COMMITTEE OF THE WHOLE.

Mr. SHOUP in the Chair.

The CHAIR. Gentlemen, the convention is in committee of the Whole on the orders of the day. The first thing in order is the report of the committee on Public and Private Corporations.

Mr. MAYHEW. I move that the report of the committee on Public and Private Corporations be passed over, and that we take up the next order of business. I do that for the reason that Mr. Savidge, one of the members of the committee on Corporations, has a leave of absence, and was expected to return last night; he has been unable to do so. He desired to be present when this report was considered. He not being present, I move that it be passed over until his return.

Mr. HEYBURN. I second the motion. (Vote called for. Rising vote shows 33 ayes, opposed 8).

The CHAIR. The motion prevails. The next thing in order is the report of the committee on Public Indebtedness and Subsidies.

Mr. BATTEN. Inasmuch as the chairman of the committee on Public Indebtedness is absent, I move that that order of business be passed temporarily until he returns.

Mr. AINSLIE. I understand that Judge Hagan does not intend to return, and if we keep up this sort of

thing we shall never get through. I am tired of staying here day after day waiting for members to return. I propose to go along in the regular order, if the majority of the convention will stand by me.

Mr. MAYHEW. I know Mr. Hagan is not coming back.

The CHAIR. Has the motion any support?

Mr. MAYHEW. I supported the motion—what is the motion? (Laughter).

Mr. BATTEN. I withdraw my motion. I simply had wanted to have Mr. Hagan here if possible.

SECRETARY reads Report of Committee on Public Indebtedness and Subsidies.

The CHAIR. Members are continually offering amendments, which they may only do after the entire report has been read, and I believe that has always been the practice in all legislative bodies—to read the report at length. However, I shall leave that matter to the committee.

ARTICLE VIII.—SECTION 1.

Mr. REID. I move that Section 1 be adopted.

Mr. MORGAN. I move to strike out the first four words in line 11. It now reads: "until at a general election it shall have been submitted," etc. Those words "for and against it," are surplussage. It would read after amendment "and shall have received a majority of all the votes cast at such election." (Seconded).

Mr. AINSLIE. I think if the gentleman from Bingham will look at that again—it is submitted at a general election. There might be a great many tickets voted at a general election, for state and county officers, or district officers, without men voting upon the proposition of taxes at all.

Mr. MORGAN. I see, sir. I will withdraw the amendment.

Mr. McCONNELL. Mr. Chairman, I move to amend line three, by inserting after the word "one" the words "and one-half." (Seconded).

Mr. McCONNELL. I think if we should limit the indebtedness to one per cent, with our present indebtedness, we would not be able to pay for the first session of the legislature. I think the expense of holding our first session of the legislature——

The CHAIR. The gentleman will please send up his amendment in writing to the secretary.

SECRETARY reads: Insert in line 3, after the word "one," the words "and one-half."

Mr. POE. I don't understand that this runs to the question of how much we may levy for taxes.

The CHAIR. The proposition here submitted is, to what extent shall the legislature be authorized to run the territory or the state in debt. I do not understand that this regulates the amount of taxes that shall be levied by the legislature at all; but I understand this to say that the legislature shall at no time cause a debt or create a debt against the state exceeding one per centum of the outstanding taxable property of the state. I may be wrong, but that is my idea.

Mr. McCONNELL. My information is that there was no money in the treasury to pay members of the legislature when it adjourned. There will have to be warrants issued, and it will be an indebtedness of the state. I think we had better not fix it hastily, until we examine it. While every member of the floor is no doubt anxious to limit the indebtedness of the state as low as possible, we do not want to do anything to hamper our action hereafter.

The CHAIR. The question is on the amendment of the gentleman from Latah.

Mr. AINSLIE. I think the gentleman offers a very proper amendment. Taking the expenses of the territory, and a valuation of 48 millions, one per cent would only give them $48,000 a year, but for the present we may put it at $42,000 a year. I think it would be well enough to raise it to one and a half. If that does not cover it we can raise it again, but if it is too much——

Mr. MAYHEW. Does the gentleman say that the taxable property of this territory is 48 million dollars?

Mr. AINSLIE. Assumed to be that amount.

Mr. MAYHEW. It is 22 millions, according to the reports.

Mr. GRAY. I can't see any harm in the adoption of the amendment, if the money is not needed. But it is not best to restrict the legislature too closely; it might be injurious and affect our credit. It would be better to have a reasonable addition to the amount of credit than to run short. I may state that it would be absolutely necessary that we should levy sufficient taxes to pay the current expenses of the state, and I would certainly not desire to put any restrictions in the constitution that prevent the accomplishment of that. There is one thing certain, the legislature will not raise any more than absolutely necessary to accomplish that end. I therefore move to amend the amendment of the gentleman by inserting "two," instead of "one and a half." (Seconded).

Mr. PIERCE. I do not understand this is for the purpose of levying taxes; it is simply for the purpose of restriction. Our assessed valuation being about 25 millions, one per cent would restrict the legislature in creating an indebtedness of this state of over $250,000. By adding one-half per cent, it makes $375,000, and I believe this to be the usual amount that has been established by states that have been admitted previous to this time.

Mr. MAYHEW. There is no such thing as 25 millions of valuation of property in this territory. It is misleading for men to get up here and put the valuation of property at 25 millions, for it is not—it is less than 22 millions. If the gentlemen will look at the reports, the total valuation of all property in this territory is $21,624,748.74. Now here the property valuation of this territory is less that 22 millions. If we are going to make figures upon a false basis and upon property that we don't possess, we will get ourselves into some difficulty. We might as well look the matter in the face, and put the increase of this matter at two and a half per cent, or two per cent, and be done with it. If

we had a greater valuation of property we would not require this indebtedness or the raising of this money, or the incurring of an indebtedness exceeding one per cent. Now Mr. Chairman, I say two per cent would be better than one or one and a half per cent. If we are going to have a state government, don't let us have it running continually in debt. We must know this, that whatever the indebtedness of the territory is, the state has got to assume it.

Mr. MYER. I think there is a little confusion in regard to this subject. I don't think the gentlemen should confuse the amount which this territory can run in debt with the amount of money that can be raised in the way of taxation. It is immaterial what this territory owes today, whether it is 20 millions, or what the assessed valuation is, whether it is twenty or a hundred millions. This territory, no matter what its future assessed valuation is to be, is to be restricted, so that in the future ts debt shall never exceed one per cent of the assessed valuation of property in the territory, and that is all there is in this question.

Mr. MAYHEW. My object is to increase it to two per cent, so that we can carry on the state government.

Mr. AINSLIE. If it is in order, I will move to amend so as to cover the question. Strike out all in lines two and three after the word "aggregate" to the word "exceed." Strike out the word "with any previous debts or liabilities."

SECRETARY reads: Strike out "with any previous debts or liabilities" in lines 2 and 3, Section 1.

Mr. HEYBURN. I have made a close estimate, based on the report of the committee on Salaries, and taking this report in regard to what the expense of the government of this state will be, it would place that amount annually—the annual expense of the state government, at about $240,000. One per cent of 21 millions is $210,000 a year. Now we have already an indebtedness of very considerable amount—I have forgotten exactly what it is, but it seems to me that if we limit

this on the basis of our present assessed valuation of property, that we cannot make ample provision for the running of the state government. We should at least cover it; if we do not leave considerable margin, we should cover it.

Mr. MAYHEW. I would call the gentleman's attention to a late report of the indebtedness of the territory—$200,752.

Mr. HEYBURN. Yes, and we must add that to the amount of the limit, so that it seems to me one per cent is not making ample provision for the government we are creating; we should take that into consideration. If we are creating a government the annual expense of which will be $240,000 to $250,000—from which it would appear that the cost of our state government is not excessive at all—we should provide an annual income to more than safeguard that; we should have a margin, resting in the discretion of the legislature, that would enable them to raise in case of necessity $275,000, which would be $25,000 in excess of the estimate of the cost of our state government. There are always extraordinary expenses in government that cannot possibly be foreseen. I would be in favor of the amendment offered for making this two per cent. The legislature is not bound to appropriate or create that much indebtedness, but give them margin enough, so that they will not find themselves with a bankrupt state government on their hands the first session they meet.

Mr. McCONNELL. I will accept the amendment.

The CHAIR. The question is then, to strike out the word "one" after the word "of" in the third line, and insert the word "two." Are you ready for the question?

Mr. HAYS. Mr. Chairman and gentlemen, if we adopt the amendment of the gentleman from Shoshone, you will interfere with an amendment that will be sought by the Finance committee—or the Revenue and Finance committee, in this matter. We have carefully estimated the expenses of the state government, and we find that they will be something like $100,000 less than the gentleman from Shoshone states it. We do not think

it will exceed $140,000—we have carefully estimated this matter, and we do not imagine it will exceed $140,-000, and one per cent will cover all the state expenses necessary to be provided for.

Mr. HEYBURN. I would like to ask the gentleman a question; was that based upon a legislature of eighteen and thirty-six members?

Mr. HAYS. Yes.

Mr. HEYBURN. And based upon the report of the committee on Judiciary?

Mr. HAYS. Yes; we have taken all these things into consideration.

Mr. HEYBURN. And make it only $140,000?

Mr. HAYS. Yes.

Mr. McCONNELL. Mr. Chairman, I think this question is being argued from a wrong basis. It will make no difference what the cost of the legislature will be; it will make no difference as to our running expenses. The principal object he has had in offering this amendment is this: There being as stated some 22 millions of taxable property in this territory, one per cent of which would amount to $220,000, and there being now an indebtedness of approximately $200,000, as represented by the gentleman, would leave only the further margin of $20,000 which this territory could bind itself for. Now it may be necessary for us to build a penitentiary. The government itself possibly will turn this penitentiary over to us, but when we become a state there are certain things which it will be necessary for us to have, and it will be necessary for us to provide means, too. Disregarding that we may levy an assessment—levying a tax by the legislature, and we have only a margin of $20,000 if we limit our indebtedness to one per cent to cover any contingencies that may arise, and we haven't any assurance but what the territorial indebtedness will be more than it is now before we get in as a state. Suppose the territory should assume all the expenses of this convention. The limit of one per cent would not allow the state to assume that indebtedness then. Now I will state to this convention

that I think this committee did not carefully and fully consider this question. I am a member of the committee myself; the chairman was absent nearly all the time, but we brought in this report, so that the convention can take it up and consider it themselves. Of course there are different ideas on this matter, but that is the way the situation is today. We have an indebtedness of approximately $200,000, as I understand it, and if we limit it to one per cent, our indebtedness can never reach more than $220,000 under the present valuation. The indebtedness of this year will probably run our indebtedness up to the limit of this report, consequently we would have no margin when we come in as a state, to provide for any insane asylum, penitentiary or any other public institutions. Of course any gentlemen on the floor can, before this finally comes up in the convention for discussion, satisfy themselves as to the correctness of these figures, of our present indebtedness as $200,000, and of our valuation of taxable property as 22 millions, but that is the way the matter stands today. It is not a question of how much we can raise by taxation, but it is a question of the amount of margin we have to go on, to make internal improvements.

Mr. BATTEN. I would simply rise to confess that I stand sponsor for this bill. Inasmuch as I stand after Judge Hagan on the committee I was requested to do it, which I did do, and got them together, and drafted something that I thought would do to submit to them as a basis to work upon. A great deal of what the gentleman from Latah said is true—that we have probably imperfectly considered the matter. Nevertheless, I submitted what I had done to Judge Hagan. It received his scrutiny and consideration very carefully, and he expressed himself as satisfied. He had raised one or two objections, to which I assented. Now this first section, which in the main meets with approval, is objectionable as to the limit of indebtedness. Of course that is the salient part of the whole section, but it seems to me we are going a little too far if we make this two per cent. I made a cursory examination of the limit which most of

the states have fixed, and I found they usually specified some distinct amount, like two hundred, three hundred or four hundred thousand, as the case may be, and in no case but one did I find that the amount should exceed $500,000, and that is the state of New York, where their limit is $1,000,000. Now it seems to me, gentlemen, we might possibly eliminate the more serious objection from this by inserting after the word "liable," the first word in line 3, the words "exclusive of the indebtedness of the territory existing at the time of its admission to the Union." That would leave off of this the $200,000 existing indebtedness and give us something to work on, and then I think it would be amply sufficient. I don't know that you catch exactly the drift of what I mean. Add there after the word "liable" this clause: "exclusive of the indebtedness of the territory existing at the time of its admission to the Union." Then it would read: "The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the indebtedness of the territory existing at the time of its admission to the Union, exceed the sum of one per centum of the taxable property of the state." Now that one per cent upon a taxable property of 22 millions would be about $220,000; that comes up pretty close to the limit—that is, the average limit that most of the states have inserted in their articles relating to public indebtedness, and I don't think that as a young state we should be so extravagant in this matter. I understand the object is to provide for all possible contingencies in restricting ourselves by a limit that would produce more or less improvement, and to that extent I agree with the spirit of the amendments. I will offer that as an amendment anyway, to test the sense of the committee on the subject.

Mr. GRAY. Mr. Chairman, I can't see that the legislature is compelled to incur this indebtedness. I have confidence in the legislature. I believe they will do what is right, and after they ascertain what the necessities of the state will be, I believe they will levy no

more than is necessary. This idea of sewing them up, and saying, you can give only so much, when it might be absolutely necessary to have more—I have confidence enough that they will have such an interest in the interests of the people—the representatives of the people when they are sent to represent them, will have as much interest in representing them as we have today. This idea of restricting them so closely is not policy, and I don't think it looks well, and I would give them a little latitude. There may be many a thing we don't think of, as the gentleman from Latah suggests; there may be expenses we are not contemplating now, and I think there is no danger; I do not believe the legislature will levy it without we need it, and if we need it we should have it, and I want to give them a little latitude. (Cries of "Question").

The CHAIR. The question is upon the amendment of the gentleman from Latah to strike out the word "one" and insert the word "two."

Mr. ALLEN. I would like the privilege of asking a question for information—I was not present to hear the discussion fully—I would like to ask if this will limit the state from issuing bonds, for instance for the purpose of constructing a system of irrigation canals, and so forth.

Mr. MORGAN. It would prevent them from going beyond this limit.

Mr. ALLEN. I think that is a matter that should be considered in this convention—if that has been contemplated.

Mr. PARKER. I ask for information as to how it would affect the issue of bonds for the purpose of radical road improvements in this state, and that should be considered.

Mr. McCONNELL. This would prevent the state from issuing any bonds beyond what is specified by this amendment, and that is the whole principle, that there should be a limit placed on the indebtedness, so as to secure the financial standing of our territory. And by

putting this per cent in, instead of making it a fixed amount, as the state grows larger and as we gain more population and have more taxable wealth, contingencies will probably arise that we do not think of now, but owing to the increase of our valuation we will be able to raise more money. I believe for that reason it is better to make it a per cent than a fixed amount as usually done in the constitutions of other states.

Mr. HAYS. If such be the object, then one per cent would be enough. If our property valuation is going to be increased, and we have an influx of population as well as revenue, then one per cent would be enough—excluding the present indebtedness. We do not want to give the legislative authority too much power; we don't want them to run us in debt. When you have enough money to defray all the expenses of government, if you add one per cent more, you will have $240,000 to defray the state government expenses. We have figured that—the Revenue and Finance committee—and we find it will not take any such amount to defray the expenses of state government. The amount is about $140,000, if you exclude the floating indebtedness of about $40,000; if you add that, it would be about $180,000. Therefore I say that the rate fixed in this bill is sufficient for all purposes and you have a surplus beside, unless some gentlemen are intending to allow the legislature to make other expenditures, to erect public buildings and create an indebtedness. The present levy, as I understand it, is about three and a half mills on the dollar. To defray the expenses of the state government, it will not be less than about seven. Now will the people be willing to vote a levy of two per cent? I don't believe they will. I shall oppose that amendment.

Mr. McCONNELL. It is not a question of a levy of two per cent at all.

Mr. HAYS. That you shall never exceed that.

Mr. McCONNELL. No, it is not in regard to levying taxes; it is in regard to the future indebtedness of the state. It is not in regard to a levy at all—it is not

the question of tax levy, it is the question of what the indebtedness of the coming state shall be fixed at, whether we shall ever allow it to go beyond one per cent of the taxable property of the state, or whether we shall allow that indebtedness to increase at any time to two per cent.

Mr. HAYS. I understand the situation; that is what I am opposed to. I shall earnestly protest against allowing this to go beyond one per cent. That is sufficient to cover all expenses—more than cover the expenses, and you will have enough money left to pay for these additional buildings or improvements you propose to make. The people are taxed enough now; they will not submit to higher taxes.

Mr. McCONNELL. It is a question of future taxation for the present; it is not a question of present taxation. Should the contingency arise to add an addition to our insane asylum or jail, how could you run the state or territory in debt, without there would have to be a levy to cover it, but by authorizing the state to issue bonds to a certain extent, we can have that money to go on until such time as the state may be able to pay it. It is a question of whether we now, in our impoverished condition, wish to pay for the improvements and expenses of coming in as a state, or leave it to the future.

Mr. BATTEN. How many amendments are pending now, Mr. Chairman?

The CHAIR. The gentleman from Latah offered an amendment, to which there was an amendment offered, which the gentleman from Latah accepted. As I understand, there was another amendment offered to the amendment proposed by the gentleman from Latah. The gentleman from Alturas offered an amendment which I think is not an amendment to the amendment pending, but would be a distinct amendment.

Mr. BATTEN. I just desire to get my amendment before the house.

The CHAIR. I understood the gentleman to say he

would offer his amendment, provided the amendment of the gentleman from Latah was not adopted.

Mr. HOWE. I would like to hear that amendment read.

SECRETARY reads: To amend by inserting after the word "liabilities" in line 3, the following clause: "exclusive of the indebtedness of the territory of Idaho existing at the time of its admission into the Union."

The CHAIR. The gentleman from Boise, Mr. Ainslie, offered one.

Mr. AINSLIE. That covers the amendment I offered awhile ago.

The CHAIR. Then your amendment is withdrawn, I understand?

Mr. AINSLIE. No sir; I did not withdraw it, it is still pending; I never withdrew it.

Mr. MORGAN. I call for the question.

The CHAIR. The question is on the amendment offered by the gentleman from Latah; to strike out in the third line the word "one," and insert in lieu thereof the word "two." Are you ready for the question. (Cries of "Question." Rising vote shows ayes 23, nays 26). The amendment is lost. The question is now upon the amendment offered by the gentleman from Boise; the secretary will read it.

SECRETARY reads: To amend Section 1 by striking out the words: "with any previous debts or liabilities," in lines 2 and 3.

Mr. BATTEN. Permit me one word on that. I think it is very necessary to have that provision in it. The amendment of the gentleman from Boise was sought to meet the objection which has been urged by several gentlemen, from Latah and others, and I think it must be admitted that with the provision which I propose to insert his amendment will not be necessary. I think it is necessary that we should have some provision of this sort in this article, in order to govern us in the future.

Mr. MORGAN. What is your amendment, Mr. Batten?

Mr. BATTEN. After the word "liabilities" in line 3, insert this clause: "exclusive of the indebtedness of the territory of Idaho existing at the time of its admission into the Union."

Mr. MORGAN. It seems to me that if Mr. Ainslie's amendment is adopted, it does away with the necessity of yours; it means the same thing.

Mr. BATTEN. I admit that, but I say it is well to have that "previous debts" appear in the constitution anyway. I think there should be some restriction, not only in incurring indebtedness from time to time, but previous indebtedness should be included in that restriction. That is to say, I find that nearly all the constitutions provide for this matter of public indebtedness, and I don't think we can safely strike that out. But it is to meet those objections that I have inserted the clause which my amendment covers.

Mr. HAYS. I shall support the amendment proposed by the gentleman from Alturas in preference to that of the gentleman from Boise county, because it makes the reading and construction of the section very certain; the other would leave it indefinite. As to whether the indebtedness we would take upon our shoulders in coming into statehood shall be included or not, it is rather uncertain, while the proposed amendment now pending will make the section certain, and I think under that amendment one per cent would be sufficient.

Mr. VINEYARD. I ask for the reading of that amendment of Mr. Ainslie again, to see whether it is identical with the one offered by Mr. Batten.

SECRETARY reads amendments offered by Mr. Ainslie and Mr. Batten.

Mr. MORGAN. Mr. Chairman, it occurs to me—if the gentleman will excuse me—it occurs to me that one is opposite to the other. One includes previous debts and liabilities, and the one of Mr. Batten excludes previous debts and liabilities.

Mr. BATTEN. I desire to answer the gentleman

by saying that we wish to come into the Union with a clean score as far as possible, so far as indebtedness is concerned, and with that object in view I simply eliminate entirely and leave out all question of territorial indebtedness, and let us handle that in some other way or mode.

Mr. GRAY. I don't know how you are going to eliminate that indebtedness without paying it. It would be increased by the increased percentage, and the provision should have been there. You have got to pay it beyond a doubt.

Mr. VINEYARD. I favor the amendment of the gentleman from Alturas, because it strikes me the language is terser and covers the same idea as was intended by the gentleman from Boise. I am opposed to throwing the bars down too, in future legislatures, on the subject of the creation of this indebtedness from time to time; and according to the estimates that have been made by the committee who have had these matters in charge, it seems to me that there will be ample revenue raised on this basis to carry on the government in any reasonable way and the ordinary indebtedness that may be incurred by the state, and leave a margin for any extraordinary expenses.

The CHAIR. The gentleman from Boise makes an amendment to strike out. The gentleman from Alturas makes an amendment to insert. That question is not divisible, and I don't think the amendment of the gentleman from Alturas can be considered as an amendment to the amendment of the gentleman from Boise. The question is upon the amendment as offered by the gentleman from Boise; are you ready for the question? (Cries of "Question." Reading of the amendments again called for, and Mr. Ainslie's amendment again read).

Mr. GRAY. Let me ask the gentleman from Boise if that debt would not exist just the same and have to be paid just the same, supposing that those words were or were not there? Does it affect it in any manner by

striking out, say, "singly or in the aggregate, with any previous debts or liabilities?" That debt has got to be paid out of that money, for all I see. I don't see that it changes it.

Mr. AINSLIE. In reply to the gentleman from Ada, I will say this. The other part of the section stands without this amendment, that the legislature shall not in any manner create any debt or debts which shall exceed the sum of one per cent. Now I don't know how much the indebtedness of the territory is; there is a contingent indebtedness here, that just for wagon road, also contingent indebtedness for the state university at Moscow. This will be retained by the committee on Schedule. Now add the amount of interest on this indebtedness, and deduct that from the amount leaving not to exceed one per cent on the assessable property of Idaho, and we shall in all probability run short of funds to carry on the expenses of the state. Therefore I propose to exempt from the operation of this one per cent provision the previous debts and liabilities, so that while we have that to pay, it gives us the right to levy one per cent to increase the debt of the state, regardless of that amount, which will give us additional funds if we should need it. It recognizes the indebtedness, but allows the legislature to levy a tax creating a debt to the extent of one per cent if necessary, in order that this may not be considered.

Mr. GRAY. I don't understand that it does do that.

Mr. AINSLIE. It will, by striking out "any previous debts or liabilities," but if you leave that in, in making your tax levy under an act of the legislature of one per cent, there has got to be a certain amount deducted from the revenues derived from this taxation to pay the interest on that amount, and to provide a sinking fund to pay the principal, in some way, and that will be deducted from the revenue derived from the levy made under the act of the legislature of one per cent, and it is doubtful whether we have enough. By leaving that out, you have that additional amount to use for other purposes.

Mr. GRAY. I don't understand him. I claim right here that the law will make that first debt payable out of that one per cent, with those words stricken out.

Mr. BEATTY. Mr. Chairman, I believe Mr. Sweet had me the other day appointed as schoolmaster for the committees in this convention, and I fear that with the wrangle we are getting into now I shall have a task I cannot perform. It seems to me that no two gentlemen understand these amendments alike, and it certainly seems to me we are getting into a great muddle. The section as it now reads is clear. The only question is whether there shall be a greater limit allowed to taxation. I move therefore, to avoid this muddle we are liable to get into, as a substitute for all the amendments now pending, that we insert after the word "one" in line 3, the words "one-half," so as to make it read "one and a half per cent." Then the section will be clear; there is no question as to what it means, and it will give an additional limit. (Seconded). And upon that I ask the previous question.

Mr. POE. It strikes me that this is an extraordinary proceeding—this amendment is. The original motion was that "one" be stricken out and that "one and a half" be substituted, and that has been amended to "two" and voted down, and now the gentleman is going back to his original position. That is an extraordinary proposition, it seems to me; I don't think it is in order.

The CHAIR. The gentleman from Latah withdraws the motion for one and a half per cent he proposed.

Mr. HEYBURN. I think we are liable to drift into a mistake over a word, if the gentleman calls for the previous question on that amendment—if allowable at all to call it. I have just been referred to the report of one of our territorial officers, and I find the indebtedness is now something over $200,000. $210,000 would be one per cent on the present assessed valuation, and that would leave us $10,000 margin to go on in the state government. Now that does not include, as I understand it, the appropriation that was made for the state wagon road last winter and some matters of improve-

ment to the state asylum, and the result would be, if we adopt the motion of the gentleman from Alturas, that the state would find itself limited to the indebtedness already incurred. I understand that those two items amount to about $50,000—$40,000 for the road and $10,000 for the other, so that we find all the possible indebtedness absorbed by the territorial indebtedness, with no margin to go on for the state government at all, unless the motion of Mr. Batten is adopted, which excepts the present indebtedness from the operation of the clause. If you do not accept it, you will find yourselves in the position of not being able to incur any indebtedness upon behalf of the state; you will find the whole matter mortgaged by the territorial indebtedness. The gentleman's amendment would leave one-half of $210,000, on the basis of one per cent on 21 millions—one-half of that as a basis. That is not sufficient, according to the ideas of any gentleman in this convention. One per cent is the very least we can possibly get along with, and that one per cent should be clear of all these previous debts or liabilities of the territory. We do not know just how much is the debt, but we know absolutely that $200,000 is reported by the territorial officer, and we know there is in addition to that whatever that state road takes, and in addition the state asylum improvement, and we know that it is in addition to what has been appropriated for the state university, so that the probabilities are that the territorial indebtedness incurred is something over $250,000. I trust the amendment of the gentleman from Alturas, Mr. Beatty, will not prevail.

Mr. McCONNELL. I rise to a point of order; the previous question is not allowable.

The CHAIR. The chair is of the opinion that the previous question is not allowable in committee of the Whole. For that reason I do not——

Mr. BEATTY. There is so much confusion that I cannot hear what is said.

The CHAIR. The quesion before the committee now

is, shall the question be put. (Cries of "Question"). The question is: Shall the main question be now put?

Mr. HOWE. I rise to the point of order that it requires five members to demand the previous question.

The CHAIR. I sustain the point of order.

Mr. BEATTY. Mr. Chairman, I have been unable to hear what the chair has ruled, there is so much confusion. I don't want to get out of order after the chair has ruled.

The CHAIR. The chair rules that it takes five members to sustain a call for the previous question.

Mr. BEATTY. Very well, as that has not been demanded, I have only this to say. I do not object to the amendment of the gentleman from Alturas, Mr. Batten, except upon the ground that it certainly makes a condition in the sentence. Now if the clause Mr. Ainslie has proposed be stricken out, and then the amendment of Mr. Batten be introduced, I think it would make the sentence read correctly. I want myself to see the increased limit allowed to the legislature. I think that one per cent is objectionable, but it certainly seems to me, if I can read at all, that the amendment of Mr. Batten makes a condition in the language, just as Judge Morgan has suggested, and that is the objection I have to that amendment, as I understand it. Of course we only hear them announced here, and cannot keep them in our mind. If that amendment can be put into such a shape as not to make a condition and then leave the sentence standing, it would be satisfactory.

Mr. BATTEN. I would like to ask the gentleman where the condition is.

Mr. BEATTY. I understand it to read this way, with that amendment—it shall not, singly or in the aggregate, with any previous debts or liabilities—now how does your amendment come in?

Mr. BATTEN. After "previous debts or liabilities," "exclusive of the indebtedness of the territory of Idaho existing at the time of its admission into the Union, exceed the sum of one per cent upon the taxable prop-

erty." That is, to a certain extent, parenthetical.

The CHAIR. The chair rules that the question is upon the motion of the gentleman from Boise (MR. AINSLIE) to strike out in lines 2 and 3 the words "with any previous debts or liabilities." Are you ready for the question?

Mr. CLAGGETT. I would like to offer a substitute, which I think will properly cover some of these amendments. My idea about the matter is that——

Mr. MAYHEW. Can a substitute be offered on the previous question?

Mr. CLAGGETT. The call for the previous question was not sustained. My idea about this matter is, that it is better to get at this question of per cent of indebtedness, say for ten years after the state is organized, in a different way; to leave the whole question of per cent out and fix the total of authorized indebtedness at a fixed sum; then we will know precisely where we are going. And for that reason I ask leave to offer this substitute. I leave the per cent which comes in after the ten years blank, so that it may be filled in, in case the committee favorably considers this way of getting at it. "The legislature shall not for ten years, in any manner, create,"—that is, to strike out all down to the word "except" in the fourth line, and substitute the following: "The legislature shall not for ten years, in any manner, create any debt or debts, liability or liabilities, which shall in the aggregate with any previous debts or liabilities exceed the sum of $500,000, nor after ten years exceed.....per cent upon the assessed value of the taxable property of the state, as shown by the last preceding assessment." That last phrase is necessary to go in under any circumstances, or you will find that your legislature will say the assessment of last year was erroneous by many millions—it is wrong, and it is not the true taxable property of the state, and under guise of that would go ahead and largely increase the indebtedness limited by law. Now with regard to that substitute, with regard to this question of limitation on state

indebtedness, it seems to me one per cent is altogether too small under any circumstances, either now, with an assessment roll of twenty to twenty-two millions, or at any time hereafter. It must not be assumed by the members of this convention that the amount of this indebtedness is to be an annual charge. Now I will suppose that the taxable property today is twenty millions and the sum total of the indebtedness of the state is half a million. That half a million would represent one-fortieth of the assessment roll. But that half a million would not be payable, but existing in the shape of out-standing bonds of one form or another, upon which the annual interest charge would only be six or seven per cent, and on half a million dollars it would be only $30,000 a year. So that if you go to tie up your state with the proposition of one per cent on the taxable value, you will find that you will make it exceedingly difficult for the state to be run, that your legislature, whenever they convene, will be constantly tempted to evade the provisions of the constitution, and those attempted evasions will tend to the destruction of that sense of fealty to the constitution, which will result in carrying out that theory of evasion and shiftiness, so to speak, through your entire legislature. If you were to limit the indebtedness at any time to five per cent of the assessed value, you would not go beyond more than about two and a half per cent of the actual value, and this five per cent of the assessed value would be in the shape of an annual charge of six per cent upon that, so that the tax roll would bear the addition very well.

Mr. HASBROUCK. I would like to offer an amendment. I do not like the amendment last offered. It is in my opinion too complicated, would require too much figuring. I desire to offer the amendment in this form.

The CHAIR. It seems to me, with so many amendments being offered, that should not be offered until we have passed upon some of the amendments already offered, unless it is an amendment to that amendment. We

are getting so many here that it is impossible to keep track of them and know which follows.

Mr. MAYHEW. I hope the gentleman will be permitted to offer his amendment, and let them be taken in their order. If some of these are adopted it might cut off the gentleman too soon.

Mr. HASBROUCK. In lieu of the first four lines, read: "The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall exceed the sum of $250,000, exclusive of any previous debts or liabilities." I am not in favor, for one, that the state shall be run in debt any more than that sum; and I believe it is adequate. We have provided in the committee on Finance and Revenue that the amount of the running expenses shall be met by a levy of taxes upon the property of the territory so that there shall not be a deficit, but if there is a deficit the next levy shall be such as to pay that. Therefore you will have the $250,000 to meet any extraordinary expenses that may be incurred, or for any internal improvement that may be desired, and I am of the opinion that it is ample. If I am permitted, I would like to offer that amendment now.

Mr. CLAGGETT. Mr. Chairman, it is substantially the idea which I have suggested in the substitute, and that is, to fix the indebtedness at a specified sum and leave out the per cent altogether. I will withdraw my substitute by leave of the second, and let this amendment go in, subject to amendment.

Mr. HEYBURN. I want to call the attention of the gentleman who is making the motion to this: As I understand it to read, it would allow the legislature to create $250,000 of indebtedness every session, because all existing indebtedness would be previous indebtedness at the time of the creation of the new indebtedness.

Mr. VINEYARD. Certainly; that's it exactly.

Mr. McCONNELL. That is the grammar of the substitute. Am I correct, Mr. School-teacher? (Laughter).

Mr. CLAGGETT. I offer as an amendment to strike

out those last words, exclusive of existing indebtedness, and to substitute for $250,000 the sum of $500,000, and that will cover all the territorial indebtedness, and will not make the sum total any greater than provided for by the resolution of the gentleman from Washington.

The CHAIR. Will the gentleman from Washington reduce his amendment to writing?

SECRETARY reads: "The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall exceed the sum of $250,000, exclusive of any previous debts or liabilities." As he proposes to amend it, it would read: "The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall exceed the sum of $500,000."

Mr. CLAGGETT. That's it.

Mr. BATTEN. That phraseology makes the whole section on public indebtedness negatory. There could be constant creations of debt every year, and you could pile it up, only with this restriction, that in any one year you could not make it more than $500,000. (Cries of "Question").

Mr. BEATTY. Mr. Chairman, I want to suggest one objection to this plan of fixing any particular amount. It is fixing the amount upon the basis of property we now have. We may in five years be able to make that debt much larger. The debt should be in proportion to our property. If you fix it upon a percentage, the legislature can at all times regulate that debt in proportion to the amount of property we have. Now that proposes to make it $500,000. Before any constitutional amendment is made to this constitution we may be able to borrow a million dollars, and in the circumstances in which we are we may want to make such a debt as that. Suppose as Mr. Allen has suggested, (the gentleman from Logan county) we wanted to issue bonds for the purpose of public development, to irrigate these arid lands, and got a grant of Congress to control these lands, we might want to issue a larger amount of indebtedness, with a view of paying it out of the proceeds

of the land. This may tie us up, and that was the reason I was in favor of increasing the per cent, and I think yet the per cent is better than any fixing of a particular amount, because when you fix that amount you can have no benefit of increased valuation hereafter. We suppose that the property of the state will greatly increase after we become a state, and I say we may be able to borrow in five years from this on that property a million dollars, if we find it necessary to issue bonds for the purpose of public improvements, and the per cent would give us that latitude if we increase the property so that the amount can be allowed. I have all the time been in favor of increasing the per cent; I think one per cent is too low, and I voted for the increase to two per cent. But I am like my friend Mr. Gray of Ada county, I believe there is some honesty in legislative bodies, and I believe we can trust our legislatures, to some extent at least, and that we ought to give them latitude. This thing of attempting to tie the legislature down for all time to come is an unsafe experiment. We cannot tell today what we may be in five years or ten years from this, but we are legislating now with a view of what we are today, without looking forward to see what there may be in ten years from this, and I object, for one, to this plan of fixing any particular amount, but base it upon some per cent, and I still insist that the per cent ought to be liberal. (Cries of "Question").

The CHAIR. The question is now upon the amendment to the amendment, or substitute rather, by the gentleman from Washington, Mr. Hasbrouck.

Mr. CLAGGETT. I offer an amendment to that, Mr. Chairman, to the amendment of the gentleman from Washington: To strike out all down to the word "except" in line 4, and substitute the following: The aggregate indebtedness shall never at any time exceed the sum of $500,000. That makes it short and easily understood —except in the case of war, and so forth.

The CHAIR. The question is on the amendment to the amendment; are you ready for the question?

Mr. HARKNESS. I call for the reading of the amendment, Mr. Chairman.

Mr. AINSLIE. I desire to offer a substitute for all pending amendments: To strike all from the words "shall not" in line one, down to "per cent" in line three.

SECRETARY reads: The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the territory at the date of its admission as a state, exceed the sum of one and one-half per cent.

Mr. HASBROUCK. I will accept the amendment to my amendment by Judge Claggett; it amounts to the same thing.

The CHAIR. The question is upon the substitute offered by Mr. Ainslie. (Vote). The ayes have it, by the sound. The question is now on the section as amended. It is moved and seconded that the same be adopted. (Carried).

SECTION 2.

SECRETARY reads Section 2, and it is moved and seconded that the same be adopted. (Carried).

SECTION 3.

SECRETARY reads Section 3, and it is moved and seconded that the same be adopted.

Mr. HARRIS. I move that it be stricken out.

Mr. HAMPTON. I offer an amendment to strike the whole section out, as the county would be prevented from paying the regular current expenses in some cases, if it happened that the amount which was levied did not amount to as much as was necessary to run the county government. For instance we might have heavy county expenses that would run up considerably beyond the amount that was allowed by the board who made the levy, and in that case there would be no means of paying the debt—it would be null and void—all the expenses that were necessarily incurred in the carrying on of the

county government would be null and void. It seems to me that is entirely wrong.

Mr. VINEYARD. Mr. Chairman, I would inquire, how far does this section conflict, if at all, with the report of the committee on Municipal Corporations? I hold in my hand the report of the committee on Municipal Corporations, and there is one clause there that is covered by this bill. It strikes me that this matter has been covered by the report of the committee on Municipal Corporations.

Mr. MORGAN. And that is the place to put it.

Mr. VINEYARD. Yes, it is duplicated, in other words.

Mr. BEATTY. I expect, when we get to——

Mr. BATTEN. I can answer the gentleman's inquiry. After the committee on Municipal Corporations had prepared its report, and after the committee on Public Indebtedness had also prepared its report, it was then discovered that there were some provisions that would conflict, and it was the intention of Judge Hagan and Major Woods to get together, and cut out something, either one or the other—eliminate from one report what would conflict with the other, but both the gentlemen are now absent, and it will devolve upon this committee to harmonize them.

Mr. VINEYARD. I move that that section be stricken out.

The CHAIR. There is a similar motion now pending; will the secretary read?

SECRETARY reads: I move to strike out Section 3.—HAMPTON.

Mr. BEATTY. I desire to call attention to the fact that there are three sections in this report that are the same exactly as three sections in the report of the committee on Municipal Corporations. I think this is the place where they belong, and I expect when we reach the other report to move to strike them out of the other report. In other words, Section 2 which we have just adopted is the same as Section 5 in Report No. 8, and

then our Section 3 here is the same as Section 4 in the other report, and Section 5 in this is the same as Section 6 in the other report. But I think these sections belong here, and should be stricken out of the report on Municipal Corporations when we come to it, and I expect to so move when we reach that report. They are almost exact duplicates. Section 2 in the report we are now considering is the same as Section 5 in the next report. Section 3 which we are now considering is substantially the same as Section 4 in the next report; and then in Report No. 8, Section 6 is the same as Section 5 in the Report No. 7 which we are now considering. But I think this is the report where they belong, and they do not belong particularly in the other report. I am in favor of leaving them here, and striking them out of the other report when we come to it.

Mr. VINEYARD. With that understanding I will withdraw my motion to strike out, if it is understood by the convention that when these sections are reached in the report on Municipal Corporations, they are to be stricken out.

The CHAIR. The gentleman's motion is not in order. The gentleman from Cassia made a prior motion to that effect—moved to strike out Section 3. It is moved and seconded that Section 3 be stricken out. (Vote). The chair's in doubt. (Rising vote shows 8 ayes; opposed.....). The motion is lost.

Mr. CLAGGETT. Mr. Chairman, I offer the following amendment to Section 3.

SECRETARY reads: Add at the end of Section 3: *Provided,* That this section shall not be construed to apply to any ordinary indebtedness created under the general laws of the state.

Mr. CLAGGETT. I move the adoption of the amendment. (Motion seconded).

Mr. AINSLIE. I would like to hear that read.

SECRETARY reads: Add at the end of Section 3 as follows: "Provided this section shall not be con-

strued to apply to any ordinary indebtedness created under the general laws of the state."

Mr. CLAGGETT. I simply call the attention of the convention to the fact that the way it reads now it would prohibit the issuance of county scrip to pay the ordinary indebtedness absolutely imposed upon the county as provided by law, in case there should be any heavy expenses, as suggested by Mr. Hampton, exceeding the current revenues of that year; and that is intended to apply to special indebtedness, I should judge.

Mr. AINSLIE. That nullifies the section as it stands now. That absolutely nullifies the section, destroys the whole life of it. If they can go on and issue scrip, that is incurring indebtedness.

Mr. ALLEN. Mr. Chairman, I supported the motion to cut out this section for this reason, that the substitute brings our attention to the fact which the committee, it seems to me, have not thoroughly digested in preparing this section, and that is this, that in some of the counties of this territory under the general law there is indebtedness which is greater than is provided for in this clause of the section, and which makes it a necessity to issue scrip at different times in case of any emergency of court expenses, or any emergency. I think that the matter has not been fully considered and it was to expedite this matter that I supported the motion to strike out. I am in favor of the substitute.

Mr. GRAY. Now as I understand this section (reading) "No county, city, town, township, board of education or school district, or other subdivision of the state shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in that year the income and revenue provided for it for such year without the assent of two-thirds," etc. Now as I understand it. the board of county commissioners of the county or of the city—the proper levying board—when they levy a tax for a certain purpose, that is, if it is for the purpose of bridges, for the purpose of roads, or for any such purpose, they estimate what will be necessary for the

expenditures of the town or county for that year; and that sum shall not be increased without a vote of the people; there shall be no other tax levied except that one which is provided by the board of county commissioners. That is my understanding of this, and it is supposable that the board of county commissionrs having charge of the interests of the county, understand what is necessary and what would be required, and they would levy a tax sufficient for that purpose. (Reading): "exceeding in that year the income and revenue provided for it for such year without the assent of two-thirds of the qualified electors thereof." That is, in the event that is not sufficient, then they have got to have two-thirds to require the levy of the additional tax. Now if I understand it right that would seem to be what was intended by that section.

Mr. CLAGGETT. I would like to ask the gentleman from Ada one question. I offered this proviso to call the attention of the convention to this matter. We don't want to go over this too fast. For instance, the general laws of the state will provide that the witness fees are so much, the mileage fees are so much, all the expenses of the county government are fixed by law. Those expenses are paid annually by the issuance of county scrip, or paid as they arise by the issuance of county scrip. We all know that in the practical administration of county government, that there sometimes will be extraordinary expenses, I mean extraordinary expenses in the ordinary administration of affairs. I am not speaking now of special indebtedness at all, but the ordinary general indebtedness which is incurred in the way of administration of county affairs. Now if you pass that section in the way it is you will absolutely require that when a witness wants to get his fees, after he has attended upon the court, before he can do it the county commissioners have got to stop and submit at a special election to the whole vote of the people as to whether they will pay them or not, and that is the object of the proviso; it is to limit the section to such indebtedness as does not

arise under the ordinary administration of the county. I will call for the reading of the amendment again, Mr. Chairman, so that we may understand it.

SECRETARY reads: Add at the end of Section 3 as follows: "Provided that this section shall not be construed to apply to any ordinary indebtedness created under the general laws of the state."

Mr. REID. Will the gentleman accept this amendment: "Provided it shall not apply to the usual and necessary expenses?"

Mr. CLAGGETT. Certainly, I will accept the amendment.

Mr. BATTEN. I am opposed to the amendment or substitute offered by the gentleman from Shoshone. If we are going to restrict any state or municipal indebtedness, let's restrict it. Let's not do as did Rip Van Winkle when he made a resolution not to drink anything—keep on drinking and say each drink did not count. Now we are here in this article dealing with municipal and state indebtedness, dealing with it with a view to restrict it within certain bounds. Now the object of this proviso would eat the whole life out of the matter, deprive it of its very meaning, so that I am for that reason opposed to it. There are ample provisions made for meeting every objection which is urged against it, and that is if two-thirds of the qualified electors shall deem the emergency such as to require an additional levy, they can order an election or vote for that purpose. Now why restrict that indebtedness and then in the next line say we don't mean it? That is the effect of the whole matter. It seems there is unanimity of sentiment in both committees, the committee on Municipal Corporations have a section identical with this, and in preparing this draft I took the section from that of California in the main,[1] and I also found the same section is in almost all the states, and I think we should go a little slow about stripping from this provision the very meaning we have put in it.

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[1]—Sec. 18, Art. 11, Cal. Const. 1879.

Mr. REID. I think the objection raised by the gentleman from Alturas does not apply, because if you continue down in the fifth line you will see it reads: "unless, before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund." It seems that the section was intended to apply to the incurring of a permanent indebtedness, and it seems as though the committee did not mean to limit it to current expenses, because if so, the committee would not have put in the balance of those lines, in the fifth, sixth and seventh lines. Now as to the incurring of any permanent indebtedness or extraordinary indebtedness out of the usual course, I am in favor of limiting that in the way in which we usually limit counties. A man does not know, as suggested by the gentleman from Shoshone, when he gets county scrip for attending as a juror or a witness—he does not know whether it is in the county treasury or not. The effect of it would be to hold county scrip down, to allow speculators to get hold of it.

Mr. HEYBURN. I call the attention of the convention to another fact. Take a county like ours for instance, where about one-third of the income is derived from licenses. That is a fluctuating thing; sometimes the licenses in a given year will be $20,000, sometimes fourteen or fifteen thousand dollars.

Mr. STANDROD. In our county as much as $5,000 a year.

Mr. HEYBURN. They cannot make a correct estimate of that part of the income—and the word "income" is used in this bill—they cannot make a correct estimate as to what that source of revenue is going to be and make their estimate of it. There may be a serious falling off, that would place the commissioners in the condition of finding themselves five or ten thousand dollars short of what they intended to count on, and there may be an unusual number of capital cases to be tried in the criminal court. The expenses of the criminal

court instead of being upon the litigants as in civil cases are upon the county, because of it being criminal business, and you take all of these circumstances together, it is very unsafe to tie up the county in any way, shape or manner, in the position the ordinary county is already, far exceeding its legal indebtedness and scrip selling at sixty-five, seventy and eighty cents on the dollar. It is unfair to those counties; the counties out of debt can afford to do this sort of thing. But we don't want to work an injustice on the counties now already largely in debt.

Mr. BATTEN. Wth the assent of two-thirds they can do that.

Mr. HEYBURN. Yes, that I allow. Elections are held in our county at an expense of eight or nine hundred dollars—for the purpose of determining whether or not you shall issue $500 worth of warrants —that is the practical application of that principle, and it is hardly worth while to go to this expense. We don't want to have any part of our court expenses in doubt; we don't want to leave any part of the ordinary legitimate expenses of running county government in doubt, and we don't want to call a county election for the purpose of making up a deficit of four or five hundred dollars at the end of the year, because the costs of the election are very considerable in a county such as ours.

Mr. HAMPTON. I desire to offer a substitute for the gentleman of Shoshone's amendment. Insert after the word "purpose" in the third line, the words "except for necessary court expenses." This is a thing that must be provided for, it seems to me.

Mr. CLAGGETT. "Ordinary and necessary" placed at the close, brings out the meaning of expenses, the effect.

Mr. PRITCHARD. It seems to me that it will not. (Reading): "Any indebtedness or liability incurred contrary to this provision shall be void," it seems to me to provide that if any indebtedness above what is provided for should occur, court expenses or anything of

that kind, it is simply void by this provision, and an election or anything else would not make it legal. It is simply void unless an election is going to make it legal.

SECRETARY reads: Insert in the third line the words "except for necessary court expenses."

Mr. MORGAN. I think the gentleman from Cassia's substitute is entirely covered by the amendment of the gentleman from Shoshone; it would include the ordinary court expenses. I think the entire matter is covered by the gentleman from Shoshone and I hope it will prevail. (Cries of question).

Mr. PEFLEY. It occurs to me if that motion should prevail it would cut cities off. Now we are liable to fall short in our ordinary levy in this city. We have streams running adjacent through the city that in time of high water, and ditches all the time, that are liable as I said to break away and run down through the city, and if we had to wait to hold an election and get two-thirds of the voters to ratify another levy, the whole city might be ruined before it could be abated, and I would not like to see anything of that kind occur. I think it should apply to cities and counties alike and all corporations, that they should be allowed in contingencies to abate them immediately without waiting for an election to be ratified by two-thirds.

Mr. HOWE. I wish to offer an amendment to the section.

SECRETARY reads: To amend Section 3, line 3, by striking out the words "income and revenue provided for it" and insert "usual and necessary expenses."

Mr. HOWE. I think it should properly be taken and substituted for the amendment of the gentleman from Shoshone. I don't understand, Mr. Chairman, that phrase "income and revenue." Now before the commissioners fix the amount of the levy that they will put upon the property for such amount of indebtedness, they will first ascertain what the liabilities are and what the requirements are, and they will make such a levy as to cover the whole—that is of the indebtedness at that

time; and they may make a levy to cover the indebtedness, not to cover income and revenue. They raised this income and revenue to meet the expenses, and all we have to guard against is the indebtedness, not guard against the income.

The CHAIR. Is the amendment supported? (Seconded).

Mr. REID. I would like to hear how the bill will read after it is amended by the last amendment.

SECRETARY reads: "No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability in any manner, or for any purpose, exceeding in that year, the usual and necessary expenses for such year, without the assent of two-thirds of the qualified electors."

Mr. CLAGGETT. That carries us right back to where we were before exactly. You will have to limit this section in order to make it intelligible, you will have to limit this section to what was in the contemplation of the committee in respect to indebtedness which has been incurred beyond the current expenses, and add the matter at the end in the shape the proviso has been suggested.

Mr. VINEYARD. The only objection I have—I would like to hear Judge Claggett's amendment read—as respects state, city and county; why should you eliminate the word "state?"

Mr. CLAGGETT. That is the very proviso in the end of the section.

Mr. VINEYARD. "No county, * * * or other subdivision of the state." If you confine your amendment to the subdivisions of the state it would eliminate the indebtedness of the state if I have understood you correctly.

Mr. CLAGGETT. Oh no. not at all. I call for the reading of the amendment.

SECRETARY reads: "Add at the end of Section 3 as follows: 'Provided that this section shall not be con-

strued to apply to any ordinary indebtedness created under the general laws of the state.'"

Mr. CLAGGETT. And I except the amount of any general or ordinary expenses.

The CHAIR. The gentleman from Shoshone offered an amendment to which Mr. Howe offered a substitute. The question is now upon the substitute offered by the gentleman from Nez Perce.

Mr. GRAY. Let's see what that is.

SECRETARY reads: In Section 3, line 3, strike out the words "income and revenue provided for it" and insert "usual and necessary expenses." (Vote).

The CHAIR. It is lost. The question now recurs upon the amendment of the gentleman from Shoshone, Mr. Claggett; are you ready for the question? (Cries of "Question").

Mr. MORGAN. I move the adoption of the section as amended. (Seconded).

Mr. HARRIS. I move an amendment to the section.

SECRETARY reads: Amend Section 3 by striking out the words "two-thirds" in line 4, and insert the words "a majority."

Mr. HEYBURN. I second the amendment.

The CHAIR. The question is now upon the amendment offered by Mr. Harris. (Rising vote shows 15 ayes, 26 nays). The amendment is lost. The question now recurs upon the motion of the gentleman from Bingham that the section be adopted. (Carried).

SECTION 4. (STRICKEN OUT).

SECRETARY reads Section 4, and it is moved and seconded that the section be adopted.

Mr. WILSON. Mr. Chairman, I have an amendment.

Mr. HARRIS. Mr. Chairman, I offer an amendment.

SECRETARY reads: Mr. Chairman, I move that the following words be inserted after the word "therein" in line 3 of Section 4, to-wit: *"Provided,* That in any city or town of over 2,000 inhabitants by consent of the

qualified electors thereof expressed at a special election held for such purpose, such limit shall be not to exceed 15 per centum of the assessed valuation of such city or town." (Seconded).

Mr. WILSON. I will give my reasons for this amendment. As will be seen the section as read first provides the limit shall be five per cent upon the assessed valuation. My amendment goes to the extent that cities of 2,000 inhabitants may provide by special election held for that purpose that the limit shall be fifteen per cent instead of five. As you are aware, there are very few cities in this territory that have over 2,000 inhabitants; this town is one of them. I will say that last winter there was a resolution passed unanimously by our board of city councilmen requesting the legislature to pass a memorial asking congress to pass an act authorizing bonds for this city for $150,000 for the purpose of funding outstanding floating indebtedness and for a sewerage system and water works. The outstanding floating indebtedness of this city now is about $40,000 inclusive of interest-bearing warrants. The assessed valuation is between eleven and twelve hundred thousand dollars. The memorial which the council asked the legislature to pass for it passed the legislature unanimously, not one dissenting voice being heard. That shows manifestly that the people of this city want to be permitted to bond this city for an indebtedness of $150,000. If this is put in our organic law it will prevent them. If my amendment prevails it will permit it. As you all know, these western towns cannot grow except by contracting a large indebtedness. There has not been a western town within the last ten years that has increased to any extent unless they incur large indebtedness. I think, as well shown by writers on political economy, that municipal indebtedness is absolutely necessary for municipal prosperity and making the municipal improvements that call for indebtedness, and I make the assertion that with indebtedness the debtors are those who make vastly more wealth—the borrowers

are the towns that acquire it. Now it is absolutely impossible to provide for a sewerage system or water works in Boise City unless my amendment prevails and we are authorized to bond the city for $150,000. We have assurances from financial sources that bonds to the amount of $150,000 on terms of say twenty years to run at six per cent interest can be floated. Six per cent interest on $150,000 is only $9,000 a year. We are already paying four or five thousand dollars a year interest on outstanding warrants, so that if the city was bonded the expense to the city would be little more than it is now, and with a system of water works the net annual income to the city would be more than sufficient to compensate for this additional expense. Now by providing this in our organic law it does not in any way affect any other city or town in Idaho Territory except this; I am not aware that there is any that has over 2,000 inhabitants, and therefore I ask it because the people of Boise City want it, because they have supported it unanimously, and because it cannot do any wrong at all to any other section of Idaho and can be of great good to these people.

Mr. GRAY. I feel quite a little interest in this matter, but still I will say that as a general thing I cannot see where it can do wrong. It gives cities of this size an opportunity of taking a vote of their people that feel like assuming that indebtedness; if they are desirous of making improvements, it gives them an opportunity to do it. I will say as to what has been stated by my colleague, in the event that they attempt to start in and make a perfect system of sewerage here, which ought to be done if anything is done, the amount that we will have under this act would not be sufficient to complete the work or do what would be necessary to do, and therefore perhaps there would be nothing done. But if the people of Boise City are desirous of doing it I don't think they should be prohibited by a clause in the constitution from doing it. What I have in view is particularly Boise City at the present time, but it is

desirable for the people to make improvements such as suggested by my colleague. And I cannot think but what in future years in other places they may be desirous of doing the same thing, and I think it would be wrong and harsh should they be restricted in doing what they see fit to do, where it is not a state expense, only their own expense.

Mr. SWEET. I would say, Mr. Chairman, in Nebraska and Iowa, in fact in nearly all of the western states, railway corporations and others of that character induced the people of counties and towns to vote subsidies in the way of bonds to aid them in the construction of railways, until the people of those states became so burdened with taxes that they turned upon all sorts and kinds of indebtedness, and the result has been there has been a great deal of antagonism——

Mr. WILSON. Allow me to ask the gentleman a question.

Mr. SWEET. I am supporting your amendment, if you will just wait a moment. (Laughter).

Mr. BEATTY. I hope the gentleman will make himself clear.

Mr. SWEET. Well, all those states have turned against corporations and the voting of subsidies, and I think very justly, and I think the example of those states should be a lesson to us to avoid giving permission to municipalities to vote such subsidies; still I don't think it should extend to prohibiting towns and cities from having a reasonable indebtedness for school and sanitary purposes. I don't think we can build up the towns and cities of this territory unless we can have the right and power to vote a reasonable indebtedness for school and sanitary purposes, and I hope the amendment will prevail.

Mr. HEYBURN. I have an amendment, Mr. Chairman.

Mr. KING. Mr. Chairman, I would like to call the attention of the house to one fact. We have just adopted a section that gives to the counties, the cities, the towns,

townships, boards of education and school districts and other subdivisions of the state the power to incur an indebtedness to a certain amount on certain conditions. Now under this provision the county can have the power under Section 4 to incur a debt limited to five per cent, that is five per cent on the assessed value of the property. A debt incurred for a county purpose would be a tax to be assessed upon the property of every city, every town and every school district within that county. Under this provision any city can levy a tax not to exceed five per cent; that would make a tax or a debt resting upon the property of that city amounting to ten per cent under the provision we have just adopted. A school district may also levy a debt of five per cent.

The CHAIR. There was an amendment also offered and adopted to Section 3.

Mr. KING. What was the amendment?

The CHAIR. Will the secretary let the gentleman see the amendment? (Mr. King reads it).

Mr. KING. That does not affect the question. I was attempting to show how much debt can be incurred upon property within the school district or within the town or city under the provisions we have just adopted, which can amount to five per cent upon the assessed value of the property of the county. There can be a debt contracted upon all the property in the city, and this would be a tax amounting to ten per cent of the assessed value of the city, the city might include one or two school districts; each school district might incur a bonded indebtedness amounting to five per cent. Then there would be a bonded indebtedness resting upon the property of that district amounting to fifteen per cent. A tax of course must be levied to pay the interest and provide a sinking fund to pay the principal. Now would that not be too much taxation to levy upon the people? Now the amendment proposed by the gentleman proposes to increase the amount to fifteen per cent in a city; then there would be a burden resting

upon the property in that city, first, of five per cent as their proportion of the county tax; there would be fifteen per cent for city taxes on the valuation, and five per cent for school districts—that is bonded indebtedness for school purposes. These amounts amount then to twenty-five per cent upon the assessed value of the property, and a tax would have to be levied to meet the interest upon it and provide a sinking fund for the principal, in addition to the amount of all the ordinary expenses of the state, the county, the town, and the city and school district. There is a bonded indebtedness provided for under that provision by which it may go if it is in a school district and incur a burden of twenty per cent upon the assessed value of the property. Now this Section 4 provides for five per cent for each one of them. The amendment provides for fifteen per cent upon one of them. Now of course all these different subdivisions are included in the county. The county includes the city, the city includes the school district; the county includes the town and the town includes the school district. Now each of them under the provisions of this law as I see it can incur an indebtedness of five per cent, which without the amendment the gentleman has proposed would be fifteen per cent upon the property and in the city it might amount to ten per cent more than that, or twenty-five per cent. There could be a burden of debt resting upon the property of a city of 2,000 inhabitants amounting to twenty-five per cent of the assessed value, and taxes must be levied every year by the provisions of this law to pay the interest on that and also to provide a sinking fund to pay the principal within twenty years.

Mr. HEYBURN. Mr. Chairman, I have an amendment to offer.

SECRETARY reads: I move to strike out Section 4. (Seconded).

Mr. HEYBURN. Mr. Chairman, if it is not stricken out, as far as the members of this convention from Shoshone county are concerned, they can just go home,

because they will have no interest in the state government whatever. It will completely fence them in, either with the amendment or as it was originally reported. They have now an indebtedness of several times the limit that is allowed by this provision and what are they going to do? They cannot incur another cent of indebtedness. The wheels of their government will be stopped, whenever you adopt that section, right there. The remarks of the gentleman from Shoshone who has just taken his seat---Mr. King—were simply based upon the idea that that section was to be interpreted that each one of those bodies might levy a debt of five per cent, and he demonstrated that the gross indebtedness might be fifteen per cent for all those purposes. However that may be, I move to strike out that section for the reason that it is not necessary that any section of that kind should be contained in the constitution, and because it strikes right at the life of our county government. We have now a bonded indebtedness of about $150,000. We have a floating indebtedness of $65,000, and an assessed valuation of only a little over a million dollars. Now you see where we stand. You see by the terms of this constitution that we can obtain no relief. The provision says "It shall never exceed," etc. There is not any condition or proviso or exception at all. We have a government that must be kept in motion. We have courts that must be held, officers that must perform their duty, processes that must be served in order to maintain good government and peace and order in our community. I hope the sense of the convention will be to strike out the section. (Motion seconded).

Mr. POE. Mr. Chairman, I heartily support the motion of the gentleman from Shoshone, Mr. Heyburn. I don't think these city corporations or town corporations ought to be circumscribed as to the powers of appropriation or indebtedness they may create. They are the parties who will have to suffer the consequences of any unnecessary schemes there may be that are

abetted by reason of an appropriation for any amount which may be excessive. They are the parties who are to be the judges as to whether they need that, and they ought to have a right to say whether they want to make certain improvements, and whether or not they feel able to make those improvements, and I don't think that it is the province of such a constitution to come in and presume that those men who are the owners of that property do not know what their wishes are, and say to them: You shall not appropriate any portion of this property for making certain improvements. I say, leave it to the people who are to reap the benefit or the damage of that. This is a republican form of government and the people of the municipality or county do ordinarily know their business, what is to their advantage, and we ought not to take that advantage away from them. I heartily support the motion to take that section out of the constitution, and leave the cities the opportunity if they see proper, to make appropriations for sewerage, sanitary purposes, or any other thing which in their judgment they may believe will inure to the advantage of their city or town or to their county. Leave it to them. It is nothing but just and right that they should have that privilege, and I therefore support the motion of the gentleman from Shoshone.

Mr. WILSON. For the purpose of this motion to strike out, I will withdraw my amendment, with the understanding that the motion to strike prevails; because, if the section does prevail it paralyzes different improvements in this city and will ruin municipal improvements in half a dozen towns in Idaho Territory. (Cries of "Question").

The CHAIR. The question is upon the motion of the gentleman from Shoshone to strike out Section 4. (Vote and carried).

Mr. ALLEN. Mr. Chairman, if there is any force whatever in the argument presented by the gentleman who asked to strike out this section, it applies with

greater force in regard to Section 1. I now move to strike out Section 1 as heretofore adopted by the committee. I think it is limiting the powers of the state in such respects as would prevent its prosperity and progress and prevent it from issuing bonds for carrying on public work.

Mr. AINSLIE. I would like to ask if the gentleman voted with the minority on that section. If he did he cannot make a motion of that kind.

SECTION 4.

SECRETARY reads Section 5 (4) and it is moved and seconded that the same be adopted. (Carried).

SECTION 3.

Mr. McCONNELL. I move that Section 3 as adopted be stricken out. (Seconded).

Mr. MORGAN. The motion is not in order, Mr. Chairman.

The CHAIR. There must be a motion to reconsider first.

Mr. ALLEN. I would like to ask if the motion to reconsider is in order in committee of the Whole.

The CHAIR. I think it is in order.

Mr. McCONNELL. Then I move to reconsider the vote by which Section 3 was adopted.

The CHAIR. Did the gentleman vote with the majority?

Mr. McCONNELL. I did.

Mr. MAYHEW. I may state we are violating every rule we have adopted here. I would like to ask the chair whether he can make a motion to reconsider.

Mr. MORGAN. I cite the chair to Rule 50.

The CHAIR. The chair rules that a motion to reconsider is not in order in committee of the Whole.

Mr. WILSON. I move that the article be adopted.

Mr. MAYHEW. I would like to ask if Section 5 (4) has been adopted.

The CHAIR. Yes, it has.

Mr. MAYHEW. I now move that the committee adopt the article as amended.

Mr. McCONNELL. Mr. Chairman, I move to amend the motion made by the gentleman from Ada by excepting Section 3 from the motion. (Seconded).

The CHAIR. The gentleman from Shoshone——

Mr. WILSON. I rise to the point of order that Section 3 has been adopted; it cannot be excepted except by a motion to reconsider.

The CHAIR. The gentleman from Shoshone, Mr. Mayhew, has the floor.

Mr. MAYHEW. I move that the committee rise, report progress and report Article 7 (8) back to the convention and recommend its adoption.

Mr. CLAGGETT. Will the gentleman from Shoshone withhold that motion a moment?

Mr. MAYHEW. I moved a while ago to adopt Article 7 as amended and I was told it was adopted; if not I renew the motion.

The CHAIR. The motion is now to adopt Article 7 (8). (Vote and carried).

Mr. CLAGGETT. Mr. Chairman, I move that when the committee rise it report this bill back to the convention, report progress and ask leave to sit again on this article. There is a section here which ought to belong to this article and which ought to go in. It is a matter that will call for some discussion. I have not had time to prepare it, but if the committee will allow me I propose to add this as an additional section.

PROPOSED SECTION.

"Whenever the market value of the county warrants of any county shall fall below 85 cents on the dollar, it shall be the duty of the county commissioners of such county to set aside not exceeding fifty per cent. of the revenues in any such year as a scrip redemption fund for the purpose of purchasing the outstanding warrants of the county, and the party or parties who shall, on public advertisement therefor, offer to surrender the largest amount of warrants for the least money, shall receive the money."

I want to state one thing right away; I intend to draw this thing up as an additional section. There has not been any change made in the practical administration of the fiscal affairs of counties. We create a board of county commissioners and arm them with power without limit, provided they choose to use it, at least as to the ordinary expenses of the county without limit—to issue the promissory notes of the county. These promissory notes in the shape of county scrip are issued, and when they get to a certain point all the indebtedness except the fixed indebtedness provided by law, is duplicated or added to in that kind of shape which gives rise around every courthouse to a little ring of scrip purchasers, who form combines to still further depreciate the value of county warrants, and so it goes on from time to time until the county is absolutely bankrupt; and then the next proposition is to go down to the legislature with a funding bill—just what was done in the case of Shoshone county—go down to the legislature with a funding bill to fund in long-time bonds and take up the outstanding warrants, and that too by way of compound interest at a certain rate, and by means of which this indebtedness is fixed upon the county. Whenever the outstanding indebtedness in the county or a fresh issue of warrants in the county has a market value as low as 85 cents on the dollar, that county is bankrupt and should be treated as such, and the commissioners should be endowed with the power, by going into the open market and using a portion of the revenue coming into the general fund, to purchase in the outstanding indebtedness and destroy the occupation of those gentlemen who are depreciating county securities, and keep this scrip at par. That is no untried experiment. In 1865 in Storey county, Virginia City was in two years' time worked out of an indebtedness of nearly $3,000,000 by this plan.[1]

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[1]—Nevada Sess. Laws 1865, p. 121: "An act to provide for the payment of the outstanding indebtedness of Virginia, Storey County."

Mr. MAYHEW. Do I understand this amendment of yours to reach that state of facts—will it reach that?

Mr. CLAGGETT. Yes. I do not know what the county scrip in my county is rated; it has never been quoted lower than it is now, but it rose a little to somewhere in the neighborhood of sixty cents. Now who gets the benefit of that deficiency except the parties speculating in the scrip? If the county commissioners had power to set aside 25 or 50 per cent of the amount of money arising from the general fund, to go into the market and purchase the outstanding indebtedness of the county, they would get the benefit of this deficiency and it would destroy the occupation of these scrip sharps around the county seat, and keep the credit of the county at par. I say that in getting up a constitution here, when we arm the board of county commissioners with full and unlimited power almost to create indebtedness, we should provide in the constitution and give them some power by which they can have the ordinary means of getting out of an indebtedness which an individual has, and for that reason I want to draw this article carefully, and for that reason I make my motion that when the committee rise it report the bill back, report progress and ask leave to sit again on this article.

Mr. MAYHEW. With that purpose I will withdraw my motion.

The CHAIR. The motion is that when the committee rise——

Mr. GRAY. Well the motion was made that the committee rise now.

Mr. CLAGGETT. I will modify the motion to that extent.

The CHAIR. The motion is that the committee rise, report progress and ask leave to sit again. (Vote and carried).

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. SHOUP. Mr. President, the committee of the

Whole have had under consideration the report of the committee on Public Indebtedness and Subsidies; have come to no conclusion and ask leave to sit again.

The PRESIDENT. Shall the report of the committee of the Whole be received? It is moved and seconded that the same be received. (Carried).

Mr. MAYHEW. I move that we take a recess until two o'clock. (Seconded and carried).

AFTERNOON SESSION.

Called to Order by President at 2:00 P. M.

The CHAIR. The Chair will call attention of the convention to the fact that there are now lying upon the speaker's table some four or five different articles which have been fully considered in committee of the Whole and practically disposed of except bringing them up in convention and formally disposing of them. The committee on Enrollment and Revision will necessarily have a great deal to do, and the convention should as soon as possible, unless there are other matters before it, get at some of these matters which lay upon the speaker's table so that the committee on Revision can get to work; otherwise, we will conclude all our work at once and then have to wait.

Mr. BEATTY. Mr. President, I call attention——

The CHAIR. I do not understand that there is any regular order of business at this time—anything and everything is before the convention—if the gentleman will indulge the chair a moment. This morning the gentleman from Ada desired to bring up the resolution to expunge a resolution the chair held out of order at that time. If the gentleman desires to bring it up now, I presume the convention will consider it.

Mr. PEFLEY. Mr. President, I see the gentleman is not here who offered the resolution. I prefer to wait until he is here.

The CHAIR. I will inform the gentleman that Mr. Cavanah has gone away and does not expect to return.

Mr. PEFLEY. I prefer to let it lie over.

DEBATE ON ORDER OF BUSINESS.

Mr. BEATTY. Mr. President, I called attention this morning to the fact that there is much business unsettled and that the committee on Revision ought to have some rule of procedure in order to avoid delay in this convention, and my view is formed from all the constitutions I have examined, that that provision of the constitution with reference to suffrage and elections naturally comes in order immediately after the Bill of Rights, and it ought to be considered now, so that when these matters are finally passed upon and referred to the committee on Revision, they may consider them in the order in which they will come in the constitution. I therefore move that we resolve ourselves into a committee of the Whole for the purpose of considering the minority and majority report of the committee on Elections and Suffrage. (Motion seconded. The question is put).

Mr. REID. Mr. Chairman, there are now on the calendar about seven reports, I believe. The report of the committee on Elections and Suffrage has not been put upon the calendar at all. The reports have just been printed and put on the table of the members this morning. We have been in continuous session ever since, examining a very important matter. There has been no time for members to compare the two reports to see wherein the difference lies. There is some difference—more difference than I anticipated from the article I saw in the daily paper this morning. I didn't know there was any difference only for one point, and from speaking to other members, I find we have had no time to look into this matter and I don't see why we should skip over seven regular orders here and go into this. If we should take them up in the order in which they come in the constitution, then there are other matters that come first. The executive comes first, legislative next and judiciary last. Every constitution that is arranged in order and every revising committee that arranged it in order, will start with the Bill of

Rights, Executive Department, Legislative Department, then the Judiciary and others follow in order. However, if this is done at caucus dictation, I have no more to say.

Mr. MAYHEW. When this convention adjourned this morning, the president of this convention gave notice—made quite a speech— that he would offer an amendment to the matter we then had under consideration. And the committee rose with the desire that we should sit again for the purpose of taking up the matter proposed by yourself to be considered in that committee. Now, as one of the members, I am opposed to jumping from one business undisposed of to another. If this is to be withdrawn, we will go into something else, but if that matter is going to come up again this afternoon, or whenever the committee takes up the matter, in fact postponed this morning—if this question is to come up I am opposed to considering any other matter until we complete the unfinished matter left over this morning. I think we should have considered that this morning. I don't know what object they have in going to pass the matter we had under consideration this morning and ask leave to sit again upon it. I do not know the purpose of it. There is no reason given and I hope the convention will not do so.

Mr. AINSLIE. Gentlemen, I rise to a point of order. The taking this out of the regular order as it appears upon the calendar is contrary to the rules of the body. Rule 51 is as follows: "All reports of committees, containing matter to be incorporated in the constitution, shall be considered in the order in which the reports are made, and upon their introduction and full reading before the convention, such matter to be incorporated shall lay upon the table, and be printed, and when printed shall be placed on the calendar to be considered in the committee of the Whole." Now, Sir, they should be considered in the order in which reports are made and this is one of the last reports made. Rule 59 provides that "These rules shall not be altered,

except after at least one day's notice of intended alteration, and then only by a vote of the majority of those elected to the convention, and no rule shall be suspended except by two-thirds of those present." Now the calendar is the calendar of bills that have been reported to the committee of the Whole, upon which calendar are propositions for final readings. Now this matter has not been read in convention at all, except the report of the committee; it has never been in committee of the Whole at all, and the propositions for final readings and all special orders shall be placed in the priority in which the orders are made. (Rule 58). "Upon such calendar all propositions for final readings and all special orders shall be placed in the order of priority in which the order is made. Propositions for a final reading on a particular day, not reached on that day, shall be placed first upon the calendar in the order of final reading of each succeeding day until disposed of." Now, while our calendar has been made up and the reports of the different committees have been presented to this convention, I maintain that under the rules the calendar only properly contains those propositions which have been reported to the committee of the Whole. Even taking that horn of the dilemma, there are a half dozen propositions committed to the committee of the Whole that are now ready for action of this convention upon the calendar as reported by the committee of the Whole. This being one of the last reports (Rule 51) it cannot be considered even in committee of the Whole until

Mr. MORGAN. I think this order can be changed by a simple vote of the convention, as will appear by Rule 58: "No proposition found upon the calendar shall be taken up and read by the secretary out of its order thereon, except by direction of the convention." That indicates that by the direction of the convention it can be so done.

Mr. AINSLIE. That is a proposition as to final readings. This has not been read by section yet—has not been reported in the committee of the Whole. That

belongs to matters committed to final reading. "Upon such calendar all propositions for final readings and all special orders shall be placed in the order of priority in which the order is made." The gentleman cannot construe that into meaning the first reading of a bill or article.

The CHAIR. Rule 51, upon which the gentleman from Boise rises to a point of order, is as follows: (Reads Rule 51). You see the provision with regard to being considered in the order in which they are placed upon the calendar is left out. It leaves it in the power of the convention to consider any bill, as the chair understands it, at any time, as it may see fit. In other words, the convention has not seen fit to bind itself by a cast-iron rule to take up matters in the order in which they get them from the calendar, no matter how urgent may be the business. Therefore the chair is obliged to hold——

Mr. MAYHEW. Can we then, under the regular other reports that were made before have been considered in committee of the Whole. I make the point of order.

order of business, skip from that matter we had under consideration this morning in the committee of the Whole?

The CHAIR. If the motion had been made this morning, that the committee do now rise, report further progress and ask leave to sit again upon the re-convening of the convention after recess, it could not; it would remain as unfinished business and would require a motion to suspend the rules, but the chair understands that whenever the committee of the Whole reports and asks leave to sit again without fixing some time for the sitting, that the report of the committee lays upon the table like any other report and does not constitute unfinished business in any sense.

Mr. MAYHEW. I now move that the convention resolve itself into committee of the Whole for further consideration of Article No. 7 (8). (Seconded).

Mr. BEATTY. I rise to a point of order. There is a motion before the body, and this motion of the gentleman is not an amendment to that motion in any way. A motion was made and seconded also that we resolve ourselves into committee of the Whole for the purpose of considering this report of the committee on Elections.

Mr. MAYHEW. I am satisfied that the gentlemen have this to suit themselves, but I desire to call the attention of this convention if they are disposed to do the last thing at first. It is nothing more than fair, it is nothing more than legitimate, it is nothing more than parliamentary to consider the matter as unfinished and continue the sitting upon that question until it is disposed of. For some reason unknown to me or anybody else, I suppose, in this convention, except perhaps the gentleman himself, he wants to omit or pass over the matter we had here under consideration this morning and take up some other matter. Now I say it does not make any difference, and so far as this motion is concerned, if the motion has been made to go into committee of the Whole to consider the matter we had up this morning, to say it was omitted by the motion when the committee rose is rather technical, Mr. President, entirely so. And I say, Mr. President, it is not parliamentary, although this convention by a majority perhaps can repeal every rule here we have adopted heretofore, but I ask for what reason it is that these matters be postponed and we take up another matter at this period? The gentleman says he rose to a point of order because he has made a motion to take up a different matter. Now we considered this morning a matter which was really out of order and went into committee, now you are going to omit considering that bill and go into another matter out of its order to please one or two members of this convention. I hope, Mr. President, that when we have a matter under consideration in the committee of the Whole we will dispose of it as we go along. And I insist, so far as I am concerned, that we

resolve ourselves into committee of the Whole to consider this matter.

The CHAIR. I can give the gentleman from Shoshone some information on one point, at least, of his remarks. On the adjournment of the convention this morning my attention was called by Mr. Hays, delegate from Owyhee county, to the fact that there was an old special law[1] which had been passed by the territory of Idaho some fifteen years ago, applicable to Owyhee county alone, with reference to these current expenses and redemption fund, which I sought by the amendment I offered to cover. I requested him to get me the law so that I might draw that section. I only got it five minutes before the convention convened. The chair holds that the motion of the gentleman from Shoshone is in order as an amendment to the motion made by the gentleman from Alturas. The gentleman from Alturas moves that the convention do now resolve itself into committee of the Whole for the purpose of considering the majority and minority reports of the committee on Suffrage and Elections, and to that the gentleman from Shoshone offers an amendment that it go into committee of the Whole for the purpose of further considering the measure we had up this morning. The vote should be first upon the amendment. (Vote). The chair is in doubt. (Division called for. Rising vote taken. 20 in favor; contrary, 25). The amendment of the gentleman from Shoshone is lost.

Mr. MAYHEW. I call for the ayes and nays.

Mr. REID. I second the motion.

Mr. MORGAN. I rise to a point of order. You can't call for the ayes and nays in committee of the Whole.

The CHAIR. We are now proceeding in convention and his motion is in order. (Roll-call).

Ayes—Ainslie, Allen, Anderson, Batten, Bevan, Blake, Chaney, Clark, Coston, Crutcher, Harris, Hagan, Jewell, King, Kinport,

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1—Secs. 844, 845, Special and Local Laws of Idaho. (1887.)

Mayhew, McMahon, Myer, Parker, Poe, Reid, Taylor, Vineyard, Pefley.—24.

Nays—Ballentine, Beatty, Brigham, Campbell, Gray, Hampton, Harkness, Hasbrouck, Heyburn, Howe, Lewis, Maxey, McConnell, Melder, Morgan, Moss, Pinkham, Pritchard, Salisbury, Sinnott, Shoup, Sweet, Underwood, Whitton, Wilson, Mr. President.—26.

The CHAIR. The vote on the motion stands, ayes 24, nays 26. The motion is lost.

Mr. AINSLIE. I move a call of the convention. (Seconded).

The CHAIR. It has been seconded by five members. (Seconded by a half dozen. Division called for. Rising vote, ayes 22; nays 26).

Mr. AINSLIE. I call for the ayes and nays on that motion. (Roll-call).

Ayes—Ainslie, Anderson, Batten, Bevan, Blake, Chaney, Clark, Coston, Crutcher, Gray, Harris, Hagan, Jewell, King, Kinport, Mayhew, McMahon, Myer, Parker, Pinkham, Reid, Taylor, Vineyard.—23.

Nays—Allen, Ballentine, Beatty, Brigham, Campbell, Hampton, Harkness, Hasbrouck, Heyburn, Howe, Lemp, Lewis, Maxey, McConnell, Melder, Morgan, Moss, Pierce, Pritchard, Pyeatt, Salisbury, Sinnott, Shoup, Sweet, Underwood, Whitton, Wilson, Mr. President.—28.

The CHAIR. The vote upon the motion for a call of the convention stands, ayes 23, nays 28. The motion for a call of the convention is lost.

AINSLIE. I move the convention adjourn until tomorrow morning, at ten o'clock. (Seconded).

The CHAIR. All in favor of the motion say aye. (Division called for. Rising vote. 19 in favor, 30 opposed). The motion is lost.

Mr. REID. I rise to a parliamentary inquiry. I desire to know if under Rule 18, a motion for a call of the house having been sustained by one-fifth of the members, a call was not in order. Any member has a right to demand a call of the convention, the demand shall be sustained by one-fifth of the members present.

The CHAIR. The chair is clearly of the opinion that any one member may call——

Mr. REID. A call was made; the vote was put as whether it should be sustained.

The CHAIR. What is the rule you refer to which——

Mr. REID. Rule 18. Objection was made to the call and then the demand was sustained by one-fifth, the same as a call for the ayes and nays. The vote was put on the ayes and nays whether the demand should be sustained for a call of the convention and the chair rules it was not sustained, although more than one-fifth voted. I rise to know what the meaning of that rule is. I take it, Mr. President, that two members can demand the ayes and nays. If objection is made, it must be sustained by one-fifth of the members. A member can make a demand for a call of the convention. If objection is raised under Rule 18, he has to be supported by one-fifth, and you put the convention call which was not only supported by one-fifth but they stood 24 to 28.

The CHAIR. The chair is of the opinion that that construction of the rule is not sound. Otherwise the entire convention might be here on a division and the vote to call would be going on forever although they are all there. Any three members have the right to demand a call of the convention, but if objection is made to the demand, it shall be sustained by one-fifth, that is, it demands one-fifth to put it to a vote as to whether there shall be a call of the convention, I think. It would not be wise to adopt that rule here.

Mr. REID. I ask the chair how it construes the rule for the demand of the ayes and nays. It reads in the same way.

Mr. MAYHEW. I would also ask for information, for the members, according to the chair's opinion about this, say the full membership here—all members present—could continue the call. You cannot continue the call when all members are in their seats, but this is for the purpose of bringing in the vote, that the minority members—one-fifth present—can demand a call of the

house; otherwise the rule is nugatory.

The CHAIR. The chair cannot understand the rule in that way. It is susceptible of two interpretations, evidently, but the chair adopts that which necessarily facilitates the business of the convention. To say that one-fifth can hold all the other members of the convention here until the last member appears, although a large majority or nineteen-twentieths of those voting—not that many, however, but four-fifths of those present, should have voted to sustain a call or not to have a call, would be to say that we have a rule by which one-fifth of the members could block the whole proceedings of the convention, and under a rule that admits of two interpretations, the chair can do nothing but adopt that interpretation which facilitates business.

Mr. AINSLIE. The rule is perfectly plain, if it is divided properly, in my opinion. Any three members have the right to demand a call of the convention, is the first proposition stated in the rule; but, if objection is made to the call of the convention, then it shall require one-fifth of the members present to sustain a call. That is the only English interpretation that can be put upon that rule in God Almighty's world. If it requires a majority of the members present to sustain a call of the convention, there never would be any such a thing as a call. Where there is a quorum present, two-thirds of a political party might be absent, and then by requiring a majority of the members present to demand a call of the convention, you never would have one party represented at all only by half a dozen members, probably, and gentlemen, I was going to say, will remember that rules are made for the protection of the minority; the majority is able to protect itself. That matter has been decided time and time again in all other legislative bodies than this, and I say all rules are made for the protection of the minority and no other construction can be placed on Rule 18; that where three members—three members can stop the proceedings of this convention. If it is objected to, then it shall be

put to the convention and one-fifth of the members voting have the right to have that call to have the absentees come in or know why they are absent, because you have a rule here that no member shall absent himself without the consent of the body. That is the only reasonable construction to put upon the rule. I know that construction is put upon it in the house of representatives of the United States and we are operating under the same rule. I have seen it done a thousand times. I would ask the secretary of the convention whether one-fifth of the members——

The CHAIR. I shall not hear the gentleman from Boise. The chair has never seen that construction followed with regard to language of this kind. It strikes me the construction of the rule by the chair is correct. I haven't had time to consider it, but in the absence of some authority upon the subject, of course the chair will have to adhere to its ruling, and if the gentleman is not satisfied with the ruling, he can appeal.

Mr. AINSLIE. Appeal? Appeal against the republican caucus? (Laughter).

The CHAIR. The question arises upon the motion made by the gentleman from Alturas.

Mr. AINSLIE. I move this convention adjourn to meet at 9 o'clock tomorrow morning.

The CHAIR. I think we have a rule to the effect that when any proposition is before the convention—that may be, however, on the previous question. I will put the question. It is moved and seconded that we adjourn until 9 o'clock tomorrow morning.

Mr. BEATTY. I would ask if the last motion is not to adjourn.

The CHAIR. That is all covered by the last motion to adjourn because that is our regular hour and the same motion cannot be repeated until there is some——

Mr. AINSLIE. I will say half past 8 o'clock then.

The CHAIR. It is moved and seconded that the convention adjourn until half past 8 tomorrow morning. (Vote).

Mr. AINSLIE. Division. (Rising vote, 20 in favor, opposed 29. Motion is lost).

Mr. AINSLIE. I call for the ayes and nays. (Seconded. Roll-call).

Ayes—Ainslie, Anderson, Batten, Bevan, Blake, Chaney, Clark, Coston, Crutcher, Hagan, Jewell, King, Kinport, Mayhew, McMahon, Parker, Pefley, Poe, Reid, Taylor, Vineyard.—21.

Nays—Allen, Ballentine, Beatty, Brigham, Campbell, Gray, Hampton, Harkness, Hasbrouck, Heyburn, Howe, Lamoreaux, Lemp, Lewis, McConnell, Melder, Myer, Morgan, Moss, Pinkham, Pritchard, Pyeatt, Salisbury, Sinnott, Shoup, Sweet, Underwood, Whitton, Wilson, Mr. President.—30.

Mr. BEATTY. I now demand the previous question, on the motion I made to resolve ourselves into committee of the Whole.

Mr. MAYHEW. That was carried.

Mr. McCONNELL. No, it was not. I seconded the motion.

Mr. AINSLIE. I believe the motion to adjourn takes precedence—my motion to adjourn until 8:30. Then I move we take a recess until 8 o'clock in the morning.

The CHAIR. Before that motion was made, the gentleman from Alturas demanded the previous question, upon the motion pending before the convention, namely, that the convention now resolve itself into committee of the Whole for the purpose of considering the two reports of the committee on Suffrage and Elections.

Mr. AINSLIE. I move to lay that motion on the table and on that call for the ayes and nays.

The CHAIR. The motion is made to lay the motion for the previous question on the table. (Division called for. Rising vote shows 22 in favor; opposed, 28). The motion to lay upon the table is lost. The question recurs upon the motion of the gentleman from Alturas.

Mr. AINSLIE. As there is no other business in convention, I move a call of the convention again.

The CHAIR. The chair will rule it is out of order, having once been disposed of.

Mr. BEATTY. Besides that, Mr. President, after

the motion—I call the house's attention to Rule 19—after the motion for the previous question, but two other motions can be entertained until that is decided.

Mr. AINSLIE. Rule 20—on a motion for the previous question, prior to voting on the same, a call of the convention shall be in order, also in addition, the motion to adjourn and take a recess.

Mr. REID. I call your attention to page 103 of Cushing's Rules: "If it passes in the affirmative it may be rescinded or the subject may be reconsidered." And it has been held that the speaker with one-fifth may make a call of the convention, and as the chair will doubtless know, frequently in filibuster proceedings the minority call the house repeatedly when they have a large majority.

The CHAIR. I am aware that is true under the rules of the house of representatives, but our rules in governing this convention fall very short of the rules of the house of representatives. I call the gentleman's attention to Rule 19, which I think covers the case. "Any five members have the right to demand the previous question. The previous question shall be put in this form: 'Shall the main question now be put?' and until decided shall preclude further debate, and all amendments and motions, except one motion to adjourn and one motion to lay on the table." Both of which have been had. "All incidental questions, or questions of order, arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate."

Mr. REID. I ask the chair, after the gentleman's motion was put at the time, how did we vote on the motion of the gentleman from Shoshone to take up the regular order and go into committee of the Whole, after he had a motion to go into committee of the Whole to take up this matter and the gentleman made some motion, but not a substitute—how did we vote on that?

The CHAIR. The motion was first of the gentleman from Alturas to vote——

Mr. AINSLIE. I will call——

The CHAIR. The gentleman from Shoshone offered an amendment that it go into committee of the Whole on another bill. The amendment was voted down and then the whole question came back upon the original motion of the gentleman from Alturas. In consequence of the inability of the chair to find this rule which it had never looked over only this afternoon, all of those motions which have been had for calls of the convention and so on are out of order, except one motion to adjourn and one motion to lay upon the table, both of which have already been had. Therefore the chair holds that the motion for the previous question is before the convention.

AINSLIE. Does the chair hold that Rule 20 does not apply in this case? The first part of it, it seems to me, is as plain as the English language can put it.

The CHAIR. The chair will hold with regard to Rule 20 that it seems to be an addition to Rule 19 to that effect. I will hold that one motion for a call of the convention is in order after a motion for the previous question has been made.

Mr. AINSLIE. That is reversing the rule. Prior to a vote on the same, a call of the convention would be in order.

The CHAIR. That is what I say. If a motion is made or a call is made for the previous question, one motion for a call of the convention is in order and one motion to adjourn and one motion to lay upon the table, and Rule 19 and the first part of Rule 20 seem to belong together.

Mr. AINSLIE. I would ask every democratic member of this convention to remain silent and not vote and leave the republican party of this convention without a quorum. I ask that as a democrat. We have had no democratic caucus in this matter; the republicans have been in caucus.

Mr. BEATTY. I rise to a point of order. I don't think the gentleman has any right to make any such

representation as that, there being no motion before the convention—no proceeding before the convention that justifies any appeal of that kind to democrats or republicans.

Mr. AINSLIE. I leave it to the sound conscience of every democrat in the house. I propose that all have justice in this convention or I for one shall leave this convention.

Mr. POE. Mr. President, we stand in this position: We know that the caucus has been held; we know that prior to the convening of this convention after dinner that the noses of the parties had been counted and considered. It is well known to the leaders of this republican party upon that side of the house just how many democrats are absent and how many——

Mr. BEATTY. I rise to a point of order.

Mr. POE. ——and how many there are upon the other side.

The CHAIR. The presiding officer will hold these matters in reasonable—allow reasonable debate.

Mr. POE. All we ask is fair play.

The CHAIR. By consent the gentleman may proceed.

Mr POE. That is the proposition—by consent that I do it. Under this rule here, Rule 48, the calendar of each successive day's business shall be prepared by the secretary, printed and laid upon the desk of each member every morning. Now, that has been done. Upon such calendar all propositions for final readings, all special orders shall be placed, in the order of priority in which the order is made. Now here you see, here is the order that they come before us—just precisely as they appear upon that calendar.

Mr. BEATTY. I would like to ask the member a question.

Mr. POE. This, as I understand it, is the order of business.

Mr. BEATTY. Mr. President, I desire to ask the member a question, with his permission.

Mr. POE. I yield.

Mr. BEATTY. I would like to know why the gentleman did not make objection this morning when we changed the regular order of business and went to another.

Mr. POE. Because Mr. Savidge, chairman of that committee, requested it, and it was taking up something that had already been placed upon the calendar that came in its regular order. Here the attempt now of the convention is to take up something that is not upon the calendar at all, and, as I understand this rule that this is the procedure—to be taken up by the convention as it appears upon this calendar, just precisely in the order in which it occurs upon the calendar. Now, then, the object and the intention of this convention is to take up something out of order in order to get political advantage, it seems to me; and Rule 59 says these rules shall not be altered except after at least one day's notice of the intended alteration. Now it strikes me, Mr. President, that whenever we take up any business that is not upon this calendar, then we are going contrary to Rule 58 which I have just read, and this says this rule shall not be altered except by a two-thirds vote. Now it seems to me if this convention wants to go outside of the regular order of business and take up something else which it was not entitled to take up under the rule, then it would be proper for them to do so provided two-thirds of this convention are willing to suspend that rule, and if two-thirds of this convention vote in favor of the suspension of that rule and to take up the matter which is under consideration now out of its regular order, I shall not have a word to say.

The CHAIR. The whole proceeding of the convention up to this date, in one particular, has been had without paying very much attention to rules. I will refer the gentleman from Nez Perce to Rule 49 and by reading Rule 49 and the rule which he has just invoked, we can get out of this muddle so far as the

regular order of our business is concerned. Rule 49 provides, that is, the part the chair calls attention to: "After being reported, the propositions, with amendments thereto of the committee of the Whole, shall be immediately taken up for consideration, unless it shall be otherwise ordered by the convention and again be subject to discussion or amendment before the question to engross for final reading shall be taken." In other words, this matter all precedes that which is found in the rule relating to the calendar. The convention, after the report of the committee of the Whole, considers its report and passes it to the committee and fixes a time for the final reading. Then Rule 58 comes in. We have not as yet had a final reading and that is what the chair called the attention of the convention to at the very opening after calling the convention to order—that there was practically nothing of it disposed of. We have had no final readings and nothing presented for a final reading. If anything had been ordered to final reading and placed upon the calendar for that purpose, then the point of order would be well taken that they have to be considered in point of priority; but as the chair called the attention of the convention once before to this Rule 19, there is no priority on the calendar so far as matters are concerned that are submitted to the committee of the Whole. That is left out of the rule.

Mr. COSTON. Was not this point of order taken upon a call of the house—of the convention? Is not that the question upon which this point was raised?

The CHAIR. What point of order is that?

Mr. COSTON. Now pending.

The CHAIR. I did not understand there was any point of order before the house. This discussion has been going on——

Mr. COSTON. You didn't know their appeal was taken from the decision of the chair as to the manner in which the vote was announced from the chair upon the call of the house?

The CHAIR. The chair did not hear it if it was.

Mr. REID. The point of order was made.

Mr. COSTON. Well, isn't it upon that this appeal is taken?

The CHAIR. No appeal has been taken. As this matter stands now, it stands upon the motion of the gentleman from Alturas demanding the previous question, which has been seconded by more than five members, and after that—after this call is made, there can be but three motions, one to adjourn, one to lay upon the table and one for a call of the house, under Rules 19 and 20.

Mr. AINSLIE. Mr. President, we desire nothing but what is fair and honorable and upright in this matter, and we are willing to make a proposition to the other side—the majority—of that committee which we think is nothing but just to the minority and to all parties on the floor of this convention. I would therefore suggest, if it reaches the views of the majority, that we make this matter the subject of special order for Friday morning at ten o'clock and go through all the other business before that time in committee of the Whole. That will give the parties plenty of time to consider this question and examine the reports of the majority and minority and compare them and make up their minds definitely as to which report they will support. There is nothing but fairness and justice in that and we hope they will accept it. If not, we will resort to every known parliamentary rule and dilatory motions that may be necessary.

Mr. BEATTY. I am always ready——

The CHAIR. This is all out of order, but by general consent any motion is in order upon a call for the previous question. If the gentleman from Alturas temporarily withdraws his motion for——

Mr. AINSLIE. I just make that proposition to the gentleman representing the majority of the committee. I just want to see whether they are disposed to be fair

or not. I make the proposition that it be made a special order for Friday morning at 9 o'clock.

Mr. BEATTY. If the chair will not rule me out of order, I will reply to that. I was about to say that I am always ready to accept any proposition that is fair with the view of having the proceedings of the convention harmonious, but to defer this matter until away beyond the time it would be reached in any ordinary proceeding is not a fair proposition, in my opinion. Moreover, I know that a great many members of this convention are talking of going home and there is no telling how many we shall have Friday morning. I will agree to this: These reports are very brief. Any member of this convention can satisfy himself in twenty minutes' examination as to how he will vote on this question. Certainly they can satisfy themselves by tomorrow morning. I am willing to defer this matter until tomorrow morning at 9 o'clock, if it can then come up without any delay, and consider this matter fairly. And so far as I am concerned, I can't see what the objection is to considering it now.

Mr. REID. Will the gentleman allow me to interrupt him? I will state this: I am just in this situation, I was elected under the joint call I hold in my hand of two committees, and at the proper time I propose to say something about the partisan aspect of it, if it is necessary, to put the minority I broadly represent here, in a proper light. As I stated, these two reports were put in here this morning. I heard the propositions when they were before the democratic caucus and came from the republican caucus and the two propositions were going back and forth. I heard them read, but gentlemen know that you cannot retain them in your minds. I noticed an article in the paper this morning commenting on the republican majority report, and after an examination of it, I may vote for the very part on which the question is raised, but I haven't even had time to read over the two reports that were laid on our desks this morning, as I intend to do tonight. No gentleman here has studied it out—we have been busy with our committee work. As soon as we get our

breakfasts, we come here at 9 o'clock and hurry back. We will be late this evening and I know some of us will be engaged—we may hold a night session. Tomorrow some of us have got to be engaged extending courtesies to the gentlemen who are visiting us. The democratic caucus, if they desire to hold one, or the members who desire to look it up, will not have time. Now I make the proposition to the gentleman, after they consult with Mr. Ainslie who made the first proposition, that this whole matter go over until Thursday morning at 9 o'clock, to be the first order, and I will agree with them that they may go through that in committee of the Whole—end it there—go right back into convention and dispose of the matter finally.

Mr. MORGAN. Wednesday morning?

Mr. REID. Thursday—Thursday morning. Thursday is the time, because we will not have time tomorrow, I know.

Mr. AINSLIE. We have plenty of business to keep us busy all the time between now and then. We have had no time to look into this matter. Representing the democrats, I will say for them now that no obstacle will be thrown in the way of considering this, and that is usual when a matter of this sort is as threatening. It is one of the most important matters this convention will be called to act on at all. It is a matter involving a vital question—the question of suffrage. They are all important questions. We will resort to proper measures to protect our rights in this matter or to give us proper consideration in this matter that it may not be thrust upon us. The gentlemen have considered their side of it and will no doubt pass it if they wish to, but we want—the members who represent the minority report, time to consider this question well, and we simply ask the chairman, who has the matter in charge, to agree by general consent, as is frequently done in the house of representatives, that this matter go over and be taken up the first thing Thursday morning, and then we will throw no obstacle in the way of considering it section by section in the committee, then go back in

the convention and finally dispose of it. I make this proposition for the democratic side now to the republican side, in this public manner and do it in a non-partisan way, but I say no obstacle will be thrown in the way of its speedy determination by the democratic party in this house. (Question! Question!).

Mr. BEATTY. I am, I confess, rather astonished to find there is so much contention upon this question as seems to be. I had hoped and thought, a few days ago, the two parties would have no trouble whatever when this question was reached to arrive at an amicable conclusion. I find it is to be decided with more difficulty than any other matter here. I supposed we all substantially agreed upon this question and that the technical differences between these two reports could be reconciled, especially after we all make out what we have professed here—that we desire to exclude from the franchise in this territory those people who are not American citizens and are not entitled to the franchise; but it seems this question, as soon as broached, is made the badge of opposition. Now my friend from Nez Perce proposed that this matter be passed over until Thursday morning. I will call attention of the convention to the fact that if we take up every report in its regular order, that long before Thursday morning this report ought to be reached.

Mr. REID. Well, let this report, then, come up in its regular order, if that is the only objection; that is what we have contended all along.

Mr. BEATTY. No, I will not agree to that. That may admit of filibustering upon all this question.

Mr. REID. I feel authorized to say from the conferences I have had with the gentlemen, that no obstacle will be thrown in the way of its consideration when it comes up in its regular order or Thursday morning, either. All we want is time to consider it.

Mr. BEATTY. I have another proposition to make. My friend from Nez Perce says he wants time to consider this. It certainly cannot be that he wants time

simply for himself—for a man of his clear head and ability can consider this question in fifteen minutes, or half an hour, at least. My friend from Nez Perce at least does not need until Thursday morning to determine what he shall do in this, nor do I think the clear heads of my democratic friends need so much time as that. I would be sorry indeed to put them in the category of being unable to digest a matter of such brevity as these reports, for you will see upon an examination of them, they will only cover, each of them, two pages. Now if this question can be settled, I will propose that it be disposed of on Wednesday instead of Thursday morning. I have met each proposition of the gentleman now by a new suggestion and that is as far as I, for one, feel like going—for by Wednesday morning, if we work upon this calendar as we ought to work upon it, we will have reached that question and probably beyond it. Now I think we had better remember here if we desire to have a constitution to be submitted to the people at all, we must work. I know there are many members in this convention who will not remain here longer than this week. I know it from statements people made to me from time to time, and we have no law to compel them to remain here. If we are here in good faith to establish a constitution for the state of Idaho, we must get to work in that spirit, and if we work as we ought to work, we will reach this long before convening on Wednesday. I make this proposition and if that isn't fair, I know not what proposition can be made to these gentlemen that they would consider fair.

The CHAIR. This seems to have settled down to a proposition between two sides of the house, and I would suggest that you leave matters stand as they are now. You can get at it a good deal easier if you take a recess of fifteen minutes and consult informally and come to some conclusion.

Mr. MAYHEW. I have a word, Mr. President, to say about this matter. Now I can't understand why it

is, after we came in here, that all these matters undone here on the order of business are to be postponed to consider this matter of suffrage. It was not intimated this morning—no person has ever suggested it to a single democratic member. Now this morning we skipped over two or three matters to take up a matter that the gentleman suggested, and did so without opposition and that was the matter in relation to public indebtedness. Now there was the report of the committee on Public and Private Corporations, the report of the committee on Public Indebtedness and the substitute taken up and considered this morning. Now after partially considering this subject, they propose to omit further consideration of that article for the present and skip the report on Municipal Corporations—I believe that was the one we were considering when we adjourned—and omit the consideration of the report on Schools and Education and University Lands, and to omit the report of the committee on Manufacturing, Agriculture and Irrigation and take up the report of the committee on Elections and Suffrage. I would like to have the gentlemen speak fairly about this—I would like to hear some member on the republican side—some of our republican brethren, give us some reason why they desire to do this; what is the purpose and the object, Mr. President, to omit the consideration of these other articles when they are lying ahead of them, to take up this question of Election and Suffrage. Now all members, I suppose, in a convention of this kind, are a little jealous of their rights, and I think the democrats are a little jealous of their rights in this matter, and I cannot see—I haven't heard a single suggestion nor a reason given by a republican why you wish to jump from one to another and omit further consideration of the matter we had in the committee of the Whole this morning. If there was any haste in this—if the republicans were going to lose some of their members as the democrats have by getting leave of absence, I would not then be astonished at their anxiety to consider the subject, but I see they are more anxious to

remain here than the democrats are, because the latter are going away very rapidly. Now, I say it is nothing more than fair, as long as we are in this dilemma, that this matter be omitted until Thursday morning and go on considering these other matters, and if we get through with those other subjects or other articles before that time, I, as one of the democrats, will have no objection to take it up in its order. I recollect further, Mr. President, that this printed report was only returned this morning. Of course, I have my mind made up how I shall vote on the question—perhaps others have not—because I have heard a great deal of discussion in the committee. And I say this, I don't see, as this matter has just been printed this morning, that all members of the convention are prepared to vote upon this question. I think some democrats are not prepared —have not had time to consider this matter fully. I have no doubt the republicans have, because I am certain they have been fully advised upon this subject, but the democrats have never had any caucus and never directed their members how to vote on this question. So I say, Mr. President, it is nothing more than fair we should vote on Thursday morning, and if we do not do it, I hope some member of the republican party will give us some reason why they are jumping over all these matters to consider this report on Election and Suffrage.

Mr. ALLEN. I move we take a recess of ten or fifteen minutes.

Mr. MAYHEW. I move to amend that by saying a recess of twenty minutes.

The CHAIR. It is moved and seconded that the convention take a recess of twenty minutes. (Motion carried and the house goes into recess for 20 minutes).

Mr. REID. The democratic caucus will meet in the senate chamber.

Recess.

Convention called to order at 4:00 p. m.

The CHAIR. The democratic members of the con-

vention request a delay of fifteen minutes, at which time they will be ready to return to the convention hall. If there is no objection, we will take a formal recess of fifteen minutes further.

CONVENTION IN SESSION.

The CHAIR. The question before the convention, gentlemen, is the motion made by the gentleman from Alturas demanding the previous question upon the motion to go into committee of the Whole for the purpose of considering the majority and minority reports of the committee on Suffrage and Elections.

Mr. BEATTY. Mr. President, before withdrawing the motion which the chair has just announced as the next order of business, and offering the resolution which I hold in my hand, I desire to say to this convention that the motion which I made was made without any sinister purpose whatever, and I desire also, in that connection, to remind the convention that this morning without any consultation with any one I made this motion. My chief object in making it was that this question, which I consider an important one, may be met while a large majority of the convention is present, believing, as I do, that by the end of the week the convention will be largely scattered, if the members state what they really mean, because I have been informed by many that they intend to leave, but I, for one,——

Mr. GRAY. Well, I would like to see what proposition they are going to have first.

Mr. BEATTY. I propose to meet them with our own proposition before I wait for any proposition from our democratic friends. I do this with the hope that we are to have no wrangling whatever upon this question.

Mr. REID. I understood that we had met and agreed upon the time when it may be taken up.

The CHAIR. The gentleman from Alturas——

Mr. REID. That may follow with an explanation on the other side, but I don't think it is necessary. We

just disagreed about the time and we have now agreed on the time. I don't know what the gentleman has embodied there.

The CHAIR. The gentleman from Alturas will read his resolution, if he has one.

Mr. BEATTY. I withdraw the motion I have pending before the house upon the previous question, and offer this resolution which I have sent to the clerk's desk to be read.

SECRETARY reads: *Resolved,* That Thursday morning at 9 o'clock, be fixed for the consideration of the majority and minority reports of the committee on Suffrage and Elections. That at that hour, as soon as the Journal shall be read, the convention will resolve itself into a committee of the Whole for this purpose. That on the report of the committee of the Whole being made to the convention, the convention will immediately and finally dispose of the subject, and that all proceedings in committee and convention shall be free from all motions offered for delay.

Mr. REID. Second the motion. (Vote).

The CHAIR. The ayes have it and it is so ordered. What is the further pleasure?

Mr. REID. I move that the convention resolve itself into committee of the Whole for the consideration of the business unfinished this morning when the committee rose. (Motion is seconded). It was Municipal Corporations, I think—Report No. 7, I think.

The CHAIR. The bill was relating to public indebtedness, and it was held over so that we may draw an additional section. I stated once before that I hadn't had time to draw that—I want to consult a statute I had.

Mr. REID. Then I will amend the motion, that that be omitted for the reason the chair has stated, and that we take up the next in order on the calendar, which is No. 8, committee on Municipal Corporations.

Mr. GRAY. I understood that was passed over for Mr. Savidge.

Mr. REID. No, that was No. 6, I understand. So I will make the motion for the convention to resolve itself into committee of the Whole for the purpose of taking up Report No. 8—Municipal Corporations.

The CHAIR. It is moved and seconded that the convention resolve itself into committee of the Whole for the purpose of taking up Report No. 8, on Municipal Corporations. (Vote). Motion carried.

COMMITTEE OF THE WHOLE.

Mr. McCONNELL in the Chair.

ARTICLE 12—MUNICIPAL CORPORATIONS.

The CHAIR. The subject for consideration is the report of the committee on Municipal Corporations.

SECTION 1.

SECRETARY reads Section 1. Moved and seconded that it be adopted. Carried.

SECTION 2.—(AFTERWARDS STRICKEN OUT)[1]

SECRETARY reads Section 2. Moved and seconded that it be adopted. Carried.

SECTION 2.

SECRETARY reads Section 3 (2). Moved and seconded that it be adopted. Carried.

SECTION 4.—(STRICKEN OUT).

SECRETARY reads Section 4. Moved and seconded that it be adopted.

Mr. BEATTY. Mr. Chairman, I move to strike that out for the reason that it is substantially covered by Section 3 of Article 7 (8). And likewise the following section. I suggest this: If the clerk will read Section 3 of Article 7 (8), then we follow Section 4 in Article

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1—See debate on p. 636.

8 (12), you will find they are substantially the same.[1] (Seconded).

The CHAIR. It is moved and seconded that Section 4 be stricken out.

Mr. PEFLEY. My understanding is that Section 3 of the other was stricken out.

Mr. MORGAN. No sir; it was adopted with some amendments.

Mr. BEATTY. I would suggest that the clerk read Section 3 of Article 7 (8), in the meantime we follow Section 4 and see that they are substantially the same.

The CHAIR. Will the clerk read for the information of the committee?

SECRETARY reads Section 3 of Article 7 (8).

The CHAIR. The question is upon the motion to strike out Section 4. ("Question, question"). Carried.

SECTION 3.

SECRETARY reads Section 5 (3).

The CHAIR. It is moved and seconded that the same be adopted.

Mr. BEATTY. I move to strike that out as it is the same substantially as Section 2 in Article 7 (8). (Seconded).

Mr. AINSLIE. I don't see anything in Section 2 of Article 7 (8).

Mr. BEATTY. I suggest then the clerk read Section 2 of Article 7 (8).

SECRETARY reads.

Mr. MAYHEW. That is not the section—they are not the same.

Mr. BEATTY. Section 2 refers to the credit of the state being given or loaned to individuals or associations. That Section 5 (3) is pretty nearly the same thing.

Mr. MAYHEW. I think that certainly has a different legal aspect altogether from Section 2 in the

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1—See p. 585.

former article. I understood Section 6 should be stricken out because it was enacted——

The CHAIR. The question is upon the motion to strike out Section 5 (3). (Vote). Motion lost.

The CHAIR. The question is now upon the adoption of Section 5 (3). (Carried).

SECTION 4.

SECRETARY reads Section 6 (4).

Mr. VINEYARD. I move to strike that section out. (Seconded).

Mr. MAYHEW. I would like that section read in article 7 (8) and see whether this agrees with it.

SECRETARY reads Section 5 (4), Article 7 (8).

Mr. CLAGGETT. It seems to me, Mr. Chairman, that section ought to be amended but ought not to be stricken out. Mr. Sweet has an amendment.

Mr. MAYHEW. I wanted to have it read for information, was all.

Mr. CLAGGETT. Mr. Chairman, the way that reads now, it would prohibit a certain class of transactions which ought clearly to be left within the power of municipal corporations for the purpose of supplying the inhabitants with water, for illuminating purposes and to establish sewerage systems. The great abuse which arises in these municipal corporations with regard to these three purposes, especially to the two first, allowing a city or town to furnish it with water, is this, that they will go on, provided some corporation will put in its appearance with a bid to illuminate the city or supply it with water, and the corporation will thereupon vote it a certain donation. That ought to be shut out unless it is covered by some amendment.

Mr. MAYHEW. I understood the gentleman wanted to amend.

Mr. CLAGGETT. I didn't know that the gentleman had his amendment ready.

Mr. SWEET. Well, I was studying even if I did amend Section 6 (4)—it might not belong to this section in Article 7 (8). However, I will send up this amendment to Section 6 (4).

SECRETARY reads amendment to Section 6 (4): *Provided,* That cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes; *Provided,* That any city or town contracting such indebtedness shall own its just proportion of the property thus created, and receive from any income arising therefrom its proportion of the whole amount so invested.

Mr. SWEET. Mr. Chairman, I move that this amendment be adopted. (Seconded).

Mr. SWEET. I only desire to state, as it is brought in by the gentleman from Shoshone county, but I can illustrate it. It is supposed we may desire in our town to have water works—in fact, it is a necessity, and let us suppose it will cost $50,000. If a capitalist comes in and says "I will put $25,000 into the enterprise" and the people of our town will put $25,000 into the enterprise, it seems to me practicable and desirable that the people should be permitted to make the investment of $25,000 in that enterprise. On the other hand we do want to prohibit authority to vote $25,000 to this capitalist and absolutely giving him the money. We want to invest $25,000 in that enterprise and desire to have the income from it. If we furnish water to the town and furnish the money with which to supply the water, then let us have our proportion of the money that comes in. And the same rule applies to illuminating the town or anything of this character.

Mr. BEATTY. I would like the amendment read.

SECRETARY reads amendment.

"Question, question!"

The CHAIR. The first motion before the committee was the motion to strike out Section 6 (4) and this would be entitled to precedence, unless the gentleman withdraws it. The question is upon the motion to strike out Section 6 (4). (Vote). The motion is lost. The question now recurs upon the amendment offered by the gentleman from Latah, Mr. Sweet. Are you ready for the question? (Vote). The chair is in doubt. (Rising

vote, 37 in favor). A majority having voted in the affirmative, the amendment is adopted. That is the last of this article.

Mr. REID. I move the adoption of the section as amended. (Seconded).

Mr. MORGAN. Mr. Chairman, I glanced over this article very hastily indeed. I think we have adopted two or three provisions which we have already adopted. I want to call the attention of the committee to Section No. 2, which reads as follows: (Reads). Now the section in Article 3 which has been adopted (Sec. 19) is as follows: "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * creating, increasing or decreasing fees, percentages or allowances, of public officers during the term for which said officers are elected or appointed." It is in the article on Legislative Department and seems to be the same thing. Unless there is some reason given for retaining it, I move to strike out this section of the article. No reason having been given, I move to strike out Section 2 of Article 8 (12) which has just been adopted.

The CHAIR. If there are no objections, the chair will hold it in order. It is moved and seconded that Section 2 of Article 8 (12) which we have just adopted be stricken out. (Vote). The chair is in doubt. (Rising vote, 24 in favor). The majority having voted in the affirmative, the section is stricken out.

Section 1.

Mr. MORGAN. We want to make this constitution harmonious without too many repetitions. I now call your attention to the first line in Section 1: "Cities and towns shall not be incorporated by special law." That is precisely the provision that has been adopted in the article on Legislative Department, and I therefore move to strike out all of the first line of Section 1 to and including the word "but," so it will commence, "The legislature shall provide by general law," etc. (Carried).

Mr. MORGAN. I now move the adoption of the article again.

The CHAIR. It was adopted.

Mr. MORGAN. Very well.

ARTICLE 12 ADOPTED.

Mr. MAYHEW. Well, I move that the article be adopted as amended by the committee. (Carried).

Mr. MAYHEW. Now I think it is necessary when we are through with an article and have acted upon it in the committee that the report would be proper, that when the committee rise it report the article back to the convention and recommend the convention adopt it as recommended by the committee, and I make that as a motion. (Seconded).

The CHAIR. It is moved and seconded that when the committee rise to report back to the convention that it recommend that this article be adopted as amended. (Seconded, vote and carried).

ARTICLE 9.—EDUCATION AND SCHOOL LANDS.

Mr. REID. I now move we proceed to the consideration of Report No. 9, of the committee on Education and School Lands.

Mr. MORGAN. I second the motion.

Mr. CLAGGETT. I would suggest that the chairman of the committee of the Whole is chairman of that committee.

Mr. REID. Yes—presiding in the chair.

Mr. PRESIDENT. Will the gentleman from Boise, Mr. Ainslie, take the chair?

Mr. AINSLIE in the Chair: The order of business, gentlemen, is Article No. 9, by the committee on Education and School Lands.

SECTION 1.

SECRETARY reads Section 1.

The CHAIR. It is moved and seconded that Section 1 of Article 9 be adopted.

Mr. PEFLEY. I move to strike out "legislative assembly" and insert "legislature." (Carried).

The CHAIR. It is moved and seconded that the section be adopted now as amended. (Vote and carried).

SECTION 2.

SECRETARY reads Section 2.

The CHAIR. It is moved and seconded that the same be adopted.

Mr. MORGAN. I would like to ask the chairman of the committee why this supervision of public schools of the state is taken out of the hands of the superintendent of public instruction. It seems to me he is the officer to attend to it and will only be hampered by associating with him the other two officers of the state. I ask for an explanation; I do not see the reason.

Mr. McCONNELL. The committee had this question under consideration, several days, and by the assistance of some members I prepared a draft of the article and submitted it to the other members of the board who were not present at our first meeting, and I believe they, in consultation with some of the regents of the university, concluded that they would draw another article which perhaps would meet the wants of the community better than the one which had been drawn formerly, and as the question had to come up for final discussion anyway in the committee of the Whole, I reported the draft which they made. And I presume this was taken from the constitution of some other territory—perhaps that of Montana or Colorado. Will the gentleman from Alturas, Mr. Pinkham, explain that provision?

Mr. PINKHAM. Mr. Chairman, I have no explanation to make in regard to that, except that it is in a great many constitutions of our western states. I will acknowledge the fact, I think I took it from the constitution of the state of Colorado.[1] I see no reason why the superintendent of public instruction should not

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1—Copied exactly from Sec. 7, Art. 9, Colo. Const. 1876.

have his advisors in an important matter of that kind—the advice and consent of the attorney general and the secretary of state. They may be brought in as counsellors in a matter of that kind and I see no objection to the provision as it now stands.

Mr. MORGAN. I should like time to prepare a substitute for that section. I think if we are going to have a superintendent of public schools, he should have control of this matter, and it will be seen by an examination of this section that he can do nothing with reference to schools, or practically nothing—without having a meeting and consulting the secretary of state and attorney general, whose time must be occupied by other duties of the state. I move to pass the section for a while until I can have time to prepare a proper substitute for the section. (Carried).

SECTION 3 STRICKEN OUT.

SECRETARY reads Section 3 (afterwards stricken out).

Mr. WILSON. I move the words "general assembly" be stricken out of that and all the following sections and the word "legislature" inserted in lieu thereof. (Carried).

Mr. HARRIS. I move that the section be amended by striking out the word "six" in line 3 and inserting "five."

The CHAIR. I hear no second for it. What shall be done with the section?

Mr. CLAGGETT. I move to strike out all of the section after the word "year" in the last line, beginning with "any school district failing to have such school, etc., for that year." Under the section as it now reads, one or more public schools shall be maintained in every school district three months in each year. And it then provides that if we find any district that shall not have any school, and yet command the district to have a school before they can get any portion of the fund.

The CHAIR. Will the gentleman put it in writing?

Mr. CLAGGETT. Yes, sir.

SECRETARY reads: Strike out all of Section 3 after the word "year" in the fifth line. (Seconded).

Mr. McCONNELL. I hope this motion will not prevail. This provision, which is a very usual one, if it prevails, will result in the opportunity that a district may have of not having any school for any one, two or three years and have their proportion of the school fund credited up to them so that they may get ready to use it when they please. The object is to compel each school district to make an effort to have school at least three months. If they do not have school three months, they are not entitled to their share of the public money for that year. With this amendment proposed, their share of public money will be held in the treasury until such time as they have schools. It is an inducement to urge them to have schools in each district.

Mr. CLAGGETT. I don't see how any such results as that follow—that the money will be held for the district when they have no school. It simply denies the right of any person to receive the money. That will all depend upon the legislature. The way we have it now, the objection I have to it is that we want to offer an inducement for these people to go ahead and use all the school money. The way it is now you can't have any school money at all until you have a school.

Mr. McCONNELL. You can't anyway.

Mr. CLAGGETT. It can't be appropriated. I don't know but perhaps I am muddled on it a little.

Mr. PRITCHARD. I think the gentleman is wrong in regard to that. These school moneys are all apportioned to the different districts the first of January—during the fore part of January—and the money apportioned to each district is credited up to that district then.

Mr. CLAGGETT. If that is the case, I will withdraw the amendment.

Mr. PRITCHARD. And if during the year they have their three months of school, they are entitled to their money, and if they don't have the school, they are not entitled to their money.

Mr. CLAGGETT. With the consent of my second I will withdraw my motion.

Mr. POE. I would suggest here that under the provisions of that section as it now reads, there is a penalty attached to any district which does not hold or maintain a school during the year. That penalty is the forfeiture of the amount of money that would otherwise go to it in case it held school. Now you take the amendment you propose and adopt that, and then the law makes it absolutely necessary and imperative upon them to absolutely maintain at all hazards school at least three months.

The CHAIR. I would say to the gentleman from Nez Perce, the gentleman from Shoshone has withdrawn his amendment.

Mr. POE. I understand that, but suggest now that it is proper to renew it, for the reason I do not think it is policy to leave it optional whether they shall hold school or not and say if you don't do it you shall not get any money, but my idea is to pass a law to compel every district in the state to hold at least one term of school within that district during the year, and if the amendment proposed by the gentleman is adopted, then that is the effect of this article, and therefore I will renew the amendment in order that we may have the sense of the convention upon the proposition.

Mr. CLAGGETT. I will second your amendment and go back to my original proposition.

Mr. PRITCHARD. Mr. Chairman, I think they are wrong in regard to that. In any district, if there are enough children so that it pays them to have a school, or any children at all, so far as that is concerned, they are certain to have a school—they do not need to be compelled to have it. On the other hand, suppose you have a school district, as is sometimes the case, and suppose there are no children in that district during the year to attend school. Now what is the use of compelling them to have school? This will serve that purpose if there are no children. If they do not need it,

they do not need to have school, but that money is not tied up in the treasury, it goes back in the general fund and is apportioned at the beginning of the next year to the whole county again.

Mr. GRAY. I would ask the gentleman, will it be regular? What do they do, suppose you don't have any?

Mr. POE. I will answer that question. If there should by chance be a district established which was afterwards depopulated, then I would say it is the duty of the board of county commissioners or superintendent of public schools to abandon and abrogate that district to strike out all expense. That is the answer to that question, most assuredly.

Mr. GRAY. Then I will say this: I am inclined to the amendment, but not for the reason stated, but I do believe in leaving the control of those matters to the legislature, and as to what the penalty would be, amend the law—amend the general school law which ought to cover all this—excepting I am willing that it should be in there that they shall have school at least three months; but suppose they don't do it, I don't know what they would do without they should attach some penalty to it. But I think the legislature could by general enactment arrange all this matter perhaps better than we are doing it by fixing this penalty here.

Mr. McCONNELL. That is a provision of law found in either the constitutions or the statutes of every state, I think, in the Union and almost in those same words, and I can't see where it is going to be any particular advantage to strike it out. I can clearly see where it might be disadvantageous where money might be locked up that should be distributed over the county for the benefit of children throughout the county.

Mr. GRAY. I would ask the gentleman from Latah, could not the legislature fix that?

Mr. McCONNELL. I am sure they could—they do it in many states; while in some states they fix it in the constitution. This matter of how far we shall legislate

here—it seems to be the opinion of many men we should go to the verge of legislation in many things, and I suppose this is one of the places.

Mr. GRAY. I notice that. (Laughter).

Mr. HAMPTON. I am in favor of the amendment for this reason. I understand there is a law of that kind on our statute books today, and I understand the reason for it is to require districts to have at least three months of school in the year. And if we want to enforce this, we can enforce it or it should be enforced by legislation. But the object of the portion asked to be stricken out I understand to be to withdraw the money if they don't use it to operate as an inducement for each district to have the school as required by law. The effect is that it operates against what we want to enforce—three months school. There is another thing in this—it has been the practice in all schools—that teachers where they have started to teach can't draw their money until after they have had three months' school, and it operates to great disadvantage of the teachers sometimes, because teachers, like all other men, want their wages, and I can't see that it does any good in the least—in fact, the practice has been that it has done harm in this respect and for the reason stated by the gentleman from Ada, I think it ought to be left to the legislature, and by legislation we can enforce all these provisions in the constitution.

Mr. HASBROUCK. I agree with the gentlemen who have spoken last. I therefore move to strike out all the section after the word "state" in the third line and leave it all to the legislature.

Mr. PRITCHARD. I second that motion.

Mr. GRAY. I would ask the gentleman why wouldn't it be well to let it run to "gratuitous."

Mr. HASBROUCK. I prefer to leave that matter to the legislature, as well as anything else.

Mr. GRAY. We want to show, of course, we are going to have free schools.

Mr. HASBROUCK. Well, I think that is included in "free schools." They are synonymous terms.

Mr. SHOUP. Mr. Chairman, I have an amendment to this section. I move to strike out in the first line the words "General assembly" and insert——

Mr. AINSLIE. That has been done.

SECRETARY reads: Strike out all of the section after the word "state" where it first occurs in the third line.

The CHAIR. That is the amendment to the amendment offered by the gentleman from Nez Perce, I understand.

Mr. POE. By leave of my second, I will withdraw the amendment I made and indorse the one that has just been made.

The CHAIR. You have heard the motion, gentlemen—where it first appears in line 3. (Vote). The chair is unable to decide. (Rising vote shows 29 in favor). The motion prevails.

Mr. MAYHEW. I move the adoption of the section as amended. (Seconded and carried).

Mr. MORGAN. I have a substitute for Section 2 now.

SECTION 2.

SECRETARY reads: I move as a substitute for Section 2, the following: "Section 2. The general supervision of the public schools of the state shall be vested in a superintendent of public instruction, whose duties shall be prescribed by law."

Mr. MORGAN. I move the adoption of the substitute. (Seconded).

The CHAIR. Are you ready for the question?

Mr. HASBROUCK. I hope that motion will not prevail. I think there should be a board of education—that it should be an advisory board. I think it is placing too much responsibility and even too much power in a matter that is of such importance as this is, in one man, and I think he needs this advisory board. And I am so informed by people who have had this matter under consideration and by people perhaps bet-

ter capable of judging of this matter than any member on this floor. Therefore I shall oppose the amendment.

Mr. MORGAN. Mr. Chairman, I don't see any reason why a superintendent of public instruction cannot control and direct all the schools of the state, and in order that that direction should be intelligently done, I think it is the duty of the people to elect a good man as superintendent of public instruction. And as I said before, I can't see why the secretary of state should be called upon, and the attorney general, to assist in the direction of these schools. They have their respective duties and certainly cannot spend much time with the superintendent of public instruction. I am in favor of giving that to one officer, if you want such an officer at all. You may as well say that the governor shall be assisted in his duties by the secretary of state or attorney general, as to say that the superintendent of public instruction should be. ("Question, question!")

Mr. McCONNELL. I hope this amendment will not be adopted, Mr. Chairman. I think it is quite a different thing—the governor and superintendent of public instruction. When we meet in political convention, if we are admitted as a state, the governor will be one of the first officers nominated; then the secretary of state, then the state treasurer and then there must be a platform or badge of authority of some kind or other; perhaps the gentleman from Bingham may be nominated for superintendent—or some other man. I think there would be no harm in his having some advisors—I can't see any harm in it. (Laughter). It is a common custom to have a state board of education in some states. But I don't believe in leaving it to one man—the entire management and control of schools, any more than I would the management of a university entirely in the hands of one man. Why should not you say that the president of a university should have entire control of the university? When there is a question comes up for consideration the faculty is called together and they advise upon it, and when there is a question of import-

ance brought before the state board of education, they can be called together to pass upon it, I think, more intelligently than one man.

Mr. REID. Will the gentleman yield for a question? I favor his proposition but I want to ask the chairman, does this state board have control over public school lands?

Mr. McCONNELL. No, sir; in a subordinate section there will be——

Mr. REID. But I mean in their duties.

Mr. McCONNELL. No, not as a board.

Mr. REID. Who will?

Mr. McCONNELL. The board of school land commissioners.

Mr. MAYHEW. I do not care about entering into any discussion of this question, but I have observed this, so far as the discussion has gone, that there is but one question in it at all—in every argument advanced by the gentlemen, and that is this: Are three heads better than one, or three heads better than two? I think they are and therefore should be accepted.

Mr. HARRIS. Let me call the attention of the convention to another matter, that the committee on Salaries has fixed the salary of the superintendent at $1,500 a year. Now we can judge as to what sort of a man you are going to get for that sum of money.

Mr. MAYHEW. According to the views of some members of this convention, you can get a good superintendent for a song. (Laughter. "Question, question").

The CHAIR. Gentlemen, you have heard the motion to adopt the substitute offered by the gentleman from Bingham in lieu of Section 2. (Vote). The ayes appear to have it. (Division called for; rising vote shows ayes 14, noes 28). The motion is lost.

Mr. MAYHEW. I now move the adoption of Section 2 as read.

Mr. MORGAN. I second the motion. (Carried).

Mr. HAMPTON. Mr. Chairman, it seems to me that we are rushing through and mutilating one of the most

important subjects we have. I wish to call the attention of the convention to what we did in regard to Section 3.[1] I do not believe that the convention understood their vote against compulsory education entirely, but that is the effect of what we have done.

The CHAIR. Does the gentleman move to reconsider the vote?

Mr. HAMPTON. I have not; I suggest the matter to some gentlemen who voted on the other side.

The CHAIR. It must be moved to be reconsidered then. The secretary will read the next section.

SECTION 3.

SECRETARY reads Section 4 (3), and it is moved and seconded that the same be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 4 (3) by striking out all after the word "directed" in the seventh line. (Seconded).

Mr. HEYBURN. In that amendment I call the attention of the members of the convention to the fact that it provides without any exception, that it does not matter under what circumstances the school fund may be lost in money, whether by bad investments or otherwise, that the state shall supply it, when there is no provision for the fund from which the state shall supply it. It does not provide how it shall supply it. It is rather a reckless provision, it seems to me.

Mr. McCONNELL. Mr. Chairman, I think no fund is more sacred than the school fund, and perhaps there is no other fund so sacred; it should be guarded in every manner possible, and by having this provision in here, the children will always be made sure there will be that much money to their credit, and we will have that much at stake in our schools. But if there is no provision for making this fund good in every way, it may be squandered, and the first thing we know our school fund will be so small that we can only maintain

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[1]—Stricken out.

the schools by local taxation. I think the legislature can provide for making good any losses which may occur. They will probably be more careful in making investments if it is known that the state has to make it good.

Mr. HARRIS. I shall oppose the amendment, because I think that it should remain inviolate, as the section contemplates from the beginning, and intact. I see they have provided it shall be made up in case of loss, and no matter how these losses occur, even if the money is stolen, it shall be made up and that fund always kept good, for there is no purpose for which we can better spend money than for the education of youth, for there are many who have to suffer in making up losses from the fund.

Mr. HEYBURN. I would not have proposed the amendment if there had been any provision made as to how it shall be made up, but there is none.

Mr. PINKHAM. In formulating this section of the educational article, I examined very fully into the matter, and for that purpose, and for that purpose only, was the school fund placed in the hands of the state treasurer, so that we would have some protection, some guarantee, that it would always be saved for the young and rising generation of the state of Idaho. The state in this constitution will provide in what manner he shall qualify as treasurer of the state, and the law may compel him to give sufficient security for the custody—the safe custody, of every cent of money that comes into the state treasury; and I want to inform the gentleman from Shoshone that I could not find a constitution in the United States where they have provided for their public schools but what the same provision in the same language is used in their constitution as is used in this.

(Cries of "Question.").

The CHAIR. The question is upon the motion of the gentleman from Shoshone to strike out the last portion of Section 4, after the word "directed." (Vote). The noes appear to have it. The motion is lost. The

question is now upon the adoption of the section as read, and it is moved and seconded that the same be adopted. (Carried).

SECTION 4.

SECRETARY reads Section 5 (4), and it is moved and seconded that the same be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: To amend Section 5 (4) by striking out after the word "State" in the eighth line, "all unclaimed shares and dividends of any corporation incorporated under the laws of the State," and insert after the last word in said section, "all fines imposed by the legislature or supreme court of the state."

Mr. PARKER. I desire to offer an amendment.

SECRETARY reads: To amend Section 5 (4), in place of the word "proceeds" in line 1, insert "revenues derived from the lease or rental." After the words "general educational purposes" in line 10, add "the title to all school lands shall remain forever vested in the state, and said lands shall never be encumbered by lien or mortgage for any purpose whatsoever."

Mr. PARKER. A stable republican form of government depends upon our educational interests. We recognize it here by incorporating that in our Section 1 of this article. Congress has recognized it by making this grant of land embracing two sections in every township and additional grants for university purposes. Now I hold that congress gave us these lands not for ourselves, but for our children and our children's children and for generations of posterity yet unborn. But by the report of this committee, as it is printed here, we find that the school authorities have authority to sell these lands. Now up in the northern counties of Nez Perce, Latah and my own county of Idaho we have a good deal of agricultural land, but Mr. President, there are in several states today speculators who have their eyes on these lands and are able to buy these lands. Mr. President, I ask the convention to consider my amendment, and

put all these lands beyond the possibility of speculation. Let us hold on to them, let us freeze to them, to every acre of it, and not sell them now at a minimum price to land grabbers and speculators, and deprive our children of their common heritage. Let us hold on to them, and as our territory develops these lands will increase in value and we shall be able to get money for school purposes without calling upon the people for direct taxation for money for educational purposes, as they have to do in our neighboring commonwealth of Oregon today. Mr. President, I have lived in Oregon, and I have seen the state school lands of that commonwealth sold and frittered away for a dollar and a quarter an acre to speculators, and the state of Oregon has no school fund today to amount to anything in the treasury; but our school system is a foremost necessity in this whole undeveloped territory of Idaho.

Mr. GRAY. I wish to ask the committee if it has included escheated estates; under our present law that goes to the school fund. It does not seem to be named here. Perhaps further on in the article it may be.

Mr. MAYHEW. It is there.

Mr. GRAY. Yes, I see it.

Mr. MAYHEW. I move the adoption of the section as it is read.

The CHAIR. Is there any second to the motion of the gentleman from Idaho to amend?

Mr. CLAGGETT. I will second that motion.

A MEMBER. What is the amendment?

SECRETARY reads Mr. Parker's amendment.

Mr. McCONNELL. I hope this amendment will not be adopted. I am entirely familiar with the school lands in northern Idaho, in the three counties referred to, and I am also familiar too with the history of the school fund of the state of Oregon, and I can tell the gentleman that it was not because the school lands were sold at a dollar and a quarter an acre that Oregon today has a small school fund, but it was because there was a democratic governor who had aspirations for the

United States senate, and he got there. (Laughter). That was what depleted the school fund of the state of Oregon.

Mr. MAYHEW. I would like to ask the gentleman if he has any authority for that assertion.

Mr. McCONNELL. History, history, sir, which is unquestioned in the state of Oregon. (Laughter). I have made that assertion, and I used to reside myself in the state, but not to condemn the gentleman who dared to get up and refer to it, because it is to the disgrace of the state that such is the fact. We have, as is said, certain sections in the counties in the north of good agricultural lands, and there may be men, speculators, who are there today, ready to buy those lands. But this bill provides further on how these lands will be sold, and I think you will see that it is carefully guarded by the work of this convention and this committee. The public school lands of this territory, situated in the counties of Latah, Nez Perce and Idaho, will bring more money now than the agricultural lands of the eastern states, and it is a question whether it is policy to hold those lands as speculators ourselves. It is a fact well known to every gentleman who has been engaged in agriculture, that it is with very few exceptions that farm lands pay interest on the money, and it is also a well known fact that farm lands under this method of culture deteriorate in value by becoming foul, after having been cultivated a number of years, and by their culture with these methods the parties who had entered upon the lands in the north took away their fences generally, because it had become plain that they were ruining or deteriorating the value of these lands, consequently I do not think there is a school section in the north today that is under fence and well cultivated. Anyway, in the state of Washington, by means of their law, the commissioners have leased these lands for a nominal rental, and the result is that the lands are not nearly so valuable as they were before they were occupied. I hope this amendment will not prevail.

Mr. VINEYARD. I am heartily in accord with my friend from Idaho. There is not today in the United States per capita above 15 acres of land, good, bad and indifferent; that is, according to population. Land is going to be land in this territory in the course of fifteen years. If we adopt now a system that will provide for the frittering away of these school lands to Tom, Dick and Harry, to syndicates and corporations, simply going for the pittance of a dollar and a quarter an acre, in twenty years there will be no school lands in this state. The school fund of Oregon deteriorated, when it was provided in the constitution of that state that it should be perpetuated in every shape, and at the same time, under the management of their school fund in that state, with all the safeguards conceivable thrown around it for its preservation, still it has melted away, and there is scarcely anything left. Now it occurs, how did this happen? It happened by bad management. It happened by the bad management of the board of school land commissioners in that state, in marketing those lands, a great many of them, for a small sum; they went to work and marketed these lands away until that fund really amounted to nothing—it didn't amount to anything. And that was where the superintendents of the various counties had authority to sell those lands for a dollar and a quarter an acre. The charge that the mismanagement of those school lands is chargeable to a democratic administration in that state—I am not inclined to hold with my friend McConnell on that subject. I don't think it was because the governor was a candidate for the United States senate that the school lands of Oregon melted away and the money was frittered away. It was long before L. F. Grover[1] was governor of the state. In some way it afterward melted away under the management of Sam May[2] and his coad-

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1—Governor of Oregon from 1870 to 1876. U. S. Senator from 1877.

2—Samuel E. May, secretary of state of Oregon prior to 1870 and charged with the embezzlement of school funds.

jutors. That is all there is about that—bad management of both parties of frittering away the entire school lands of that state. I am in favor of leasing these lands. I am in favor of leasing them in bodies not to exceed 640 acres, or a section, to any one individual, for a term of years, and then the state would gain the benefit of the enhancement of the value of these lands. If we go on in this way of selling them, we will soon have no school lands, in my opinion—if we let the bars down so that everybody can come in generally and gobble them up.

Mr. ALLEN. Mr. Chairman, I desire to offer an amendment, Before doing so I wish to state one reason. I believe there should be some safeguard provided for the school lands of the state; I believe the people expect that, and they have a right to expect that, taking the history of other states into consideration. I move to amend, so as to bring this matter more fully before the convention, that the word "all" be stricken out, and "one-half" inserted, so as to read that one-half the school lands be held in perpetuity. That is an amendment to the amendment offered by Mr. Parker.

Mr. PINKHAM. I think all these amendments on this subject are entirely out of place as they are made here. If the gentlemen wish to put in any proviso regulating the terms of sale of land grants, it should go in under Section 10, which is devoted exclusively to that one subject. For that reason I do not think they belong to the section under consideration.

Mr. PARKER. This bill does not prohibit our board of education from leasing these lands every 99 years, or every 999 years, if necessary. All I want is that the title shall be forever vested in the state, and I think Mr. Allen's amendment recognizes that to the extent that he wishes one-half of these lands to be reserved, for which I thank him. Now if it is good doctrine to reserve one-half, why not reserve the whole? I maintain, sir, that these lands were not given to us to dispose of, that congress gave them to us to keep as

an estate for future generations, and, as I said, they can be leased for one month or one crop, or for 30 or 60 or 99 or 999 years, but the title shall always remain in the state, and so long as the state has that title we shall always have good collateral to raise money for school purposes, but once sold, they are gone—gone forever, and we will have to be subject to direct taxation to raise money for school purposes, as we are today.

Mr. CLAGGETT. Mr. Chairman, I certainly do hope the amendment which is offered by the gentleman from Idaho will pass, but whether it will leave the section in a smooth condition or not I can't say. But the idea embraced in that motion is certainly a sound one. Allow me to ask any member of this convention, assuming these school lands or any portion of them are sold, then what is going to be done with the money? In order to secure the fund from future loss, you will necessarily have to invest it in some form of security which is regarded as perfectly safe, and any form of security which is regarded as perfectly safe, sound security, necessarily bears a low rate of interest. Now let me ask a question right here, and that is, whether any of these lands can be sold at any price within the next ten or twenty years which will bring as large a rental, or rather as large an interest upon a perfectly secure investment, as you can get from these same lands by renting them out from year to year, and then have your whole principal intact at the end. Not one single, solitary foot of school land, or the donations of the government, should ever be permitted to pass out of the hands of the state, and I stand broadly and squarely in support of the proposition made by my friend from Idaho.

Mr. HEYBURN. I just simply want to say to the gentlemen of the convention, that during the time I was away from here since this convention has been in session, I have had occasion to see something of a system of leasing school lands. I was trying a case in Spokane Falls, and had occasion to ask a gentleman

who claimed to be authority and had leased from the county commissioners a quarter section of school land in Spokane county, how much rent he paid for it, and he replied under oath that he paid $10 a year rent to those commissioners for that quarter section of land, which was considered to be a very valuable quarter section. So that if our board of land commissioners are going to rent our school lands at any price they may see fit, we had better guard the matter in such a way that they will not rent for $10 a year a whole quarter section. I am in favor of selling the lands and investing the money in some way for another reason. If you lease the lands here and there all over the country, you find that in many portions of the country men will not stay on them who lease them, and they will be blots upon the surface of an otherwise prosperous looking country, and the men who lease them will lease them for the simple purpose of cropping them and wearing out the soil, and when the whole country is settled up around them, there will be these whole subdivisions of land unfenced here and there, without trees or any fences upon them.

Mr. PEFLEY. I was heartily in favor of selling the lands when I heard the explanation of the chairman of the committee that the money was stolen to send a man to the United States senate, but if we have such offenses in prospect now, and a good many politicians in the country, I think we had better keep the lands and not sell them, for fear they will be used for the same purpose.

Mr. McCONNELL. I would say to the gentleman that the candidates for the United States senate are now all on the republican side.

Mr. MAYHEW. I was rather inclined to vote against the amendment of Mr. Parker at first, but as soon as I heard that *ad hominem* speech of my friend from Latah county, I think it is necessary now to adopt the amendment. (Laughter). Now if there are going to be any politicians, let them be republicans or democrats,

that are going to steal this money, let us put this property in these lands in a condition that neither democrat nor republican can take it. It is no argument to me that because a democrat has done that once that there are not a great many republicans that will do it in the future if they have an opportunity—I think that is no argument at all; but the question before the convention is how and in what manner we are going to best perpetuate the funds of the schools of this territory. Now I say that if it is the best policy to lease these lands out and keep them for a great many years in a condition by which the schools can be benefited by the leasing of these lands, let us do so. I am told by one of my own friends, a republican, too, that he wants to buy some of these lands, and I suppose he wants to buy it as cheap as he can. Now I am opposed to selling these lands at once, so that at one sweep the entire school fund might be destroyed for the future, though I might be willing that these school lands should be sold from time to time as may be desirable, but after hearing the argument on that point, I am like my friend from Shoshone, Mr. Claggett—I plant myself squarely as in favor of the amendment offered by the gentleman from Idaho, Mr. Parker.

Mr. POE. Mr. Chairman, no doubt it was the intention of these gentlemen to preserve the land, or the proceeds of it, for the benefit of the rising generation. It is all very fine in theory, this matter of preserving this land intact for future generations—for the benefit of future generations. But while we are considering the benefit of future generations we should for a moment consider that there is a present generation that requires aid from this school land, that is, the men who have come into this country and reclaimed it from the wilderness, that are living here, as it were, in poverty, on account of having left their homes in the east and come here for the purpose of building up a new country. They have had to strive, as it were, in poverty—in almost abject poverty, in order to bring us to the position

we are at present in, to-wit, the position where we can demand admission into the Union. Up to this time, however, they are in poverty, and of these lands, not one quarter of a dollar, either from the sale of them or from the rent of them, can be used for the education of their children. They had to pay the taxes out of their hard-earned money, which absolutely almost took the bread from their mouths, to educate their children and provide for the public schools while we were in a territorial state. There are plenty that are coming now into this country, and that are now in this country, who are unable to educate their children without some assistance. Now the question comes, how should we adjust the matter to reap the benefit to be derived from this school land? Shall we keep it intact for future generations and deprive ourselves, our own generation from the benefit of it? The gentleman answers us by this proposition, that you sell not an acre of that land, but that you keep it intact, and you reap your benefit from the leasing of that land. As was said by Mr. Heyburn, what have the lands in Washington territory been leasing for? And where is the agricultural man—where is the man that knows anything about agriculture, about farming, tilling the land, but what knows that whenever you lease that land to an irresponsible person, a person who cares for naught so far as the preservation of that land is concerned, only that he may for the time being reap the greatest profit out of the use of it, he will care not what the condition may be that he leaves it in. What is the history of the agricultural land of this country and of every other country that is not properly cared for? It will grow up in wild oats and other obnoxious substances which ultimately destroys it, from a condition which will make it profitable for agricultural purposes. Then I say if you forever put a prohibition in this constitution prohibiting the selling of this land, within ten years from today, I will say, that on every acre of it to be taken up and cultivated from the time that we pass the law—that within ten years from that

time it would become so foul that you will not realize a quarter of a dollar an acre out of it for rent. Then where will be your fund to educate the children of the present age? Now I say, gentlemen, there should be an inhibition placed by this constitution upon those who have the charge of that land, that they should be directed as to the sum for which they should sell this land and that this sum should not be less than ten dollars per acre. Then every section of this land will have an inhabitant upon it, a man who will become a citizen in the country, who will help to develop the country, and we will be placing the fund within the hands of some party who I hope will not be like the senator from Oregon, whether he be democrat or republican, that would steal the whole matter. I do not think this a proper time to make any reflections upon one man or another. I know that there are incidents in the history of this country in which it has been clearly proved that certain republican officials have been false to their duty. I admit that such things may have occurred under a democratic admnistration, but what has that to do with the question before this house at this time? The proposition is now that this land be sold, that it be placed in the custody of the treasurer of the territory and then placed at interest, and that the interest arising from the fund shall be appropriated to the payment of the current expenses of the public schools. Now then, it is further provided in this report that that fund itself, that the principal shall be held intact. Now it is a well known fact here that if that principal is held intact forever, the future is provided for. But while we are providing for the future, we are providing at the same time for the poorer present. And I say, gentlemen, that I am satisfied that the best interests of this country will be served in more than one respect if we sell this land and put a fixed valuation upon it, so that the parties who have the power to sell this land cannot sell it at a less valuation; then we know just what we are going to realize; we know we have a large school fund, the principal of which will not only

educate the present generation, but as it goes on it will educate those who come after us. And then there is another consideration, gentlemen, and that is this. The people of the territory of Idaho that now seeks to be a state are comparatively poor. How poor they may be is evinced by the amount of taxable property that is now within the state. Then I say that we should not do anything that would deprive the present generation of the benefit of this school land, and if we absolutely prohibit and deny the right of the sale of any of this land, it will not be ten years until there will not be an acre of it bringing a quarter of a dollar revenue into the school fund, and our present generation will be deprived, as well as future generations, of any benefit from this fund.

Mr. CHANEY. Mr. Chairman, I do not wish to occupy any considerable time of this convention, but I wish to make a statement of some facts which may enable the members to act upon this question intelligently. Having been a rancher myself in northern Idaho for several years, I think I should at least be taken as some authority as to the rental and leasing of lands. Good farmers in our portion of the country have quit renting or leasing their lands entirely. They prefer to let them lie idle, by reason of the fact that if they rent them or lease them, in three or four years they become so foul with wild oats or cockle seed that they are no account any more, and it will need a little explanation to enlighten members who are not acquainted with the peculiarties of our country, to say that if the land once becomes seeded in wild oats or cockle it will volunteer from year to year and gets entirely valueless for farm purposes. We have many instances of that sort up there. You may plow them under, those that volunteer, and put it in timothy, and in cases of that kind, where a field thoroughly seeded in wild oats has been plowed under and seeded in timothy, I know one instance where the timothy was left for four years—good timothy crops for four years—then the timothy sod had been plowed under, and those wild oats had laid there all those four

years, and grew up thick after laying four years. Now that is a fact. If you want to entirely destroy the value of these school lands, either for renting purposes or for selling, lease them, and you will find they will be valueless, either to rent or to sell. That is my honest opinion.

Mr. McCONNELL. An enabling act was passed by the last congress, for the admission of Montana, Dakota and Washington, and it limited the price at which the land might be sold to ten dollars an acre,[1] and I think congress will doubtless limit us in regard to the price our school lands will be sold at, if it sees fit to admit us.

Mr. SWEET. The enabling act for Idaho territory last winter did limit the price at which we could sell school lands to eight dollars an acre.[2]

Mr. McCONNELL. Well, this is not a question of sentiment; it is a question of public business, and living in that country where most of our school lands are that are valuable—we have not very many, and except university lands we have hardly any to sell at present—living where these lands are and knowing what price can be obtained for them now, as a matter of business I think it is a good time to sell them, because there are many of those lands that will bring $20, $25, and even as high as $30 an acre under the hammer. As provided further on in this article, we provide that these lands should be sold only at auction, for the aid of the institutions to be benefited. We have provided that this money shall be loaned only on good farm property. It has been stated that you could only do it at a low rate of interest. I will guarantee that at the present time every dollar of the proceeds from sales of these school lands, if it were in the treasury today, could be loaned on farm loans in this territory at ten per cent. I call that pretty good interest.

Mr. MAYHEW. You say that you provide further on in this article that these lands shall be sold; do you fix the price they shall be sold at?

1—Sec. 11, Act of Feb. 22, 1889. 25 Stat. at L. 679.

2—Sec. 22 of Mitchell Bill. See Appendix.

Mr. McCONNELL. The enabling act passed last winter fixes the price, that it shall not be less than eight dollars, but our act provides they shall be sold at public auction.

Mr. MAYHEW. Well, it would not be less than a certain sum.

Mr. McCONNELL. Well, certainly, we provide for that. But as a business proposition I think it would be poor policy to hold these lands and attempt to lease them; so I hope the amendment will not prevail.

Mr. ALLEN. I would like to bring out one other fact in connection with the character of these school lands, and that was the object of my amendment. A portion of the school lands of Idaho territory are timber lands; a portion of them in northern Idaho, as has been said by a gentleman familiar with their character, are very much different from those in southern Idaho. The character of our lands is that they are sagebrush lands, and when once cultivated they are very much more valuable from year to year by that fact of cultivation. A portion of the lands are timber lands, and the reason of my amendment was, having these facts in view and applying them, as has been stated by the same gentleman, that the present school children of this territory or state should have some fund provided for their education, and I believe that is too important a question to pass over lightly without further consideration.

Mr. HARKNESS. Mr. President, it occurs to me very forcibly that the school lands in this part of the territory should be sold at present. Who is going on there to clear the sagebrush and get water rights on that land and fence it, and lease it and pay anything for the lease? The fact is it is worth more now than it will be ten years from now, when all the surrounding water rights are taken.

Mr. MAXEY. Mr. Chairman, this is a peculiar country and a peculiar soil, and the soil particularly is not adapted to leasing or renting. You will find in renting or leasing land in this country that it will not

take long to carry the land down stream, and unless the man owns the land or has an interest in it, I do not think it would be prudent to lease it or rent it. My observation in Illinois was that the school lands there could be noticed over the country by the log cabins and blackberry briars in the fence corners, and all such trash as that. You could pick out the school lands for miles all over the country. It simply amounts to this: The man that is tilling the land is not interested in the land, and it runs down. It is not worth half as much as the neighbor's land adjoining that particular farm. I don't think the proposition of leasing school lands in this territory practicable.

Mr. CLAGGETT. Mr. Chairman, I have listened to all these various remarks, and I am not only unconvinced as to the unsoundness of the position of the gentleman from Idaho county, but I am convinced more fully than ever of its complete and absolute soundness. This whole discussion has proceeded upon the theory that if we leave the title to these lands in the state, to be under the control and regulation of the state, that it is going to be just according to the way lands have been cropped or rented by private proprietors in northern or southern Idaho, or whatever it may be. This spring I was down in eastern Washington. I found that nearly half the land that was settled upon there was settled upon by renters, and I found that the customary trade made there—by inquiry among the farmers, was that they gave half the gross crop, they gave that as an annual rental to the proprietor. Now we are proposing to sell these lands here for five, ten and fifteen dollars an acre, when we can, by reserving it to the state by such rules and regulations protect these lands against very nearly all the evils the gentlemen have pointed out, and still have a double security for the school fund, which I referred to before, namely, the proceeds from the rent of the land, and in case for any reason then that fund should be lost by misappropriation, as was said by my friend from Oregon, or embezzled, we would still

have the principal to fall back upon, and our school fund is protected. I do not suppose anybody would suggest for a moment that the legislature would rent any portion of these lands for a short period of time—five, ten or fifteen years, but would only rent the land upon strict conditions of compliance with regard to keeping it up, so far as the application of manures and so on, and fertilizers, and good care being taken of it, and make the time twenty or thirty years, and put in a provision at the end, if you want to, that if during the period of lease the terms and conditions of the lease had been fully complied with, by keeping down your cockle burrs, Mr. Chaney, and your wild oats—making that a condition with regard to the lease, then the party should have the preference right of the renewal of that lease for ten or twenty years more. I don't see a bit of difficulty in the matter whatever. If you reserve the title and keep it in the state, the whole matter passes over to the domain of the legislature. They can experiment session after session, if they see fit; they can provide for leases for certain classes of land, as to their conditions, and I do not see why we should go ahead and part with this patrimony of the schools.

There is some force in the argument made by the gentleman from Oneida, and that is, so far as the desert lands are concerned, that the supply of water may be taken up, and the lack of water may leave the lands less valuable, or some portion of them, than they are now. But we have provided in two different articles, one in the Declaration of Rights, and another one in the report of the committee on Irrigation, for the construction of large canals. I think I may safely assume that all the small streams in this section of the country have already been taken up. You must utilize the large streams from this time on.

Mr. SHOUP. I would like to say a word or two on this question. The committee took all these matters into consideration before it made this report, and as my colleague on the committee, Mr. Harkness, has well

said, who is going to reclaim all these lands? I suppose that nine-tenths of the school land of this territory will now be arid land, land that cannot be cultivated without irrigation, and a great deal of it lies long distances from these large canals the gentleman from Shoshone speaks about, if they are ever built at all. And as regards the price of sale of this land, congress will no doubt provide that none of the school land shall be sold for less than eight or ten dollars an acre, no matter how sold, whether by auction or in any other way, there will be a limit in that respect. And as regards this question of saving this school land for future generations, that is all nonsense. We now propose to sell these lands right now, or as soon as we can, at the most convenient time. But there is no question but what this land is more valuable now than it will be hereafter after it has been cultivated and completely worn out by renters. We will then reserve for the future and for the people that live after us the cash this land brings, and give that to them as a perpetual fund which they shall keep forever, instead of giving them a lot of worthless and wornout land that is of no value to anyone, and in a part of the territory where irrigation is necessary and all the water rights taken up and owned by some one else.

Now Judge Claggett speaks about renters in a certain part of the territory coming with half their crops every year.

Mr. CLAGGETT. In Washington territory.

Mr. SHOUP. Well, in my part of the country a rancher is not able to make a living when he gets it all.

Mr. CLAGGETT. Well, we are, up there, where we make a living on half.

Mr. BATTEN. What I had intended to say has been very well said by the gentleman from Ada, Mr. Maxey, and the gentleman from Bingham, Mr. Harkness, and the gentleman from Custer, Mr. Shoup. It seems to me in dealing with this matter we have to deal with it in the light of the peculiar conditions in which we live

and the character of the soil. Water is as much a consideration in the tillage of the soil as the soil is itself, so that we have got to discuss it, and I take it, to handle it, in the southern part of the territory. It is a little different—understand, in the northern part of the territory; it is not necessary for them to irrigate there, so they can probably discuss this question as it is discussed in Dakota. Now the discussion has taken this turn, and we must adopt one or the other of two courses; either preserve our lands intact for all time, and so that we may derive a never-failing source of revenue from them, keep them as old landed estates are preserved in England, or sell them at once or very soon, to realize some immediate revenue. Now it strikes me there is a middle ground between these two courses, that we can test the merits of both by some provision similar to that which they have adopted in Dakota. And the only obstacle to adopting the Dakota provision is that which I have mentioned, that we are not similarly situated as they are in Dakota. There they trust to nature to irrigate their ground. We have to trust to nature, it is true, to a certain extent——

Mr. SHOUP. I suggest to the gentleman that——

Mr. BATTEN. Now in Dakota Section 4[1] provides that "the lands granted to the state by the United States for the use of public schools may be sold upon the following conditions, and no other: Not more than one-third of all such lands shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the state, and the legislature shall, subject to the provisions of this article, provide for the sale of the same." Now I throw out the mere suggestion here, might we not adopt something similar to that; that for the first five years none of the lands shall be sold, after our admission into the Union; that pending that time the lands be leased at a certain fixed rental, subject to certain restrictions and safe-

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[1]—Art. 8, Const. South Dakota, 1889.

guards, as the honorable gentleman from Shoshone has suggested, and we can test certainly the merits of the case in that manner. That, however, I will admit, is subject to one objection, a serious one, and that is the objection urged by the gentleman from Bingham, that the water will be taken up mainly for the lands, if they are valuable at all, and that they are more valuable now than they will be in the future. I will admit that I am hardly satisfied as to what is just the best project, but certainly I do not favor the project of the gentleman from Idaho county that we preserve these lands intact for all time and lease them. I have been told by men who have farmed constantly through irrigating ditches that after a certain time they find their lands going down stream, as has been very well said by the gentleman from Ada (MR. MAXEY), that the character of the loam is such that constant irrigation tends to erosion, and gradually carrying away all the nutritious elements, the fructifying elements of the soil, so that after a certain length of time you get down to the subsoil or a substratum that is not fruitful at all. It does seem to erode now. Theoretically, I agree heartily with the gentleman from Idaho in his amendment, but I do not think as a matter of practical—sound practical business judgment, desiring to get the most we possibly can from our school lands, that his amendment is practical. I realize the danger which confronts us in the immediate sale of it. I am well aware that there are now probably crowds of covetous, hungry speculators and land grabbers, waiting for some chance to pounce down and grab choice school lands, and I believe we can check them in those pernicious designs by fixing the sale of it at a fair and reasonable rate, something like that suggested in the enabling act of eight dollars. I am rather in favor of a middle course. I think it might be best to say that they shall not be sold within three years. (Cries of "Question").

Mr. KING. I would like to say a few words, Mr. President, on these school land matters. In Kootenai

county originally it was mostly timbered, and the prairie country has been surveyed, and there is only two sections of school land in a whole township. If we adopt the system of leasing it will be impracticable there, for these reasons, that the timber land would naturally be cut off and destroyed more or less, and it would be impossible to keep any track of the wood destroyed. Now I have had experience up there. There are two sections of university land which are reserved in each township. They have four sections to survey. They go on and cut the timber off. I have been there four times within the last year, and the railroad company cuts a couple of hundred thousand ties every year; wherever it is most suitable for that purpose, they go there and take it. And you have to stand there with the sheriff to fight them off. We had ten thousand ties attached, but the damage to the land was tenfold more than the value of the timber. I think we should adopt a land system whereby the school land grant shall not be sold at a minimum price less than eight dollars an acre, to be agreed thereafter that the county commissioners in each county be a land commission. Now if you sell this land on twenty year's time, one-twentieth down and interest at seven per cent payable annually, and one-twentieth every year, the poor man with a small capital takes a chance to go on the land because he has twenty years to pay for it. If you sell it at auction at one time, it is of no benefit if you have the money put somewhere, but in twenty years drawing interest you get more profit. The Northern Pacific sell on ten years' time, one-tenth down the first year, pay nothing only the interest, the second year another tenth and interest. By the time the ten years is up the land is paid for. But the timber land—they have restrictions, that the tenth part of that quarter section shall be under cultivation, and the valley, and the prairie lands, of course have to be improved somewhat, there is a restriction there, but the company overlooks it a good deal, but they are very particular about the

timber land. If you take timber from the timber land you must make some improvement in return for it. The school land would be in the same position, because we have such diversities of soil, diversities of timber, and mountains and prairies and valleys; it is impossible to sell the land all at the same price; if you put it at ten dollars an acre, some of it is worth twenty to thirty. It is to our interest to see that the school lands are protected. The county commissioners have it in their power to have that land graded and make the sale, and in that manner you could get a better price than at auction. The railroad up our way asks eight dollars an acre for the land; you can get it in the next section for two dollars and a half, but to the government you have to pay cash for it, but the railroad allows ten years to pay for it in.

Mr. PINKHAM. I believe it is considered necessary by every member of this convention that the substance of the section under consideration should remain in the constitution. It may be amended in its typography to suit the views of some of the delegates in this convention, but the substance of it should be there and remain there. The amendment offered by the gentleman from Idaho county which we have been discussing for some time and listened to so much eloquence about, is not germane to the subject here under consideration, and should not be listened to for a moment. It properly belongs under Section 10, and if you adopt the amendment which the gentleman from Idaho county has offered to this section, there is another section in this article succeeding it which would have to be amended to suit it, and therefore I ask Mr. Claggett's Mr. Batten's and Mr. Clark's leave that the gentleman from Idaho county withdraw his amendment, to renew it again when we take up Section 10 for consideration. (Cries of "question").

The CHAIR. There was another amendment which came in first.

Mr. ALLEN. I am willing to withdraw it at this

time, in order that we may have ample time to discuss it at some other time. (Cries of "Question").

The CHAIR. The question is on the adoption of the amendment of the gentleman from Idaho county to amend Section 5 (4). You have heard it read.

SECRETARY reads Mr. Parker's amendment. (Vote).

The CHAIR. The noes appear to have it; the noes have it. The amendment is lost.

Mr. PINKHAM. I move the adoption of the section. (Sec. 5 (4). Seconded and carried).

Mr. WILSON. I move that the committee rise, report progress and ask leave to sit again. (Carried).

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. AINSLIE. Mr. Chairman, your committee of the Whole have had under consideration Article 9, the report of the committee on Education, Schools, School and University Lands, and have come to no conclusion thereon.

The CHAIR. If there is no objection, the report of the committee of the Whole shall be received.

Mr. McCONNELL. Mr. Chairman, the committee of the Whole, having had under consideration Article 8 (12), reports as follows: Mr. Chairman, the committee of the Whole having had under consideration the report of the committee on Municipal Corporations, ask leave to rise and report it back to the convention, with the recommendation that it be adopted as amended.

Mr. MORGAN. I move that the report be received. (Seconded).

The CHAIR. The chair will be compelled to rule that this motion is out of order, and it stands before the convention now for action under Rule 49. After being reported the propositions, with the amendments thereto, of the committee of the Whole shall be immediately taken up for consideration.

Mr. REID. Mr. Chairman, I move that the report

of the committee be laid upon the table for the present, and take its place with the other reports to be considered. (Seconded and carried).

Mr. GRAY. I move that we adjourn until tomorrow morning at nine o'clock. (Division called for. Rising vote 26 ayes, 16 nays).

The CHAIR. The motion prevails, and the convention stands adjourned until tomorrow morning at nine o'clock.

SIXTEENTH DAY.

July 23, 1889, 9:00 A. M.

CONVENTION IN SESSION.

Prayer by the chaplain.

Roll-call.

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Batten, Beatty, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Coston, Crutcher, Gray, Hampton, Harris, Harkness, Hasbrouck, Hays, Heyburn, Hogan, King, Kinport, Lamoreaux,Maxey, Mayhew, McConnell, McMahon, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Robbins, Salisbury, Savidge, Sinnott, Shoup, Steunenberg, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Beane, Cavanah, Crook, Glidden, Hagan, Hammell, Hendryx, Howe, Jewell, Lemp, Lewis, Pefley, Standrod, Stull, Woods.

The CHAIR. The secretary will resume the reading of the journal that was passed yesterday as not being complete.

Mr. MORGAN. I move that the report of the committee of the Whole on Legislative Department be dispensed with.

The CHAIR. If there is no objection it will be so ordered.

Mr. MORGAN. I move that the further reading of the journal be dispensed with. (Seconded and carried).

CORRECTION TO JOURNAL.

Mr. WILSON. There is a portion of the journal

which is not correct, and I think now is the proper time to correct it.

The CHAIR. Are there any corrections to be offered to the journal as far as read?

Mr. WILSON. I made a motion that Section 4 of the article on Public Indebtedness be amended, and from the journal it is made to appear that my motion was lost. It was not lost; it was withdrawn, and Mr. Heyburn's motion was made.

Mr. SAVIDGE. Mr. President, I believe that when my vote was recorded yesterday I was not present.

The SECRETARY. I may have read it so, but it was an error; he was not marked as voting. He was marked absent on the call of the house.

Mr. BATTEN. The amendment I offered to Section 2 of the article on Public Indebtedness was not acted upon. Mr. Ainslie offered one which was adopted that covered pretty nearly the same ground. It appears that my amendment was lost, which is a mistake.

Mr. MAYHEW. Mr. President, I would like to make an inquiry; I would like to ask this question. You have observed already from the reading of the journal that there are some clerical errors and some mistakes made in it. I think it is always a bad rule to dispense with the reading of the journal. I would like to make the additional inquiry, if we do not have to have that entire journal read tomorrow that we omit today? I don't think we gain anything if that is the case, if it is to be omitted one day and read the next.

The CHAIR. There is one thing the chair desires to call the attention of the convention to, and that is this. Ordinarily the journal does not contain the proceedings of the committee of the Whole; the only part of the proceedings it contains is the report of the committee, and putting these whole proceedings down of the committee of the Whole in the journal—there is no use in it, and it seems to me there is no sense in it and no parliamentary rule requiring it, but the convention has heretofore seen fit to order it. That is to say, under

our rules. In the house of representatives, after the committee rises and the bill is being considered before the house, no amendment can be offered to the bill except such amendments as have been offered in the committee of the Whole, and that is the reason why in the house of representatives the proceedings of the committee of the Whole are all preserved in the journal, in order that the journal may show what amendments were offered in committee of the Whole, but under our rules here any amendment may be offered in convention, and if that is so, there is no use in duplicating the proceedings of this convention in that way, and I hope some member will offer some motion to get rid of this trouble.

Mr. MAYHEW. I rise to that question now. I observe that the secretary of the convention reads the entire proceedings of the committee of the Whole, as if it occurred in the convention, and that is wrong. My observation heretofore has been, and my experience in these matters has been that the action of the committee of the Whole is omitted from the journal until the committee has completed its labors upon that subject. Then from their report as to the entire amendments made to any article, those amendments are inserted in the journal. But now, if you will observe, Mr. Chairman and gentlemen of the convention, the clerk's labors are two-fold, on his next journal, as if it never had been in the committee of the Whole—the whole proceedings of the committee of the Whole is read every morning since this convention has been in session. Now I think that the clerk should omit putting that into the journal until the committee has performed its labors—discharged its duties, and its full consideration upon the different articles, and then the convention adopts or rejects it, as the case may be, in the convention, and that is all that is necessary then to be done—is to have that part the convention adopts, or the committee of the Whole, placed upon the journal, and I therefore move, Mr. Chairman, if it will meet with the approbation of the

convention, that the secretary do not insert in the journal the proceedings of the committee of the Whole until after the full report of the committee is made to the house, or to the convention, to see whether they adopt it or not. I see very readily it is making a great deal of labor for the secretary unnecessarily.

Mr. REID. Before that amendment is put, I would like to inquire, then when would we have an opportunity to correct the minutes of what occurred in committee of the Whole?

Mr. MAYHEW. At the time they were adopted.

The CHAIR. Our rules do not provide for the keeping of any journal entries of what occurs in the committee of the Whole at all; it is only the proceedings of the convention, and when the committee makes its report, that report will go into the journal, but all this multitude of little suggestions, and amendments offered and withdrawn—none of them are required to go in under our rule.

Mr. REID. Then would it be in order, when the clerk reports what is done in the committee of the Whole, to correct it before the house proceeds to consider it? The point I am getting at is, just as the gentleman from Ada said, his motion was reported as having been lost, when he withdrew it. If we have an opportunity to correct the proceedings in committee of the Whole, then I do not object; but if we do not, then I would object, for the reason that we are confined in convention to what was offered in committee of the Whole.

The CHAIR. That is just what the chair has been calling attention to that we are not doing, and there is where the necessity comes in. The reason why the proceedings of the committee of the Whole in the house of representatives, as I stated before, are preserved in the journal, is because no amendment can be offered in convention except such as was offered in committee of the Whole. But we haven't got that rule; the rule is just the other way.

Mr. REID. All I say is that when the report comes from the committee of the Whole, and it develops that there is any error, that it be allowed to be corrected.

The CHAIR. Why, of course; that is where that comes in. "After being reported, the propositions with the amendments thereto of the committee of the Whole, shall be immedately taken up for consideration, unless it shall be otherwise ordered by the convention, and again be subject to discussion or amendment."

Mr. MAYHEW. What rule are you reading, Mr. President?

The CHAIR. Rule 49; and there is no necessity whatever for any of these entries being made; in fact the rules do not require it, and unless the chair is ordered otherwise by a vote of the convention, he will hold hereafter that the secretary need not include the proceedings of the committee of the Whole, because when the final report is made, then any other motion may be made in convention under these rules which would be made in committee of the Whole, and can be preserved in open convention.

Mr. REID. The point I am getting at is, suppose when that report is made some gentleman finds there is a mistake in the report.

The CHAIR. Certainly; that has got to be corrected.

Mr. REID. Well, if that is the case, I will support the gentleman's motion with pleasure.

Mr. MORGAN. I suppose it would be necessary for the secretary to keep a record of the motions and matters that actually prevail and are adopted, otherwise he could not make his report.

The CHAIR. Of course; that is a part of it.

Mr. MAYHEW. But he does not read it twice; the labors of the secretary are two-fold, and I think it is too laborious and unnecessary.

The CHAIR. It is moved and seconded that hereafter the proceedings of committees of the Whole shall

not be recorded by the secretary. I believe that is the substance of it.

Mr. MAYHEW. Not "recorded," but no report in the journal until after the report of the committee.

The CHAIR. I understand, but that does not get rid of the difficulty. The point about it is that there is no necessity to keep any record of them at all. The only thing you have to keep a record of is to see that the report of the committee with the amendments to the original bill come before the convention properly.

Mr. MAYHEW. That is correct.

The CHAIR. But all the preceding matters, mere matters of detail gone through with in committee, are not recorded under our rules, nor under any parliamentary usage, except where there is a special rule, as in the house of representatives, for special uses. There is no necessity to have any record kept of that whatever. But when the report of the committee of the Whole is made through its chairman, and if there is any mistake in the report of the committee, then of course that is a proceeding in convention and can be rectified right then and there if it is wrong.

Mr. REID. As I understand the chair, when you say no record shall be kept, you mean on the books.

The CHAIR. I mean on the journal.

Mr. REID. Of course he will keep it on paper.

The CHAIR. Oh, certainly.

Mr. MAYHEW. Well, that is the object of my motion.

Mr. AINSLIE. I think there has been a misunderstanding. For example, the clerk of the convention, when the convention is in committee of the Whole acts exactly as the clerk of the Judiciary committee, or any other committee, who keeps a true record of all the proceedings of that committee, but it is not necessary that the record of the proceedings of the committee should go into the journal of the convention.

The CHAIR. Exactly, that's it. And the record kept by the clerk of the committee of the Whole is for

referring members to see that their propositions are properly reported, as there may be a mistake, to refer to, to correct errors in convention on the report of the committee. (Vote, and the motion prevails).

The CHAIR. Are there any petitions or memorials?

PETITION IN RE USE OF WATER.

Mr. HASBROUCK. A number of the inhabitants of Washington county, whom I have the honor to represent, have a petition to offer here, in regard to the use of water for agricultural purposes, and I request that it be read.

SECRETARY reads: Mr. President, and members of the constitutional convention, Boise City, Idaho.

We the undersigned, citizens, taxpayers and water consumers of Washington County, Idaho Territory, hereby respectfully petition your honorable body as follows, being in favor of the admission of our territory as one of the United States of America, and believing that we will be afforded more ample protection in our just and equitable rights, as citizens engaged in agricultural pursuits, and the products of our soil being of paramount importance to our commonwealth, we pray that in the formation of a constitution such as your honorable body is now framing, it will consider the rights and privileges of those who are cultivating the arid lands of our territory and wholly dependent on water for irrigation, and will provide that constitutional clause that will protect the consumer against a monopoly such as exists in our county, whose policy is oppressive and detrimental to the prosperity of our community, we being compelled to purchase water for irrigating all our land from a ditch company who control all the accessible water, at rates inadequate to the results of our labor. We ask that the constitution place the authority upon the disposal of water within the power of the legislature. The statute giving priority of right in the use of water we think unjust. Those living along the line of any ditch, or company's ditch, should

have their pro rata of water in season of drouth and great scarcity; and your petitioners will ever pray.

The CHAIR. Under the rules the petition will be referred, unless we make it a special order. The chair will refer it to the committee on Agriculture and Mining.

Mr. HASBROUCK. That is the committee I wished to refer it to, and I would request on behalf of these petitioners too, and who have incurred the expense of coming here to present this petition, that they be accorded a hearing before the committee, at some time when the committee can meet conveniently, and at as early a date as possible. I submitted to these two gentlemen the report that the committee have already made, but they are of the opinion that it does not entirely cover their case, and therefore they would like to be afforded a hearing before this committee.

The CHAIR. That can easily be arranged, by requesting the chairman of that committee to call the committee together at such time as is convenient.

Mr. HASBROUCK. Well, I simply made the request so that the members of the committee might know that it was in contemplation.

The CHAIR. Is there any further presentation of petitions and memorials? (None offered). Reports of standing committees? (None). Reports of select committees?

RECEPTION OF CONGRESSIONAL DELEGATES.

Mr. AINSLIE. The select committee appointed on Saturday to receive the delegation of congressmen in this city, have to report that they met the gentlemen at the depot this morning, accompanied them to their hotel for breakfast, and turned them over to the governor and mayor of the city, who will take them in tow and show them around, and that they accepted the invitation of the committee, in accordance with the resolution of the house, and will visit the convention at two o'clock

this afternoon, at which time we suggest that a recess be taken and an informal reception be held.

The CHAIR. Does the gentleman make that in the shape of a motion?

Mr. AINSLIE. I would make a motion to the effect that at two o'clock when the committee escort the gentlemen into the hall, a recess be taken for one hour. I suppose they would like to be presented to the members of the convention, and would like to make a few remarks. (Seconded).

The CHAIR. The report may be received, if there is no objection to the same, and the motion is made by the gentleman from Boise county that on the arrival of the party at the hall of the convention at two o'clock this afternoon, the convention take a recess for one hour. (Carried).

COMMITTEE REPORT—SPECIAL FINANCE.

The SECRETARY. Mr. President, your special committee on Finance beg leave to report that they have assurance from citizens of Boise City that a syndicate can be formed here which will take the mileage and per diem claims of the members at a discount of 33 1-3 per cent, provided the convention first concludes its labors, but as threats have been made to dissolve this convention by the withdrawal of certain members, your committee can perfect no arrangements until it has finally adjourned. W. J. McConnell, Chairman.

The CHAIR. What is your pleasure in regard to this report?

Mr. MORGAN. I move that the report be received, and the committee be continued. (Seconded and carried).

The CHAIR. Are there any further reports from select committees? (None). Final readings? (None).

Mr. MORGAN. Mr. President, at the request of the chairman of the committee on Apportionment, I move this morning that the report of the committee of the Whole upon Legislative Department be taken up and

acted upon by the convention. Of course gentlemen are aware that this committee on Apportionment can do nothing until this convention determines how many members of the legislature they will have, and other matters which are contained in this report. I would be glad and would be perfectly willing to take up the report of the committee of the Whole, beginning with the first report which was made by the gentleman himself, Mr. Shoup, being the report of the committee on Bill of Rights, but he desires that this shall be acted upon first, in order that the committee on Apportionment, which consists of one member from each county, can get to work and conclude its labors.

Mr. BALLENTINE. I do not see how the convention can adopt the report on the Legislative Department at this time. The convention ordered the report printed, with the amendments added in the committee of the Whole; it has not yet been laid upon our desks, and I do not see how the convention can act upon it until we have the bill before us.

The CHAIR. The action that was taken by the house upon that motion, according to the recollection of the chair, was that any further consideration of that matter be postponed until the bill which was reported by the committee of the Whole with the amendments made thereto shall be printed, and laid upon the table.

Mr. MORGAN. I had forgotten that, Mr. President. I think that is correct. I will withdraw my motion.

The CHAIR. What is the pleasure of the house?

ARTICLE IX.—SCHOOLS AND SCHOOL LANDS.

Mr. REID. I move that the convention resolve itself into committee of the Whole upon the bill pending yesterday when we rose, which I believe was the report of the committee on Schools, Education and School and University Lands. (Seconded and carried).

The CHAIR. Will the gentleman from Latah take the chair?

Mr. McCONNELL. Mr. President, I would much

prefer that some other gentleman take the chair, as Mr. Sweet is one of the committee, and I would like to have him on the floor too.

The CHAIR. Will the gentleman from Custer take the chair?

Mr. SHOUP. The gentleman from Boise, Mr. Ainslie, was in the chair while a part of this was under discussion, and I think it would be proper that he continue in the chair until it is finally disposed of.

Mr. AINSLIE. I had some amendments to offer to this bill, and I respectfully request that the chair excuse me.

Mr. McCONNELL. Mr. Shoup is on the committee.

The CHAIR. Mr. Heyburn is not, I believe.

Mr. McCONNELL. No, he is not on the committee.

Mr. SHOUP. I would prefer to be excused, Mr. Chairman.

COMMITTEE OF THE WHOLE.

Mr. HEYBURN in the Chair.

Section 6 Stricken Out.

SECRETARY reads Section 6, and it is moved and seconded that the same be adopted.

Mr. BALLENTINE. Mr. Chairman, I offer the following amendment:

SECRETARY reads: Insert after the word "county" in the first line, "who shall be elected by the qualified electors thereof." (Seconded and carried).

Mr. PARKER. Mr. President, I have an amendment.

SECRETARY reads: Amend Section 6 by striking out all after the word "law" in line 3.

Mr. GRAY. I second the motion.

The CHAIR. It is moved and seconded that Section 6 be amended as read.

Mr. PARKER. The ordinary county superintendents know as much about the disposition of school lands as the clerk knows of theology.

Mr. REID. I hope the amendment will prevail, for this reason. In the report of this committee, by the committee on County Organization, there is provided, at the suggestion of the unanimous vote of the committee on Judiciary, a probate judge who is ex-officio superintendent of the public schools. The two offices will be as much as he can attend to, and I think that Section 5 (4) should be amended so there will be this office of commissioner of lands, that it shall be separate and distinct from the man who is county superintendent of public instruction and probate judge. We have combined these two offices in the interest of economy, and at the suggestion of the whole committee on Judiciary, after careful consideration of this case it was the unanimous opinion of the committee, as well as of the committee on County Government, that the offices of probate judge and superintendent of public instruction should be combined and pay him fees, a plan which will be submitted by the committee on county government. Now I think we should return to Section 5 (4) and amend that, so that we shall elect a superintendent of public lands. I know in almost every county in the territory that public lands, the care of them, the looking after them and the selling of them will take up the attention of almost any one man; it will be that way in the north, and if not, we can elect somebody who will be paid by commissions, so that if he does not do much work he will get little pay, if he does a great deal of work he will be paid accordingly, and that can be arranged. And as this report has been held back to see what the report of the other committees would be, the Judiciary committee especially, as they are doing these things—the report will come in today, it is nearly complete now—we should provide that the probate judge be superintendent of public instruction, and that this commissioner of lands should be independent of those offices, and in that case they could strike out this section, and just say, instead of the county superintendent, let him be commissioner of lands, to be paid by commissions

to be fixed by law. I do not make the motion, because I make the suggestion to the chairman of the committee on Education, so that that can be provided for. There will be a clash between the two reports. The probate judge cannot attend to the schools and public lands and also to the probate business, so that one or the other of the two reports must be changed. This report is recommended by the unanimous vote of the committee, the action of the Judiciary committee and also the committee on County Government, and I suggest to the chairman that Section 6 be stricken out or re-drafted, so as to have this commissioner of lands elected by the people, on a salary to be fixed, as suggested by the gentleman from Alturas.

Mr. BEATTY. Mr. Chairman, I agree with the suggestion to strike out that latter clause, and to go further and strike the whole section out. Why should we provide in the constitution for the election of a county school superintendent and then limit the term to two years? Why not leave that to the legislature? Here we have provisions requiring that he shall be elected by the qualified voters and should be elected for two years. We might want to change that, we may want to elect him for three or four years, but that is a matter which is not necessary to be in the constitution at all, and which should simply be provided by the laws. This thing of attempting to define every little office in the constitution, and the term of office, and how they shall be elected, is simply a duplication of what should be in the laws themselves, and I think we are getting too much of this thing. I move to strike the whole section out. (Seconded).

The CHAIR. Are you ready for the question?

Mr. GRAY. This is the first time I have been met with the idea that there should be something left to the legislature, but I am not altogether in accord with the change he would like to have, under this bill now; that there should be a county school superintendent, for a term to be elected by qualified voters, and the duties and

qualifications, the compensation and term of office may be prescribed by law. That latter part is the motion of the gentleman from Idaho county, and I think is perfectly correct. It would do nothing but annoy the land board to have every county superintendent have his fingers in there.

Mr. REID. It is provided in the county bill for county superintendents of public instruction, and the only suggestion I made was as to whether we have a superintendent of lands.

Mr. GRAY. Well, that might be added in another section, but I don't think it would be proper in this. Under the educational system as attempted to carry it through, they may say it should be superintendent—county superintendent of schools.

Mr. REID. That would not clash with the other.

Mr. GRAY. No, not in any respect.

Mr. BEATTY. Would not they both be duplicated in the constitution? I understand from Mr. Reid that that will amount to a duplication of the constitution, and we do not want duplications or triplications.

Mr. GRAY. I think it is a portion of the educational system as it is carried out.

Mr. REID. I will state to the gentleman that we did not want to put it in, but it was just as it was with the committee on Judiciary, we took the ground that the offices of sheriff and coroner belonged under the judicial system, but the committee on Judiciary decided to the contrary and struck out the sheriff, left those offices out, to be put under the county offices.

Mr. GRAY. Our disagreement was to that, that we did not consider them judicial officers. (Cries of "question").

SECTION STRICKEN OUT.

The CHAIR. The question is on the amendment of the gentleman from Alturas that Section 6 be stricken out. (Vote). The chair is in doubt. (Rising vote

shows 28 ayes, 10 nays). The motion is carried, and Section 6 is stricken out.

SECTION 5.

SECRETARY reads Section 7 (5), and it is moved and seconded that the same be adopted.

Mr. CLARK. Mr. Chairman, I am heartily in sympathy with it, and I would move to amend by inserting after the word "sectarian" in the last line, so as to read "any sectarian or religious purpose." They will evade that proposition by saying it is not sectarian because it is not thus and so, does not relate to a sect or denomination.

Mr. MORGAN. I second the motion. (Vote and carried).

Mr. PINKHAM. I believe it was embraced in the resolution passed yesterday, to correct the words, where "Legislative Assembly" appears in this bill, to "Legislature" all the way through.

The CHAIR. Yes, that is true; that applies to the entire report. (Vote and carried).

SECTION 6.

SECRETARY reads Section 8 (6), and it is moved and seconded that the same be adopted.

Mr. CLARK. Mr. Chairman, I have an amendment.

Mr. HASBROUCK. Mr. Chairman, I have an amendment.

SECRETARY reads: Add to Section 8 (6) the words: *"Provided,* That nothing therein contained shall be construed to forbid the reading of the Bible in public schools in any commonly received version, nor to enjoin its use."

Mr. CLARK. Mr. Chairman, I am entirely satisfied with the clause there in the bill as it now stands, as it is a copy of our own statutes on the subject,[1] but we get an immense amount of law by decisions hastily ren-

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1—Sec. 705, Rev. Stat. 1887.

dered, and sometimes rendered without very much reason behind them. Three or four years ago the superintendent of public instruction in this territory, on an appeal from a remote country district, made a decision that the Bible was a sectarian book and could not be read in the public schools of this territory. Under that decision, if it is read in any public school in this territory, the teacher of that school forfeits his pay if anybody objects to his receiving it. I would simply like to get back to where we were before that decision was rendered; that is, leave the matter entirely within the hands of the people. I have so drawn this, that it may be read in any commonly received version. Both the version used by the Catholics and the King James version as received by the Protestants are understood to be commonly received versions. And I have so drawn it also that nothing in this section enjoins its use. I would simply like to leave the matter to the free disposition of the people.

Mr. PARKER. I cannot support the amendment of the gentleman from Ada county, Mr. Clark, for the reason that we already have in the preamble of our Bill of Rights a constitutional Jehovah who ought not to be there. Now if this amendment goes into our educational system, we shall have Mormon settlements in the southern portion of this territory claiming that the constitution gives them the right to teach the doctrines of Mormonism. In our county we have a large number of honest colonists who are Catholics, and they claim the right to teach the doctrines of the Catholic church. The safest way is just to have these things left entirely, as we say in the section, "no sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color."

Mr. SHOUP. I hope the amendment of the gentleman from Idaho county will not prevail. We may as well remember that there are a great many Hebrews in this territory, and wherever they live they have families

of children which they always desire to send to school, and that they do not accept the New Testament as scripture at all, and for that reason I think it would be improper to allow the Bible to be read in school.

Mr. McCONNELL. If we are not proceeding out of order, I move that this amendment be adopted. I think it is not before the house yet.

The CHAIR. Yes, it was moved and seconded.

Mr. McCONNELL. Well, I hope, Mr. Chairman, that this amendment will be adopted. I think where a neighborhood is religiously inclined, where the patrons of the school believe in the reading of the Bible, where the trustees are willing, it should be read in the school, and that there should be no provision in the constitution or provision of the law that would not allow it to be read. I cannot see any harm in it. I believe the intelligence and the morality of this convention is largely due to the fact that in their homes and perhaps in the schools where they were educated the Bible was taught, and I can't see any use in saying in this enlightened age that it will do harm, or practically say so by forbidding its use in our schools, if the citizens who patronize the schools desire to have it read.

Mr. GRAY. I can easily see the difficulty and the confusion and the ill feeling that will be generated if this amendment prevails. There may be perhaps a majority, there may be all the trustees, the teacher and quite a number of the children who are desirous of having it read; others do not; and my experience, my observation has been, in matters of that kind, that there gets to be a dissatisfaction over the management, growing out of the use of the Bible, which I will say as for myself I would have no objections to, but I have seen schools even broken up for that reason and that reason alone. There is that dissatisfaction when a majority of the trustees or even all of them agree; for you will not find one school district in this territory where all the patrons would agree in the use of it. If not, then I will assure you of the unpleasantness to follow that is to be gen-

erated, and it commences with that, and ends usually with the discharge of the teacher and the breaking up of the school. I hope this amendment will not prevail.

Mr. REID. Mr. Chairman, I hope the amendment will be adopted by this convention unanimously. I remember, sir, in reading the history of my country, that when the constitutional convention of 1787 had groped for two or three weeks, and were about to come to a disagreement on important matters of fundamental government which they were considering, and it seemed that the contentions of conflicting interests could in no way be harmonized, one of the greatest and best men of this country, the great philosopher Franklin, rose in that convention and announced the fact that he had always perceived that God governed the affairs of men in the affairs of nations as well as those of individuals, and he moved then and there that the convention proceed no further without daily invoking the aid of Jehovah in their considerations of government. From that time full light broke upon the intellects of those men, and they were able to agree and frame a constitution which has been the pride of the whole world, and you may take it today, and take every report of every committee that has been submitted to this convention, and there is not one principle of sound law, one principle of right, one principle of liberty that they have not taken from that very book that the gentlemen want to leave behind now, and say that it shall not be read in the public schools. And today the man that guides the helm of this nation, the great and good man that is in the White House, reads a chapter from that book, and gets down and kneels with his family, and that is the reason he has guided us along in the way of prosperity and peace. It is because the Bible is read, preached and taught in the schools that this country is great and glorious, and for one I do not want to see any constitution adopted that has not in it a recognition of Jehovah —this constitutional Jehovah that the gentleman speaks of with such scorn and contempt; and I do not want the

day to come when my children and those of my neighbors cannot read the Bible, the Bible as it is; not the book of Mormon nor the Hebrew Bible, but always the one Bible. Talk about versions! It is the Bible that was given to us in Sinai and handed to us on Olivet and preached to us, the Bible that all recognize, let our opinions differ as they will, and I hope the convention will adopt the amendment of the gentleman from Boise.

Mr. MAXEY. Mr. Chairman, it should be remembered that other people have rights and privileges as well as Hebrews in this country, and it will be remembered also that this is a Christian nation, and if you are to have a free school, let it be free. If people want the Bible read, let them read it; if they do not want it read, let them keep it out; leave it free to their own decision, their own election. If there is a community, with a district school in the community where they want the Bible read, let them have it; if there is one where they do not want it read, let them leave it out.

Mr. MORGAN. Mr. Chairman, I was about to rise to say what has been very well said by Dr. Maxey in this matter. I am in favor in this country of the majority ruling, and if the directors of a district desire to read the Bible in their schools, I am in favor of their having the privilege of doing it. If those directors conduct the school in a manner that does not satisfy the people they have an opportunity of putting them out from time to time, and certainly it can do no harm to have the directors control the matter in this respect, and I am in favor of the amendment.

Mr. POE. Mr. Chairman, it has been well said that the Bible contains sweeter poetry, finer strains of eloquence and purer morals than can be found in any other book, in whatsoever language it may be written. Upon the Bible the different creeds are founded which are called sectarian. This is the first instance in my life where I have ever heard it intimated that the Bible was sectarian, and it seems to me that we would be doing a wrong to ourselves and those that will be gov-

erned by our action to deprive them of the right to worship God according to the dictates of their own conscience, and deprive the school of the right to have the Book of all books read to its pupils if the directors and parents of that school desire it. To say that the Bible shall be excluded from the public schools, I would consider an act which would do more than all other acts to condemn the work of this convention.

Mr. BEATTY. Mr. Chairman, to that Bible in my early youth I listened daily, and I have gathered from it precepts which I hope have accompanied me through life. But the question before us is not whether that Bible is correct or not. The gentlemen who have spoken on this question seem to have forgotten the real question before us. We are not discussing the question of the merits of that book. I am happy to say that but few men on this floor will deny its truth or its merits. I regret that there are a few here who from their course seem to take that position. I am not under any circumstances one of that kind, and I do not wish anything I say to be construed in that way. But, sir, there is a question involved of as much importance to me as any other one, and that is the interest of our public schools. I believe those schools should be fostered by every means in our power. Now I undertake to say that if we make this an issue, if we provide that it shall be understood that the Bible shall be a book to be read in the public schools, it at once detracts from the interest in those schools on the part of many citizens.

Mr. REID. Will the gentleman allow me to interrupt him?

Mr. BEATTY. Yes.

Mr. REID. The amendment offered by the gentleman from Ada does not provide that; it says nothing shall be construed to prevent its being read.

Mr. BEATTY. I understand the force of the amendment, but what I was going to say upon that point was this, that the section as it now reads does not preclude the use of the Bible in the schools, but by putting this

amendment in here you raise the question at once, you at once hold out and extend an invitation to the trustees and those who advocate its use in the schools, to advocate it and to push the question as far as possible. Now I claim that the section as it now reads leaves that open for the trustees of the different districts to use their judgment upon that matter. My own belief is that it makes a wrangle wherever it is introduced. I here desire to refer to one of the most distinguished members of the supreme court of the United States, who I believe was a most consistent Christian, and according to my recollection a distinguished member of the Episcopal or Presbyterian church, I forget which—Justice Stanley Matthews, now dead. He took the position many years ago in the city of Cincinnati that the Bible should not ever be read in the schools, and in his subsequent decisions held to that extent while upon the bench in the state of Ohio.

Mr. REID. Was not that under a local law, that we are trying to prevent from being enacted here?

Mr. BEATTY. I do not remember the law in force at that time; I do remember, though, the opinion he gave as to the law; it was but his own opinion as to the advisability of using the Bible in the public schools where there was a contest or objection to it. Now Mr. Chairman, we cannot disguise the fact that there are many people who do not want the Bible read in the public schools. Take for instance the Catholic church; they do not agree upon the same version as we do, and the Hebrews, as has been said here, will not take the whole of that Bible as their guide; they reject the New Testament entirely. Now if we put it in such a way that the question can be constantly raised, I undertake to say that it will detract from the interest of the public schools. That is my only objection to this amendment here. Anything that tends to detract from the interest in the schools, or that tends to make dissensions or discussion in them, operates against the interest of the whole people.

Mr. MORGAN. Will the gentleman allow me a question?

Mr. BEATTY. Certainly.

Mr. MORGAN. Under the section as it now reads you say the Bible may be read if they desire, and the gentleman has just said that the superintendent of schools has decided—and that decision has never been reversed—that the Bible is a sectarian book. Does not that provoke discussion at once? That is what he desires to avoid by this amendment.

Mr. BEATTY. The section, as I remarked a while ago, does allow the use of the Bible to be read in the schools where the people desire it, and the section, I think as drafted, does exclude all sectarian books. Now the Bible cannot be deemed a sectarian book, but if the courts held it was, then in my opinion it should not be read. If the courts held that it was a book that could not be accepted by the community at large, and the reading of which would create dissension in the schools, my opinion is that it should not be read if we do not want dissension in the schools. I believe as it reads that the Bible can be used and no objection made to it. The ruling of the superintendent of public instruction is not a ruling that necessarily would govern under this constitution. We propose here that under this constitution some other power than that of the superintendent of schools would have to govern this question. Now I hope the amendment will not be adopted. I think it will lead to trouble in the schools, and my sole object is simply the protection of the schools, and keeping from them any dissensions that will detract from or invalidate their usefulness. It is not that I have any objections in the world to the Bible. I have not yet myself forgotten to read it, and I hope I never will. I never yet have forgotten to follow its precepts, and I hope I never will; and I have no sympathy whatever with the gentleman here who has attacked it with slurs and insinuations as to the authenticity of it, or who desires to leave it entirely out of the constitution. I heartily

agree with the sentiment expressed in the preamble, and shall vote for it in that form or any other form they shall make it which is stronger than that to recognize the existence of a Supreme Being, and I do not think this is the place to introduce an amendment which may in the future lead to more or less dissension which will detract from the interest in our public schools. (Cries of "Question").

SECRETARY reads Mr. Hasbrouck's amendment; Amend Section 8 (6) by inserting after the word "color" in line 6 the following: "No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any school district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article." (Seconded).

Mr. CLAGGETT. I offer this now as a substitute for all pending amendments:

SECRETARY reads: *Provided,* That nothing herein shall be construed to prevent the reading in the public schools of those portions of the Bible as inculcate lessons of morality.

Mr. CLAGGETT. Mr. Chairman, I wish to be heard on this subject. The Bible is a composite book. It takes first the history of the Jewish race and the religion of the Jews. It takes in what is called the new dispensation. To this extent it may be regarded in a large sense as a sectarian book. It is not a sectarian book as between the different denominations of the Christian religion, but it is a sectarian book as applied as between the Christian religion as a whole and any other of the great religions of the earth. If you exclude the religious portions of the Bible, you could not find any book extant—none has been written, and I believe none will ever be written which will contain such a collection, as complete an assortment to cover, as it were, the entire duty of man to man, as is contained in the prac-

tical lessons of morality contained between the lids of that book. I desire to keep this thing out of the public schools, just as the gentleman from Alturas does, but if you do not put some such provision as this in the constitution, it will be brought into the common schools in every district through the country by some bigoted gentlemen of one kind or another, men or women, undertaking to bring in and teach Christianity—not morality, not the morality of the Bible, but the Christianity of the Bible, as a means of maintaining morality in the state. Now I wish to call the attention of the convention very briefly—about 40 or 45 years ago, it may have been a little longer, but I think about 45 years ago now, they had this question up in Ireland for a good many years, and the natural result of the whole matter was that it was impossible to establish in that subject kingdom of the British empire a good system of public schools, on account of these religious denominations, the Catholics and Protestants, getting by the ears. Finally two men, whose names should go down in history for all time as benefactors of their race, one of them representing one, the other representing the other religion—I refer to Bishop Cullen of the Catholic church and Archbishop Whately of the Episcopal or state church—got together and threw aside everything of a controversial or denominational nature, and agreed to select those portions from the Bible and made it a text-book upon which not only all Christians but all people who believed in morality and decency combined and united. And I desire to exclude in this constitution, to exclude from the agency or power of any school board to raise these questions of a denominational character, but I certainly do desire that the people of this state shall have an opportunity of learning the moral lessons which are contained in that Bible. For, after all, we go back to the beginning of things, and we find that republican institutions are based, as all the fathers of the republic have conceded and declared, upon the morality and the intelligence of the people. And to

exclude in any way, shape or form, to exclude the children of the state from access to this great reservoir of moral principles and practical maxims of daily duty is doing an injustice to them and doing an injustice to the state at large.

Mr. BEATTY. What is your amendment?

SECRETARY reads: *Provided,* That nothing therein shall be construed to prevent the reading in the public schools of those portions of the Bible as inculcate lessons of morality.

Mr. REID. I would like to hear the original amendment read.

SECRETARY reads: *Provided,* That nothing herein contained shall be construed to forbid the reading of the Bible in the public schools in any commonly received version, nor to enjoin its use.

Mr. REID. Mr. Chairman, the substitute offered by the gentleman from Shoshone does at last open the door. Who is to decide what portions of the Bible inculcate morality? Some of the most beautiful lessons of morality are contained in the very portions he would have to exclude. Take the story of Joseph, and a thousand others that can be found anywhere in those portions that he proposes to exclude. And then there are some of us who do not want any Catholic bishop or Episcopal bishops either to dictate what portion of the Bible we shall read or shall have taught to our children. Just take the Bible that we all learned in our youth, and there is not a man here who will not stand upon this floor and say it does not teach some of the basic doctrines—he may not believe in it, but as a code of morals he learned when he was young, that his mother learned him; take the Bible as the little child heard it read, take that code just as it is—and they believed what they taught us. You leave the Bible and its teachings out of your new state, take them out of your new government, and ask admission into the American Union, after putting in a prohibition so that if they choose the Bible will not be read, or some superintendent of pub-

lic instruction may decide that it is a sectarian book and that the code of morals must be excluded on his dictum—I say leave that out of your constitution and have it go forth to the people of this territory that this convention here, with a chaplain to pray for us from day to day, and which rose up promptly the other day and decided that this proposition here of having no money spent for religious exercises in the state legislature, that that should be voted down almost unanimously—I believe with the exception of one or two votes, and let it go forth that this discussion was had here, and that it was the sentiment of this convention, by not putting in that clause, that they might exclude the Bible from the public schools, and I tell you the Christian people of this territory—and I do not mean by that the members of the churches, I mean by that nearly every man in it who has had Christian rearing, every man who has learned from his mother that the basis of this life is learned from that book—will rise up and put his foot on this constitution.

Mr. PARKER. The duty of the state, Mr. President, is simply the teaching of the children of the community the three R's—to learn to read, to write, and the rules of arithmetic, and the duty of the state ends right there. If the state has authority to put in the constitution instructions that our public school teachers shall teach such morality, it is their duty to enact for the legislature in this organic law provisions which shall give the legislature authority to punish those children who transgress those laws of morality which you will teach by this constitution. Mr. President, in a territory like this we have a large and cosmopolitan population, and I ask you, suppose we had a school district composed of an equal number of Mormons, Catholics, Jews and Protestants. Now each denomination of people would have a view right in that school district to introduce the teachings of its own Bible in the school of that district. What is going to become of your school system then? You are going to

have a condition of setting the neighbors by the ears which will be subversive of the system—subversive of the school system. The code of Mormon, Mr. President, the Bible of the Mormons, they would naturally want to introduce that and have their children taught that, and so the Protestants would want the Protestant Bible introduced, and the Catholics would want the Catholic Bible introduced, and the Jews, who do not believe in Christianity at all, would want the Old Testament introduced and would require to have it read there. In my opinion, if the amendment is carried, it will be used as a lever to sustain these sectarian denominations in this country, and our public school system cannot stand it.

Mr. WILSON. I hope the section as originally reported by the committee will be adopted by the committee of the Whole. I think this discussion has developed more hypocrits upon this floor than anything else before the convention. I have heard men stand up here and advocate that the Bible be read in the public schools who know no more about the Bible than they do about the book of Mormon. I have heard men advocate that the Bible be read in the public schools who know more about draw poker than they do about the Bible, to my certain knowledge. I believe in advocating what we think, and not talking for buncombe or for our records.

The gentleman from Bingham suggested that he believed in the majority ruling. I believe in the majority ruling all temporal affairs, but I do not believe in the majority ruling in spiritual affairs. I know that the gentleman from Bingham is a pronounced anti-Mormon. If he carries out the principles he advocates, then in his opinion a majority in Idaho ought to rule, and nobody knows what the rule of the majority in Idaho will be. It is well known that in this territory there are at least four sectarian Bibles. There is the Jewish Bible, which is the Old Testament, and the Catholic Bible, and the Protestant Bible, and the book

of Mormon, whatever it may be—that is not the Bible, of course. But each of these sects represents an important factor in our population. I believe that if the Bible is not a sectarian book, then the Bible can be read and will not be prohibited by Section 7 (6). The gentleman from Nez Perce, Mr. Poe, has stated that in his opinion the Bible is not a sectarian book. I do not myself believe it is a sectarian book. The supreme courts of a good many states have decided it is not a sectarian book. I know the supreme court of the state of Ohio decided it was not a sectarian book, as did the supreme court of the state of Pennsylvania; and therefore the reading of it would not be prohibited as by Section 7 (6) as it stood originally. What some of the superintendents of public instruction in this territory may have decided heretofore I do not know. I know that we have had superintendents of public instruction in this territory for the past four years, and their decisions have been based upon what they thought was right. I know the decision, if I recollect it right, to which the reference has been made, was made for the purpose of excluding the book of Mormon from the public schools, and not the Bible.

I am in favor of the section as originally reported by the committee, and I believe that is the actual sentiment of a majority of this convention, if they will speak their sentiments.

Mr. MYER. The decision was rendered that the gentleman refers to, regarding the Bible being a sectarian book. It was sent up from the superintendent of Boise county to the superintendent of the territory, and the superintendent of public instruction decided that the Bible was a sectarian book, but I dare say there is no book of Mormon within the precincts of Boise county.

Mr. MAYHEW. Mr. Chairman, I had not intended to take part in this discussion, and I do not intend to take any part in it now, but there is this to be said. I shall vote to support the amendment of the gentleman

from Ada, that nothing in this constitution shall prohibit the reading of the Bible in the schools. Mr. Chairman, it is not the reading of the Bible in the schools that creates a feeling of sectarianism. I do not believe in the theory that the Bible teaches sectarianism. I shall not enter into a discussion about the Bible teaching morality, further than to say that I believe it is the greatest code of morality ever written by mortal man. While I do not practice its teachings, while I do not adhere to the admonitions of the Bible as my friend from Alturas does (laughter), while I never have had any disposition to slur any person as to his religious opinions, I believe in that Christian doctrine that every man should worship God according to the dictates of his own conscience, and I do not propose to get up in this convention and tell how grand and great a Christian I am, for I know that no one would believe it. (Laughter). I have not heard any person upon this floor making slurs as to any person's religious opinions. But one thing that strikes us and that has made considerable hurrah, is to see how pure and Christian-like some people pretend to be when we know they are not.

Now Mr. Chairman, take a living example in a school of the United States where the Bible is read. It is read there by its teachers in that school, but none of the teachers are permitted to teach any sectarian doctrine. They are not permitted to teach or tell them the doctrines of the church that I have adhered to for my own reasons, and that is the good old Methodist church. That is Girard College in Philadelphia. While the Bible is there taught, while the Bible is there permitted to be read, no sectarian teacher is permitted to enter that college. None who teaches sectarian doctrine is permitted to go into that school. Yet that school has produced and turned out some of the best and most learned men in the state of Pennsylvania. I, for one, Mr. Chairman, desire that the Bible may be read in our schools, but that no sect shall teach in the schools any sectarian doctrine.

Mr. SHOUP. I have no disposition to continue this argument any further, Mr. Chairman, but I wish to say a word or two in regard to some of the strictures that have been placed upon members of this convention. The members who oppose this amendment have not said anything against the Bible at all, have not said anything against the morality or teaching of the Bible; they simply say that they do not think it should be taught in the public schools, that that is not the proper place, that it will create strife and dissension. Now if the majority of the district vote that the Mormon Bible may be read in the public school, whatever that can be, and impose upon them their Bible, although they are not a majority but do not believe in it at all, that is a matter in regard to compelling others to keep out of the schools altogether. Allow everyone to be taught all the religion their parents desire them to be taught, but in the proper places, in the churches and Sunday schools and a great many other places where it is the proper place to teach them. But I do not think, because any member gets upon this floor and expresses his opinion he should be gagged, or that members should get up and make long and eloquent speeches and references in regard to their mothers and early youth and all such things as that, or that any member on this floor should be condemned for anything he believes right and proper. I do not propose to have any such whip lash cracked over my head, and I will vote just as I think right and proper on all occasions.

Mr. AINSLIE. Like the gentleman from Shoshone I had not intended to take any part in this discussion, but there is one thing—the statement has been made that this is a Christian nation. I deny the proposition in toto. I deny that Christianity has anything to do with the government of this country, any more than has Mormonism or Mohamedanism or any other religion. And while a majority of the people of the United States are no doubt of the Christian faith, it is not through any indorsement of the constitution of the

United States or any enactments of the legislature. I believe, sir, in keeping religion and state as far apart and separate as possible. I believe in the Bible and in the teachings of that book as firmly as any man sitting upon this floor. I believe in the divinity of Christ and in the Christian religion; but, sir, I am willing to accord to others, however they may differ from me, the same right and privileges in the common schools of this land, for which they pay taxes to support, as I have in sending my children there.

Now if you teach the Bible in the public schools, there is a large class of people in the United States who have the same right in the schools that I have, who certainly will not attend them. We know that it is a matter of history, and will repeat itself in this state. I do not believe in teaching the Bible in any schools, unless it is schools supported by private subscriptions and private enterprise. I believe in teaching the great moral principles of the universe in the public schools, but not through the Christian Bible or any other Bible; they can be taught by precept and example that they go together. I believe the Bible is without doubt a religious book; they say it is not a sectarian book, but that it is a religious book there is no doubt. I say the place to learn your children religion is in your churches, Sunday schools, and in your domestic circles. I do not believe, under the conditions existing in the United States, who combine within themselves every religion probably upon the face of the earth, when taxes are contributed and the principle generally forced upon the people that they shall pay their taxes—every denomination and every religion, to support the public school, that they can be brought over to the belief of Christians if we introduce the Christian Bible in it.

Now, Sir, while I have these religious impressions I am not going to be as strict about them as many people are, but I say that the putting of the Christian Bible into the public schools will be a damage to the schools,

and I say this too; keep religion and state affairs as far apart as you possibly can.

The CHAIR. The question is upon the substitute of the gentleman from Shoshone.

Mr. AINSLIE. I would ask for the reading of the substitute. There is a portion of the substitute offered by the gentleman from Ada that I am willing to support. I think the question is divisible.

Mr. BEATTY. There was an amendment offered by the gentleman from Washington, Mr. Hasbrouck, which I would like to hear; I would like to understand that before I vote. I think there is merit in it, and I would like to vote for it.

SECRETARY reads: Amend Section 8 (6) by inserting after the word "color" in line 6 the following: "No books, papers, tracts or documents of a political, sectarian or denominational character, shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article."

Mr. HASBROUCK. It will be observed it is simply an addition to Section 8 (6), and the object of it is to make it stronger than the section now appears. It does not need any argument on my part to state what its effect will be, after the lengthy discussion we have had upon this subject, and therefore I will not take up the time of the convention because I think it is perfectly clear. I have nothing more to say upon it.

Mr. REID. I would ask the gentleman from Washington county, could the superintendent under your amendment exclude the Bible on the ground that it was sectarian?

Mr. HASBROUCK. I don't know whether he could or not; it would depend simply upon the power——

Mr. REID. Well, under any ordinary construction.

Mr. HASBROUCK. I don't think it would.

The CHAIR. All those in favor of the substitute

of the gentleman from Shoshone say aye. (Vote). Opposed no. The noes seem to have it; the substitute is lost. The question recurs on the amendment of the gentleman from Ada, Mr. Clark.

Mr. REID. I think it is on Mr. Hasbrouck's amendment.

Mr. CLAGGETT. The gentleman from Ada offered an amendment to the original section; to that Mr. Hasbrouck offered an amendment. I offered a substitute for pending amendments, the one that has just been voted on. The question now——

Mr. REID. Mr. Hasbrouck offered an amendment to the section, and Mr. Clark offered an amendment to the section. That would bring Mr. Clark's up first.

The CHAIR. I understand Mr. Clark's amendment comes up first. The question is upon the amendment offered by Mr. Clark of Ada.

SECRETARY reads: *Provided,* Nothing herein contained shall be construed to forbid the reading of the Bible in the public schools in any commonly received version, nor to enjoin its use. (Cries of "Question"). (Vote; division called for. Rising vote, 23 ayes, 25 noes).

The CHAIR. The question now recurs on the amendment of Mr. Hasbrouck.

Mr. POE. What is that?

SECRETARY reads Mr. Hasbrouck's amendment again. (Vote).

The CHAIR. The chair is in doubt. (Rising vote, 25 ayes, opposed 22). The amendment is carried. The question now recurs on the section as amended. It is moved and seconded that the same be adopted as amended. (Carried).

Mr. SWEET. Mr. Chairman, I would just like to ask for a little information. How does it come that we are not permitted to vote on the substitute at all. I did not hear that substitute presented.

The CHAIR. The substitute was put and lost. The clerk will read the ninth section.

SECTION 7.

SECRETARY reads Section 9 (7), and it is moved and seconded that the same be adopted. (Carried).

SECTION 8.

SECRETARY reads Section 10 (8).

Mr. REID. I offer the following amendment.

SECRETARY reads: Insert after the word "therefor" in line 5 the following: "Provided that no school lands shall be sold except at auction for less than ten dollars per acre." (Seconded).

Mr. VINEYARD. I offer the following amendment:

SECRETARY reads: Amend by striking out all after the word "trust" in line 11, Sec. 10 (8), and insert the following: "And the state board of land commissioners shall at all favorable times and as opportunity affords, pursuant to law, rent or lease the said lands at a minimum not less than 25 cents per acre, in tracts of not more than 640 acres to any one person, for a period of not less than ten years nor more than thirty years, and it shall be the duty of the legislature to enact all proper laws as will at once be adapted to preserve the lands from deterioration and secure the largest revenue from their use."

Mr. PARKER. Mr. Chairman, I offer the following amendment:

SECRETARY reads: Substitute for Sec. 10 (8). It shall be the duty of the state board of land commissioners to provide for the location, protection, leasing or rental of all the lands heretofore or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible revenue therefrom. No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the revenue derived therefrom shall be diminished, directly or indirectly. The general

assembly shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust for the use and benefit of the respective objects for which said grants of land were made. The title to such lands shall remain forever vested in the state, and they shall never be encumbered by lien or mortgage for any purpose whatsoever. The general assmbly shall provide for the leasing and rental of said lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of said grants.

Mr. ANDERSON. I have an amendment.

SECRETARY reads: Amend Section 10 (8) by adding after the word "grants" in the 14th line, the following: *"Provided,* That no other land than Section 16 in each township be sold during the first twenty years."

The CHAIR. The question is on the first amendment, that of Mr. Reid, of Nez Perce.

Mr. PARKER. Mr. President——

The CHAIR. I desire to ask if the gentleman intends it as a substitute for the entire section.

The SECRETARY. It so reads.

The CHAIR. The question is on the amendment of the gentleman from Idaho.

Mr. PARKER. I have submitted my substitute with the idea that I did my amendment to Sec. 5 (4) yesterday. I do not pose as the special champion of the doctrine that prevails in this substitute. But my attention has been called to an abuse that has already sprung up in this land question, and in the northern counties, where it has already been a subject of great danger in this way of annexing school lands, in Idaho county, and in one instance in Nez Perce county, they have to my own knowledge even been fenced up and used for private purposes. Now, Mr. President, I would like that stopped, now and forever. I claim that under this substitute the land is vested in trust for school pur-

poses under the jurisdiction and control of the state board of land commissioners, and that that land can be leased or rented for a long period of years. It is on such terms, Mr. President, that the great properties owned by great educational and charitable institutions of the eastern states are held. The university of the state of California today derives all its princely revenue from the land grants bequeathed to it in early times, and which they had the sense and sagacity to hold on to. Senator Stanford, also of California, bequeathed that magnificent land grant of Palo Alto to the state for special purposes, in trust forever, Mr. President. So in the great universities of the east, Girard College, Harvard and Yale Universities, and all the kindred universities of the United States, derive their revenue from their landed possessions—possessions which they never part from, as you are proposing to do here. So in the old country Oxford and Cambridge and other universities have immense landed possessions which they have held from time immemorial and hold to this very day, and so it is all over the world. So in the great charities, Bellevue Hospital in New York, and St. Bartholemew and Christ Church Hospitals in the city of London—all have their landed possessions, which are the source of their wealth and revenue and charity.

It was claimed last evening that the lands would deteriorate and that the lessees would foul them, but they will deteriorate much more rapidly if you sell them and let them go out of your grasp, because once gone we can never get them back again. Neither do I coincide with the statements made on this floor last evening that land of this kind would be worth less in ten years than it is today; I cannot indorse any such doctrine as that, Mr. President. I see coming over the Oregon Short Line and Northern Pacific hundreds and hundreds of emigrants almost every day in the year; not a day passes but there are at least five cars of emigrants coming from the eastern states, and with this tide of population swelling over the Rocky Mountains and

carried right across our territory, we shall be built up with population, and these lands which are worthless today will acquire a value which we cannot now see nor foretell. I believe, Mr. President, as Senator Hearst said on the floor of the United States senate chamber, that there will be a population of two million souls in this great Snake River valley, and while you and I may not live to see it, we must bear in mind that we are laying the foundations of a state, not for ourselves, but for our children and our children's children, and for generations yet unborn. And, Mr. Chairman, this territory today seems so wide, and there is so much unoccupied and vacant land lying all around us, that we despise the possessions which Uncle Sam in his liberality has given us to hold in trust for our children. I say that neither I nor you have any definite idea of what this land is worth today which lies under the sun of Idaho or what it is going to be worth in the future. And, Mr. Chairman, when it is advocated here to sell these lands for the little sum of five or ten or fifteen dollars an acre, I say that we are looking at the value of these lands through the big end of the telescope, and that if that doctrine is carried out the state will eventually be the loser for it.

Mr. GRAY. Mr. Chairman, probably the gentleman could be called to order, and I rise to a point of order, because this very same matter was discussed on yesterday and was passed upon by the house, but under the circumstances it was impossible to call the gentleman to order.

Mr. MAYHEW. Mr. Chairman, I thought this question was passed yesterday, and was to be considered under this section, if I understand it right—this same proposition was passed over and was to be considered when Section 10 (8) was reached.

The CHAIR. The chair so understood it, that it was passed over to be considered when it was reached in its proper place.

Mr. REID. I want to inquire, Mr. Chairman, why

they say it is a substitute—the gentleman says so in his remarks offering it—and it is to strike out all after line 11 and insert. What I want to know is, how it can be a substitute if you are going to strike out part of the section and insert.

The CHAIR. The chair made that inquiry, and it was called a substitute.

Mr. SHOUP. The motion was not passed yesterday, and was voted on yesterday and was lost. I will call attention to Cushing's laws. Motions to amend are subject to the same rule as original motions with reference to their subject, viz.: That no motion to amend can be made which contravenes provisions of law or is inconsistent with a special order of the house, or which is substantially the same as a proposition on which the judgment of the house has already been passed.

Mr. VINEYARD. I do not now understand that the convention designed upon yesterday to pass for all time, so far as this convention was concerned, on the proposition of the public school land of this territory. In the debate which took place on yesterday, on the gentleman's proposition from Idaho, while I favored in the main the ideas embraced in his amendment, yet I voted against it for the reason that I believed it was in the wrong place in the article that was then under consideration and which is now under consideration by the committee. The committee has not yet risen, and the committee has arrived at no conclusion upon this article. Therefore this committee nor this convention has passed finally upon this question, as the gentleman from Custer seems to contemplate from Cushing's Manual.

Mr. GRAY. I desire to ask the gentleman a question: If the chair did not decide that it was not passed upon yesterday?

The CHAIR. It appears on the face of this amendment we call a substitute that it is really an amendment, proposing to strike out all after line 11 and insert this. The chair will be compelled to hold that that is an

amendment, and that after the other two amendments have been proposed and disposed of, it takes its place. The chair was in error in allowing the discussion to proceed on the theory that it was a substitute for the entire section, as was stated on the document sent up.

Mr. VINEYARD. Then the chair does not hold with the position of the gentleman from Custer?

The CHAIR. The chair holds now that the proper question is on the amendment of the gentleman from Nez Perce. The secretary will read the amendment.

SECRETARY reads: Insert after the word "therefor" in line 5 the following: *"Provided,* That no school lands shall be sold except at public auction or for less than ten dollars per acre."

Mr. PINKHAM. I would call the attention of the gentleman from Nez Perce to line 11, where it provides that no land shall be sold except at public auction, and that is merely a repetition.

Mr. REID. I had overlooked that, and I will ask that that be stricken out. All I want to provide is that all lands shall be sold at public auction; and I will inquire of the chairman of the committee, in the second line there, what do you mean by "the sale or other disposition?" Do you mean leasing, or some other way, mortgaging it to secure money on it? I suppose that term would mean that they could be leased, mortgaged and money borrowed on them for the use of the school fund.

The CHAIR. The question is on the amendment of the gentleman from Nez Perce. (Vote). The chair's in doubt. (Rising vote shows 23 ayes, 20 noes). The amendment is carried. The question recurs on the amendment of the gentleman from Alturas, Mr. Vineyard.

Mr. VINEYARD. If the amendment of Mr. Reid prevails, I don't see that the amendment I have in there, which is so diametrically opposite to his amendment, can prevail. I have my own ideas about these school

lands. The amendment which the committee has just now adopted cuts off forever the idea of leasing.

Mr. CLAGGETT. Oh no. Oh no. It just simply declares that that is a better proposition than the one in the section.

Mr. VINEYARD. Oh, excuse me; I didn't know that.

SECRETARY reads: To amend by striking out all after the word "trust" in line 11 in Section 10 (8), and insert the following: "And the state board of land commissioners shall at all favorable times and as opportunity affords, pursuant to law, rent or lease the said lands at a minimum of not less than 25 cents per acre, in tracts of not more than 640 acres to any one person, for a period of not less than ten nor more than thirty years, and it shall be the duty of the legislature to enact all proper laws as will at once be adapted to preserve the lands from deterioration and secure the largest revenue from their use."

Mr. VINEYARD. Mr. Chairman, this amendment is virtually the very idea contained, except as it is more guarded for the preservation of these lands than was the substitute, so-called, of the gentleman from Idaho county; it carries the same idea as was conveyed in that. I believe with the gentleman from Idaho that these school lands should remain to perpetuate the school fund, preserving a nucleus around which we may collect something for not only ourselves who live now, but for those who shall come after us. All the public, the great public institutions, not only in the United States but in Europe, as has been well said by the gentleman from Idaho, have been perpetuated and have grown in wealth by reason of just such safeguards as this which we now design to throw around these lands. The leasing of these lands under proper conditions and under proper restrictions of law as may be by the legislature prescribed, will increase not only the school fund but will increase the value of these lands as well, and if there should ever come a time when it would be

necessary to sell these lands, why, they would then bring a sum of money that properly managed would enure to the benefit of the school fund for all time to come and furnish free schools in this state always. Objections were made yesterday, in the argument that these lands would deteriorate under these leases, that they would become foul and all that kind of thing by improvident farming, but we propose under this amendment as drawn here, that it shall be the duty of the legislatures to make all proper and necessary laws, that will enure to the benefit of the state by the renting of these lands, and derive the largest possible revenue from them in their operation and under the conditions of these leases. The legislature may put ample safeguards in its legislation under this section, that will compel a party to farm these lands and use them to the very best advantage, not only to the lessees but for the benefit of the state. And I believe, gentlemen, if you want to preserve these lands inviolate and make them realize the largest possible revenue to the schools, that it can only be done in this way. I think if these lands are thrown open to indiscriminate sale, that there are any amount of land grabbers to be found, any amount of syndicates can be organized to gobble them up at ten dollars an acre, and in twenty years the school fund of this state would be impoverished by it. That is to say, we are liable to be without a school fund at the end of ten or twenty years if these lands are thrown upon the market now. There are no lands now to spare. We understand the increase of our population, and how it has come into the west and into this territory. Twenty years from now, land that is worth now ten dollars an acre, will be worth fifty, seventy-five and one hundred. According to the proposed plan now, on which this congressional committee of the senate proposes to come out here and examine these arid lands of the Snake River basin, with the view of national subsidy of water works, reservoirs, canals and ditches, which are too large for state or individual enterprise to take hold of,

if the government should think it wise to do so, all of these arid lands of the Snake River basin can be used and reclaimed as agricultural lands, and if so reclaimed would blossom as this Boise valley today, which thirty years ago was nothing but a desert covered with sage-brush.

Mr. GRAY. Mr. Chairman, I have a few words to say about this. But it seems that the basis of all this argument is that the legislature will be composed of men of no sense at all. They will not have the interests of the territory at all at heart; they will not come here for that purpose, only for the purpose of stealing something, or getting rid of something, or disposing of the public property to some land-grabbing syndicate—which I do not believe. And as to the renting of these lands at two bits an acre, I will guarantee that if the price be put for the rental of some of these lands under their present condition at two bits an acre, the heir of that man will enrich the ground before they are ever rented to anybody. It will take at least three or four or five years to put some of these lands in a condition that they can yield anything; a man could not make a living off of them as it is, without the state sees fit to make use of some other of the school monies to put water upon them and get it in a condition to rent. In the condition it is now, I say it would be imposisble to rent it. Why, a man couldn't raise anything but jack rabbits on it, and a very poor crop of them. So I do think that putting these indiscriminate restrictions upon the legislature, giving them no authority whatever to say—making this rigid rule, as he says that is the way we will realize money from them—is unwise. We set up this land board and suppose them to be honorable men; we trust that they will rent the lands as well as they can, that they will get as good a lease as possible. Portions of the land probably would rent far above two bits an acre, while there is a great deal of the land that would not rent for anything, and if it should be fixed here that they cannot lease them without receiving two

bits an acre, they will not be leased, because they are not in a condition to be leased. And there is probably land here that is worth maybe a dollar, and maybe a good deal more than that per acre. But I do believe that we are trying to circumscribe this too much—we are giving no latitude whatever. The conditions of the lands are varying; some are good, some are under cultivation now, others are arid. It will be worth more than the land to bring the water upon it. I really do not approve of the amendment to that purpose. Half the land as it now stands, without the state takes it in hand and spends a large amount of money upon it, never will be worth ten dollars an acre. I do not see any basis for it, for the fact of bringing water upon it is an expense, and no person could afford to do it on a thirty year lease at 25 cents an acre; it would be doubtful whether he could or not.

Mr. CLAGGETT. I see the hour of twelve has arrived, and I therefore move that the committee now rise, report progress on this bill, and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. HEYBURN. Mr. Chairman, your committee of the whole have had under consideration the report of the committee on Education, School and University Lands, and have come to no conclusion, and ask leave to sit again.

The CHAIR. If there is no objection the report of the committee will be received and lie upon the table. It is moved and seconded that we take a recess until two o'clock. (Carried).

RECESS.

July 23, 2:00 P. M.

Convention called to order by the president.

RECEPTION OF VISITING CONGRESSMEN.

The CHAIR. The hour of two o'clock this after-

noon was set by the convention specially this morning, for the purpose of receiving the congressional delegation now in this city. I presume they will be here before long. Nevertheless, we might transact some business before they arrive, and in case it is not desired to transact business after they arrive we can take an informal recess.

Mr. GRAY. Mr. President, how soon will they arrive?

The CHAIR. The sergeant at arms informs the chair that they are already in the building. In the execution of the order which was made this morning with reference to their reception, I would like to suggest that when the committee escorts the gentlemen into the room, the convention rise and stand; that when they are seated a resolution be offered by some member to take a recess of one hour for the purpose of having an informal reception.

Mr. BEATTY. Mr. President, before that delegation gets here, I desire some suggestions to be made as to what we shall do after they come. If we have a recess of the body, how shall we occupy the time, and how by that means will we be able to hear from them? I understand that it is expected that they will probably address us upon some invitation. We do not know of any program, and the question has been suggested whether it would not be well for us to continue in session and give them an invitation to address us while we are assembled as a body instead of as a disorganized assembly. We would like to hear some suggestion from the chair upon that.

The CHAIR. The convention made a special order this morning and provided no program. The matter certainly should have been attended to by the committee on reception, and in the absence of a program the chair would simply suggest that when they come the convention stand as a body, and as to a resolution for a recess be taken on their coming in, the chair can do nothing more than suggest it. My own idea about it,

however, is this, that when the gentlemen arrive in the hall the convention receive them standing, and remain in session as suggested, with the request that they address the convention if they so desire, and that on the conclusion of their addresses we then take a recess for the purpose of making their personal acquaintance; and if somebody will put it in the shape of a motion we will know——

Mr. MAYHEW. Mr. President, I don't know that these gentlemen desire to address the convention upon any subject at all. I don't presume to say that they want to sermonize or dictate to this body or to the people of this territory, and I think we should wait for the report of the committee.

Mr. POE. I would state for the information of the gentleman from Shoshone that I heard the governor state to Mr. Dorsey that they would be expected to make some remarks to the convention, and he acquiesced in it. Therefore I presume they expect to make some remarks to the convention.

Mr. GRAY. Didn't that committee that was appointed attend to all those matters?

The CHAIR. It was not attended to, apparently.

Mr. POE. Mr. President, I move that the convention receive the delegation while in session, that when they shall come into the building the convention rise and receive them standing, that they then take their seats and that the president request them to address the convention, making any remarks to the convention they think proper, and that after the addresses the convention take an informal recess of half an hour.

Mr. HEYBURN. I second it. (Motion put and carried).

Mr. SAVIDGE. I move that the sergeant at arms be requested to notify the reception committee that we are now ready to receive the visitors. (Seconded and carried).

Mr. AINSLIE. The committee on the reception of the congressional members have consulted the governor

and Mr. Dubois, and I think it would be proper to bring them in and have the governor introduce them to the president of the convention, and that he can request them to the effect that we would be glad to hear a few remarks from them upon our proposed statehood, and I think each one of them will make a few remarks. After that we can take a recess and introduce them individually to the members, if that suits the convention.

The CHAIR. That action has already been taken by the convention.

Mr. AINSLIE. The gentlemen will be up immediately. (The committee returns with the members of the congressional party).

The CHAIR. Gentlemen of the convention, you are honored upon this occasion by the presence of several distinguished members of the house of representatives, who are not traveling through this western country for pleasure entirely, but who have wisely taken advantage of their opportunities to fit themselves more perfectly in the future for the consideration of the great needs of this portion of the great west. By order of the convention the chair now presents the delegation of the gentlemen who are here present, and invites each and all of them to be kind enough to address at least a few words to this convention, with regard to the object of its convening and its purposes.

Governor SHOUP. Mr. President and gentlemen of the convention, I will introduce to you Mr. Dorsey of Nebraska, who is at the present time a member of congress. (Applause).

SPEECH OF MR. DORSEY.

Mr. DORSEY. Mr. President and gentlemen of the constitutional convention of the territory of Idaho. I assure you that it affords me much pleasure to be with you at this time. This little party that I am chaperoning through the northwest comes at my invitation. I am a western man myself, thoroughly identified with the interests of the great west, and since I have had the honor to serve my district in Congress, sometimes I have made

statements upon the floor of the House, in committee and in the lobby, the correctness of which have been questioned. It appears to me that our eastern neighbors understand too little of the magnitude of this great West and the wants and necessities of the West; and sometimes when we tell the exact truth in reference to our actual condition, in reference to our growth and wealth, and especially when we speak of the possibilities that lie undeveloped, they question the statement, and indeed they say, it is a western lie. You have all heard it, you know how it is yourselves, all of you, for I know you are all eastern men, and when you go back and tell your old neighbors in the East about the great crops you raise here in this beautiful valley, about your fruit and mineral productions, your mines,—O, they say, that is one of those western yarns; how John has learned to lie since he has been out West. (Applause.) Now so far as I am concerned I am tired of it, and I propose to have some affidavit man, some eastern man who will be an affidavit man, and who will swear in future to every statement made, and each and every member of the party pledged me to that after they left Nebraska. (Laughter).

Now I would like to talk to this convention; there are many things I would like to say to you, but Mr. Burrows of Michigan, of whom you have all heard, and who is to be the next Speaker of the House of Representatives, you understand, (applause) and who consequently will appoint the committees—and no man under our government has as much power, excepting the President, as the Speaker of the House of Representatives,—he wants to outline your duty, and he can do it,—I cannot. He wants to make suggestions to you that you should follow, for you are here as I know to frame a constitution; and after that constitution has been framed and submitted and ratified by the people and presented to Congress, then you shall be admitted, and Idaho will take her place as one of the sisterhood of states. (applause.) So far as I am concerned, it is not necessary for me to pledge you that I am in favor of the early admission of Idaho. (applause.)

Gentlemen, make a constitution that will not be objected to. You know what is needed much better than I can tell you. When I look around me upon the gentlemen who compose this convention, why, I am almost ashamed even to make a suggestion to you, for you understand your wants and come here prepared. And now let me tell you,—for I helped steer Nebraska into the Union; I lived in Nebraska when we were under territorial government, and I was, as hundreds and thousands of others of our people, anxious for admission, knowing that it would help to increase immigration, and that we could get out of our leading strings, would not be a dependency any more, and I suppose you

feel the same way. We elected our legislature for the state, we elected our state officers, we elected a representative in Congress, we presented our constitution to be admitted. Our legislature proceeded to elect two senators, who took their seats. We had no trouble whatever, excepting in one word that should have been left out,—we put in the word "white." And Congress returned it, and said that when the legislature met and would strike out the word "white" from the constitution, then the President should issue his proclamation, and that was done.

You have serious questions here to discuss and settle. The Mormon question is a burning problem in Washington. We have been down in Utah, and I say to you now that I had the honor to serve on the Committee on Territories in the last Congress, and perhaps I had a better insight than a great many others into that Mormon question, for we heard it discussed by the ablest men of this country for two weeks in committee. When the committee was first organized by the 51st Congress, there was not a member of that committee that was in favor of the admission of Utah. But at the closing days of the second session somehow there appeared to be almost a majority of that committee in favor of it. It was kept—we kept that back by a minority of the committee, every member of the minority,—I was in the minority of the committee, a minority representative attended every meeting of the committee, and by the help of one gentleman on the majority we managed to put that off. That question will be brought up in the next Congress, and I don't know, but I am satisfied that Utah will not be admitted during the next four years. What effect that question will have upon you people in Idaho, you must be the judge, but prepare to guard against it.

Now as I said at the commencement of my remarks, I shall not attempt to outline to you your duty or make any suggestions, but I will leave that for my friends Burrows, and if he omits anything I am sure Gen. Goff who will follow him,—for I want you to hear from him; he is a very modest man and got back in the corner, but you insist upon hearing Gen. Goff,—will take up and discuss what he omits.

Now, gentlemen, allow me to thank this convention, your president and your good governor, and I shall not omit to mention my good friend, the distinguished gentleman who represented this territory in the last Congress. Perhaps it was my friendship for him that caused me to feel somehow a personal interest in Idaho. But I have tried to serve you, and I did, to the best of my ability as a member of the committee on Territories.

Now let me thank you for the kindness to us on this our little trip through this western country, in giving us this pleasure and in showing us this beautiful valley which is a surprise to

all of us, and I wish to say that we appreciate now—I do, much better than I did before, the wants and necessities of Idaho, and if I can do anything to advocate your material interests, by voting liberal appropriations for irrigation, by doing any and all things that will tend to build you up and make you a grand commonwealth, I shall most gladly do so. (applause.)

Mr. DUBOIS. Mr. President and gentlemen of the convention, I learned from Senator Dorsey to call upon Mr. Burrows, who will address you for a few minutes on matters pertaining to the constitutional convention. It affords me now great pleasure to introduce to you Mr. Burrows. (Applause).

SPEECH OF MR. BURROWS.

Mr. BURROWS. Mr. President and gentlemen of the convention. Our friend, Mr. Dorsey, says that he has brought along some affidavit man to swear to the truth of every statement made since we left Nebraska. It was very wise for him to do that, for I am sure none of us would have sustained anything he said within the state of Nebraska. (Laughter.) For I think he lied from one end of the state to the other. (Laughter.) But I was in hopes in this era of reform that he had reformed, but he made two misrepresentations in his brief speech. One was that I was to be Speaker of the next House of Representatives, which is not within the range of possibilities, (Laughter) and the other was that I desired to address this convention and lecture them on their duty. I have not the remotest idea of doing so,—I have nothing to do with that, and I have too keen an appreciation, gentlemen, of the value of your time, to detain you one moment.

I congratulate you, however, upon the initial steps you are taking towards the goal of statehood. This assemblage of the chosen men of this territory, coming from the body of the people, representing its wealth, its culture and its intelligence, shows that the thought uppermost in the minds of the people of this territory at the present time is that you may become a member of the great confederacy of states. It is your right to thus assemble in convention, because one of the most sacred rights guaranteed to every American citizen is that right to petition Congress for a redress of grievances, and if there is any one grievance more severe than another, it is for the intelligent people of a territory, bone of our bone and flesh of our flesh, to be held in vassalage by any government or by any power. (applause.) The right of self government is the very essence of

American liberty, and in the exercise of that right you are about to petition Congress to be admitted into the Union of these states.

Several questions, you will pardon me for suggesting, are very important. Of course it lies with Congress to determine whether you are to be admitted or not. If it should turn out that the suggestion of my friend Mr. Dorsey is correct, that I shall be chosen the presiding officer of the House of Representatives, I need not say to you confidentially that the committee on Territories will be all right. (applause.) In the city of Washington one of the most difficult things to catch is the Speaker's eye; everything else is attainable. But I want to say here and now that when the honored delegate, the distinguished gentleman who represents this territory, shall address the chair, in such a contingency he will have no difficulty in catching the Speaker's eye. (Laughter and applause.)

But allow me to say, gentlemen, that the most serious obstacle to my mind in the way of your admission into the Union, is not the question of irrigation, it is not the question that concerns your material affairs in the territory, but the most serious obstacle lying in the pathway of your admission into the Union is the question of Mormonism; and I can speak plainly to you about that. As stated by Mr. Dorsey, we have been visiting in Utah, at Salt Lake, and independent of the knowledge we possessed touching that question, some other information has come to my own mind. It is an open secret there,—so it was told me, —that when Idaho shall become a state more immigration of that class of people will come into this territory, to such an extent,—and that is the purpose,—to such an extent as to absolutely dominate its civil affairs. I was told within the last two weeks that 200 families emigrated from Utah into this territory. The people of that church are expecting that Idaho will be admitted into the Union. They do not expect that Utah will be, and Utah, if my vote and my voice can prevent it, never will be, (applause,) until she wipes from her escutcheon the abomination of the nineteenth century. Now your constitution will be very carefully scanned upon that question; and the most objectionable feature of the domination of the Mormon church is not polygamy,—that is but an outgrowth of it, and you may make your constitution as strong as you please upon that question, but it will not meet the demands of the Mormon people. I heard a sermon last Sunday (I suppose it was a sermon) in that great cathedral. I listened to it very attentively, and it only confirmed what I had heard before, that the Mormon church claims to have special revelations from on high. The gentleman discussing the proposition explained the mysteries of Joe Smith's

revelation, how, when and where it was received. The plates were lost. He was not there, but he said he knew every word of it was true, because he had had a special revelation from on high on that question, and therefore his followers, believing in him, implicitly believed that it was true. And then he said that in modern times, as in ancient times, why not have prophets who are in daily communication with a higher power? Then he said; we are loyal to the constitution of the United States, we are loyal to its flag, but I will be frank with you and state that when we receive a revelation from on high that is in conflict with either of those, we will follow the revelation to the death. Now gentlemen, no organization, whether religious or secular, no body of people in this country can dominate, either in the state or in the nation that acknowledges a higher power than the power of the government in civil affairs. (applause.) And if any organization of men say; we are true to the state, we are true to the national government, so long as nothing is revealed to us in conflict with those, they simply state that they recognize a higher power, a foreign power, and I care not, gentlemen, whether that body of men derive that power from above or below, or acknowledge the ruling power in England or in France,—speaking to ourselves,—it is dangerous to inject into the state or the nation any such principle, because it is the very essence of treason and disloyalty to the government. (Applause.) That is what the American Congress will scrutinize, and you must pardon me for suggesting that you go further than to say that polygamy shall be prohibited in this state; you must so frame your constitution, and you must by your constitution authorize the legislature of this state to so legislate as to make it *impossible*, and put it beyond all peradventure that the civil affairs of this state cannot be dominated by any outgrowth from whatever power foreign to the state. (applause.) State and church are separate in this country. An English king once said to a band of nonconformists; subscribe to this creed or I will harry you out of the land. Those brave men said: Be it so. The king declared: no bishop, no king. Be it so, they said; then we will go to a country to establish a church without a bishop and a state without a king. State and church are forever divorced, and the unholy alliance cannot be reconciled under the stars and stripes of the American Republic. (Applause.)

And in conclusion, gentlemen,—I ask your pardon for detaining you so long,—in conclusion let me say to you, that if you look to this thing well,—you cannot make it too strong within the bounds of reason,—if you look to it *well*,—I have no question in my own mind but that the day is not far distant, yea, before the close of the next Congress, when the star of Idaho shall

mount into the national galaxy and shed upon it a fresh and eternal effulgence. (Great applause.)

Governor SHOUP. Mr. President and gentlemen of the convention, I will now introduce to you a gentleman who has always been firm upon the Mormon question, who has always stood upon the right side—he is at the present time a member of congress—and it now affords me great pleasure to introduce to you Governor Stewart of Vermont. (Applause).

SPEECH OF MR. STEWART.

Mr. STEWART. Mr. President and gentlemen of the convention, this is a very unexpected call upon me, and I must say that I did not exactly like to be sandwiched between the distinguished gentleman from Michigan and the eloquent gentleman from West Virginia who is to follow me. I suppose it is upon the principle of contrast; you know they sometimes put a dark background in order to set out a beautiful picture, so they take this humble individual from New England by way of contrast to my eloquent friend from Michigan, and by way of further contrast, as you will observe when he commences his talk here this afternoon, to my very eloquent friend from West Virginia.

Now, Mr. President, I accepted my friend Dorsey's invitation to see this wonderful country, and I expected to travel through it observing, but unobserved. It seems that the program is now changed, and instead of observing I am observed myself, a thing I am not very much accustomed to, as I am a very modest individual, and never like to show myself unless I am absolutely obliged to.

Now one word about this territorial question. I have been very reluctant to make any suggestions at all, and indeed I have none to make. As has been stated, I have been somewhat interested in the Mormon question, as I happened to be upon the committee that reported the Tucker-Edmunds bill, which stands now as the great barrier to the progress of Mormonism in this country. And I could subscribe, I think, very heartily to what my friend has said, although I could not prophesy as he does. I do not know what the intentions of the Mormons are with reference to your territory. I know this, that it is an agressive,—a wonderfully aggressive and ably managed conspiracy against what I conceive to be the civil liberties of the people of this country. I know so much, and I have felt, as my friend has said, that evil as is polygamy, it is one of those evils which in my judgment will ultimately be cured by the good sense of the

community; the general sense of Christendom would after awhile eliminate Mormonism in its aspect of polygamy. But this is an organism which is a sort of theocracy, which commits the civil government of the country to the hands of a few men, which puts under and behind the door and in the dark those councils which result in legislation; nobody knows what is going on; nobody knows what is proposed to be done until it is accomplished. And its agents are employed everywhere; they travel not only through this country but through other countries. It is a secret religious organization, which comes as near the Jewish theocracy as anything which the wit of man has ever devised; in fact it is patterned after that.

Now as to your statehood. I don't believe that if Idaho is admitted in the next Congress, as I trust it will be, as a state, that there are Mormons enough on this planet to capture it. (Applause.) If I do not understand the character of the men into whose faces I look, then I am mistaken. But it is not in the nature of a body of resolute men who start right, a body of intelligent American citizens who are capable of organizing and framing a civil government and who breathe the free air of these mountains and the free air of these plains,—it is not possible that the ignorance and the superstition of the narrow minded emissaries from Utah or anywhere else will reconvert this state into a Mormon state; it cannot be done and it won't be done. (applause.) And for one, as a representative in Congress, I shall have no fear on that subject. And when your constitution is presented, if it bears upon its face those phrases that I saw today,—some gentleman showed me the phrases; I think there were two reports of committees, both of them very strong; perhaps I should prefer the stronger one myself; I think perhaps it would commend itself a little more to our people than the other, though I have no suggestions to make about that, for you are entirely competent to manage your own affairs I think; if I did not think so I would not vote to admit you,—if you present a constitution to Congress containing those provisions, whether of the minority or of the majority report, I will accept it myself, and I will vote for your admission and advocate it. (applause.) I will advocate it not only because I think it is your inherent right as American freemen and American citizens, as pioneers who have left their homes in the East and the middle states to brave the dangers and hardships and deprivations of frontier life to establish a free state out here, but I say you are fit to be trusted with self-government, with the framing of a constitution, and such men, if any men on the face of this earth are entitled to self government. I do not say this, gentlemen, to flatter you. When I saw what I have witnessed,

even in my short travels through your country,—I saw some rather barren country out here; it looked to a New Englander who is accustomed to see the evergreen hills, as we call them, and the fertile plains that are always green, and refreshed as they are by the windows of heaven without any special machinery for irrigation,—I thought as I looked out, and my good friend Dubois was pointing out what a wonderfully fertile country that was, (laughter) I said to myself, my farmer friends in my district in Vermont in the Champlain valley would not give a bad sixpence for this whole country—why, there is nothing there. They sometimes used to say in New Hampshire, the state that adjoins mine, that the country was so stony they had to sharpen the noses of the sheep in order to let them feed at all. (laughter.) But a New Hampshire farmer would not exchange his granite hills for this country as it appears. But when my friends took me out around in a carriage, and I saw on one side a desolate field of nothing but sagebrush and uncultivated spaces of barren ground, and on the other side a fruitful field of grain, potatoes, corn and all the various grasses, and when I was told that seven or eight or nine or ten tons to the acre of grass was only an ordinary crop here, (laughter) when the farmers in my country are very much gratified if they can get two tons to the acre,—and it takes them all of the year to get that, (laughter) then I said to myself, after all, this country is worth saving, this country is worth cultivating, and the people of this country deserve encouragement. If they come here and turn this wilderness into a blooming garden, as they do by the use of water, these men are the founders of states,—men to whom I always feel inclined to take off my hat. There are only two classes of men that are really entitled to very great credit in this world in the civil sphere,—the founders of the state and the saviours of the state. These gentlemen that wear the button, that we have so much respect for, these grand army fellows, are the men that have saved the states, and you are the men that not only have saved states, but you are founding states, for many of you have belonged to the grand army.

Now Mr. President and gentlemen, I have been very much gratified at what I have witnessed. I need not say that I have been surprised,—I expected to be surprised,—but I have been very much gratified and pleased at the cordial and hearty reception which you have extended, you gentlemen of the western frontier, to us of the far east. It has made me feel more than ever before the kinship that belongs to citizenship in this great country. We strike hands across the Ohio, we strike hands across the Mississippi, we strike hands across the great fertile plains and valleys that Mr. Dorsey represents, we strike hands across

this great range of mountains, and here we are, all American citizens, and soon to be under one flag, all of us, I trust,—under one flag now, in a sense; and one of the things which gratified me here, as it has everywhere, and one of the reasons why I say to you here that I feel such an intense interest in the admission of these new western states just as soon as they are fit for organizing and understand how to organize and how to run a state government, is the attention which you pay to education. That has been noticeable all along the line since I left the Missouri valley. And when I drove around here through the streets this morning I was not at all surprised when your excellent governor said: That is our school house. Well, now, here is a little village, I said, of several thousand people, and in a town only twenty-five years old, and there is a school house,—a beautiful school house, with seven hundred scholars. What did that cost? Well, $60,000. Well, you need not say to me that a people that have built their school house as soon as they could,—come and built this magnificent school house and begun to educate their children, are men that are not fit for self government. I do not care whether you have 150,000, or 200,000 or 50,000 population, provided you have this organizing capacity and are able to set up and maintain a state government. You carry forward the two pillars of our modern civilization,—education and religion. Up goes the school house, up goes the church; disorder disappears, lawlessness vanishes. It lingers along on the fringe of the frontier line, just as the savage, the wolf, and the wild beast lingers along the frontier, but how quickly they vanish when the habit of order and law-abiding citizenship comes in. Here you have it.

Now just one word more, Mr. President, and I have done. I want to thank you in a sort of personal way, because this meeting is most unexpected. I did not suppose I should be called upon to say a word until I was at dinner today. Of course what I say is entirely desultory, but I want to thank you gentlemen personally whom I never met before and whom I may never meet again, for the exceeding kindness and cordiality which you have extended to me as well as to my associates, and I shall carry with me when I return to my home in the far east, not only a very pleasant recollection of your exceeding kindness, but also a new and deeper interest, and certainly a more intelligent interest in this great west, which you are so rapidly bringing forward into the bond of our American civilization. I thank you, gentlemen. (Applause.)

Mr. DUBOIS. Mr. President and gentlemen of the convention, it now affords me pleasure to present to you

a gentleman who has distinguished himself not only in his own state but also in the last congress, and who is an ardent friend of the territories. I now present to you General Goff. (Applause).

SPEECH OF MR. GOFF.

Mr. GOFF. Mr. President and gentlemen of the convention. I am profoundly grateful to you for your generous greeting, which is as unexpected to me as it could possibly be to mortal man. I had no idea when I left my home in the mountains of West Virginia, on the cordial invitation of my distinguished brother of the house of representatives—Mr. Dorsey, for a journey through the western portion of the continent, that I would travel through the land that I have traveled through, meet the men that I have met, or be treated in this manner, of which I am so unworthy.

I have been told that I am a citizen of West Virginia; true, and proud I am to be a citizen of that little mountain state. But there is another citizenship that is nearer and is grander and is dearer unto me,—I am a citizen of the United States. (Applause.) The same starry banner that floats along the Atlantic coast and on the mountain tops of my own home, I find here, even out in the midst of the desert, and here in this beautiful valley where you live,—the proudest banner that floats in heaven today.

Now then, I also claim an interest in Idaho; it is common to us all. You gentlemen I hope feel an interest in West Virginia. That which affects you affects me. That which bears hard upon the people of Idaho crushes the people of the East just as well. I repeat that appeal to the kinship of man, to the brotherhood of mankind that my distinguished brothers made but a moment since, both of them so well and so eloquently. I glory then in the fact that this is my country, and that this is my Idaho just as much as it is yours. (Applause.)

Now there is another thing. Over in the land where I live,—and I notice the difference here,—we find too much of the dead issues of the past, while here I find you gentlemen moving on, side by side, elbow against elbow, fighting the living issues of today. Over in my state a few years ago men were contending in a mighty struggle, brother against brother and household against household; and those men are here today in the west, they are here in Idaho, they are here in all the great territories, and they have buried the dead issues and struggles of the past, and they are moving forward under our common banner, conquering the wilderness, doing away with the desert, and making our flag the great and glorious one that it is today. (Applause.) Over in

my country, living as I do in a town that has but lately celebrated its centennial, I want to say to you, and for your encouragement, if such it be, that you are not only equal to them, but you are ahead of them in the strife. (Applause.) Over in the land where a hundred years ago the wilderness had been pierced, you now have sprung forward in the last quarter of a century and passed them in the struggle of life.

Now I mean every word I say, and my home and the home of my boyhood is as dear to me as yours is to you. You gentlemen reap the benefit of the civilization for which we struggled; but we in the East and in the mountains of Virginia have only during the past 25 years breathed the pure air of eternal liberty that you breathe here in the west. (Applause.) Then we do not want the struggles of the past to interfere with us now, and I thank God that even out here on these distant plains I find them more thoroughly eradicated than I do even at my own home.

Now, gentlemen, I am, as my brothers have been, amazed all along the line that I have traveled. I was ashamed almost, that I did not know more of my own country. There are a great many over there that are in the same fix I was before I came. And that my brother Dorsey says he desires his affidavit man for. I have everywhere met not only a great people, but a wonderful land I have traveled through. I have come on an uninterrupted journey from the Atlantic coast to this point, and it has made me prouder than ever of my country. I have come from the capital city of your nation, through my own mountains, across the broad bosom of the great state of Ohio, teeming with its industries and happy with citizenship. I have traveled across the broad plains of Indiana; I have journeyed through a great, wonderful land. I have crossed over the plains of Kansas, and in all this section I found, as I found here, a section of country that is even burdened with the wealth under which it struggles. I found grain fields, golden waving in the sunshine, from which the world is and can be fed, and I meet today even here, thousands of miles, so to speak, from the other side,—I meet here the same wonderful things, meet the same wonderful sights that I did when I journeyed a thousand miles back. Tnere is no end to it. It is indeed a fair land that is our heritage; it is indeed a wondrous tale that has been told to me. I meet everywhere I travel the best looking, strongest, handsomest men in this western country that my eyes ever gazed upon. (Laughter and applause.)

Mr. DORSEY. How about the ladies, general?

Mr. GOFF. I will not forget them; I have met them too. They are fair beyond all comparison, and the only reason that I have not alluded to them, or did not, was for fear of doing

violence and offending my distinguished and eloquent friend from Michigan. (Laughter and applause.) That is part and parcel of his prerogative, and we never impose upon the rights of the Speaker. It has actually caused me to wonder as to whether or not the people here in this section of the country had not found that wondrous fountain stream that Ponce de Leon sought for so long and in vain. I pledge you my word I have not seen a man that did not look just as I have said; I have not seen a lady in all the country that did not fill the bill as I have intimated. Now it is health, gentleman, it is the wonderful climate that a most propitious Providence has given you, it is the grand climatic influences that make you what you are and which you are utilizing and I believe when I gaze into your faces today that you will, and that causes me to blush at any effort I might make to tell you gentlemen what it will do. I have a notion of my own, an idea of my own, based not only upon personal observation and research, and the knowledge and information that I have gained during the past six years as a member of the House of Representatives. I know another thing. While I have never traveled over the western portion of my country I have traversed the eastern section over and over again. I have traveled frequently from the pine-topped hills of Maine all through New England and along down the southern coast, and I have traveled out through the West to a certain extent, and I know the feeling among the people there, not only as to this country but as to its future, and what can be best done to secure that future and the happiness of this people.

Now we may differ the one with the other, but we can reason the one with the other. I may have my political belief,—I have, and I may express sentiments not approved by those who honor me with their presence, but it is a right of our citizenship to differ, and it is our right and duty to reason the one with the other. If I am wrong you will convince me, and if I am in error, I am here to take your words of wisdom and bow in conversion before you. If I were handling the Mormon question, that these distinguished gentlemen have alluded to, I would search and study well the language that we speak and write, and I would make it as strong as Anglo-Saxon can be made, that this great monster of the century is to be thoroughly exterminated. (Applause.) I would not handle it with kid gloves. I would meet the monster now, right on the threshold of your existence as a state, and I would strangle it. In the language of the silent soldier of the century, that will live when you and I have been a thousand years forgotten, I would strangle it, if it took all summer to do it. (Applause.) And you need not fear about Idaho coming into the Union then. Why, gentlemen, we want

you. We want all the territories, when they have that organization that entitles them to this representation, to take their place, and to imprint upon our starry banner that additional star that they represent. But when Idaho comes down to the city of Washington and knocks for admission, you will find that the people who represent this great citizenship that I have alluded to, will turn first to see how you have handled the question that those gentlemen have already handled. This is no assertion of my own. I refer you to the debates in the Congress of the United States during the last dozen years upon that subject, and more especially during the last four, and you will see that I have not overdrawn the importance of this question. Then when you had prepared a constitution that did so deal with this crime, I would, as I know you gentlemen will, turn my attention to those matters that more specially affect your locality. Over in my country I would know them well, and I know that you gentlemen here understand it also.

I would do one thing. I would see to it and plant it deep down in the fundamental law of Idaho, never to be eradicated, I would put those protecting words and measures in it that would give for all time to the boys and girls of Idaho free, universal education. (Applause.) If there is anything that makes me proud of my own little state and the contrast that twenty years have wrought, it is to see, as I have lately done in traveling from one end of the state to the other, on mountain top and in valley, in city and in village, on the farm and at the cross-roads, the little white temples of learning, where the children of the rich and the poor, of the high and the low, the black and the white are called together, and there furnished with that information and that wisdom which is the wing with which they soar heavenward. (Applause.) And, gentlemen of the constitutional convention of Idaho, when you have so done you can rest assured that those representatives, that those men who speak for those distant sections, to whom I have alluded, will welcome you with open arms, and will so legislate that the starry banner of our country, as it waves, will wave also reflecting the glory and honor of your territory, then a state.

See to it, though, after this constitution has been formulated, that you get ready for the exercise of the functions of statehood. Have your elections; have them before Congress meets,—it meets in December; let your people speak by their ballot, and let it be known, not only that you, the men who came from your distant homes at the call of duty under the law, the men who make the sacrifice of time and money that you men do,—let it be known that not only you but the men behind you, the men who exercise the citizenship of Idaho, the men who are to cast the

ballots of this new state,—let it be known that they too are behind you. Gentlemen, it will carry a most extraordinary weight if it has been thoroughly demonstrated and before Congress convenes attention is called to the fact that the people of Idaho desire not only statehood, but desire statehood under the constitution that you have prepared. When you have done that, and when you have elected those officials and when you have chosen a legislature, and when your people have put it beyond recall that this is to be their fundamental law, when the act passes and when Benjamin Harrison has put his sign manual of approval to it, immediately thereafter be at the capitol of your nation with your two senators and your representative, so that there will be no cause for any delay of two years in acting upon the declaration that they are ready to assume the functions of that state government to which you are entitled. (Applause.)

Gentlemen, I have detained you too long. Again I return you my profound thanks,—to you, gentlemen of the convention that you have honored me, that you have given me the attention that you have; to you, Mr. Chairman, for your invitation, to you, Governor, and gentlemen of the committee, for your more than grand reception. The country that can do these things and the men who can do these things will never know failure. As I have made this wonderful journey and seen these wonderful things and met this gorgeous reception over mountain and plain, I have thought of the wonderful change that has taken place in my country and that will take place in yours, and I have thanked God that I was a citizen of this republic, that I was permitted to have my life and being here, and I have realized that it was grander to be an American citizen than it was to be a Roman senator. (Great applause.)

Mr. AINSLIE. Mr. President, I move that the convention take a recess of thirty minutes, in order that the gentlemen may be presented to the members of the convention. (The motion is put and carried. Recess).

CONVENTION IN SESSION. (AFTER RECESS).

The CHAIR. The convention has finished the special order of business.

Mr. MAYHEW. Mr. Chairman, I doubt very much whether there is a quorum here.

The CHAIR. The chair is informed that there is a quorum here.

Mr. MORGAN. Mr. President, I move that the

convention go into committee of the Whole on pending business. (Seconded).

The CHAIR. It is moved and seconded that the convention go into committee of the Whole for the purpose of considering the educational bill. All those in favor say aye. (Carried). The gentleman from Shoshone, Mr. Mayhew, will take the chair.

COMMITTEE OF THE WHOLE.

Mr. MAYHEW in the chair.

ARTICLE 9, SECTION 8.

The CHAIR. The committee had under consideration Section 10 (8) of Article No. 9. I am informed by the clerk that there were three amendments pending before the committee.

Mr. VINEYARD. Section 10 (8) is the one under consideration.

The CHAIR. This is the amendment proposed by the gentleman from Alturas, Mr. Vineyard.

SECRETARY reads: Amend by striking out all after the word "trust" in line 11, Section 10 (8), and insert the following: "And the state board of land commissioners shall at all favorable times and as opportunity affords, pursuant to law, rent or lease the said lands at a minimum not less than 25 cents per acre, in tracts of not more than 640 acres to any one person, for a period of not less than ten years nor more than thirty years, and it shall be the duty of the legislature to enact all proper laws as will at once be adapted to preserve the lands from deterioration and secure the largest revenue from their use."

Mr. CLAGGETT. Mr. Chairman, I offer a substitute for the entire section and all pending amendments and substitutes.

SECRETARY reads: Strike out Section 10 (8) and insert in lieu thereof as follows: Sec. 10 (8). The title to all lands which may be donated to the state by the United States for the support of the public schools shall forever remain in the state, unincumbered, except

as herein provided, and in trust for the benefit of the public school fund of the state. The legislature shall prescribe by law the terms and conditions upon which such lands may be leased, but no lease shall run for a longer period than thirty years. The legislature shall by law as far as practicable preserve all leased lands from deterioration and secure the greatest amount of revenue from their use. This section shall not be construed to prevent the sale of all merchantable timber on the school lands of the state under regulations to be prescribed by law."

The CHAIR. What is the pleasure of the committee?

Mr. VINEYARD. As the substitute offered by the gentleman from Shoshone covers the idea generally embraced in the amendment which I have offered, and puts discretionary power in the legislature to manage those lands under the proposition contained in that substitute for leasing, I accept the substitute, and with the consent of my second will withdraw that amendment.

The CHAIR. If there is no objection the amendment is withdrawn. Is this substitute supported? It is moved and seconded that the same be adopted.

Mr. GRAY. Mr. Chairman, I do not approve of the substitute, for I think that if there are any lands that should be preserved at all, it is the timber lands. There will be more derived from the timber lands than from any other; that is, if the timber is protected upon the lands. Timber is certainly becoming more and more valuable, and why these lands should be disposed of and the agricultural lands retained, is what I should like to ask the mover of this substitute.

Mr. CLAGGETT. I can explain to the gentleman from Ada—if he will listen to it—it does not propose to part with the title to the timber lands; it simply provides that the merchantable timber growing on the lands may be sold, leaving the small growth to come on, the title forever remaining in the state, and every forty years you will have a new crop of timber.

Mr. GRAY. Well, I shall oppose the amendment anyway. (Laughter). As I have heretofore claimed, I think there will be others that might have something to say about this besides us. And I think that if we leave this to the body to which it would properly belong, a body of honorable men, a body of men who will investigate this matter perhaps further than we have investigated it here, that they perhaps may be more practical men than some that are in this convention, and if they should see fit to dispose of these lands, that is, if it should be to the best interest of the state, it might be all right. And I will guarantee—there are plenty of school lands in this territory—that the interest upon that money would be far more advantageous, that it would help the present, because without the interest we have nothing, and if we leave it as it is, this present generation and these present people get nothing from it, and if we had that money at interest we would get the interest on it for our present needs; and perhaps our present needs, as we are poor now, are worthy of some consideration. Now if this land could be sold at what would be a fair price, if it could be converted into money, we would get something from it, and further than that, it would pass into the hands of those who would have to pay taxes, for which we get no taxation now. I cannot for my life see why we shall fasten this matter so that they cannot be disposed of, when it is to be put in the hands of this board at present, and after that the law would prescribe the manner in which they are to be disposed of. I can't see but what we would better leave this matter to the legislature, instead of tying up matters so that it is impossible for us to do anything with it at all. If this substitute passes we will never in our lifetime have received one cent's benefit from them.

Mr. ANDERSON. Mr. Chairman, like Judge Gray, I do not believe really that it is to the interest of our new state to put itself in a position so that it cannot sell any of these lands. In a rain-fall country there may be

a revenue at once, but here the preliminary expense before a man can raise crops on land is so great that I think it would be very difficult to rent lands to any advantage. For instance, I have been estimating a little, and I find that on a section of land, at the ordinary cost—and if these figures are overdrawn I hope any practical farmer in this convention will correct me—I find that on a section of land it takes about an average of $2,500 to clear the sagebrush off; to put a fence around that land, say $600; to plow it up, at something like $2 an acre, $1,300; if you pay the water rent, at a dollar an acre, which is a very moderate price—I don't think any farmer would want to buy a water right to put on rented land—the rent for water would be at a dollar an acre $600; to put on a house and stable and the necessary improvements would require some $500, say, making a total of $5,500. This takes no account of cross ditches on the section, no account of taking the ditch on to the land, and we have not yet got to the rental which is to be paid to the state. Now, Mr. Chairman, it strikes me that no prudent man is going to invest the four or five thousand dollars in permanent improvements necessary to be made on a piece of land that he is not the owner of; especially when he can buy land at almost government prices in many instances. I sent up a substitute this morning. I do not believe in parting with all these lands, but I believe in parting with part of them, and I sent up a substitute which I would like to have read.

The CHAIR. The chair was not aware of the fact; I asked the clerk about it, and this must be a substitute for the original section. I beg the gentleman's pardon if that was the case.

Mr. ANDERSON. No, I beg the chair's pardon; it was an amendment.

SECRETARY reads: To amend Section 10 (8) by adding after the word "grants" in the 14th line the following: "*Provided,* That no other land than Section

16 in each township be sold during the first twenty years."

Mr. ANDERSON. Now it is urged as an objection to selling these lands, that if they are put on the market the best lands will be given up, leaving the worse lands in the hands of the state. That amendment however fixes how much land may be sold in the first twenty years, and points out what lands will be sold. The condition is in the section here that it shall be sold to the highest bidder at auction, so that they cannot be gobbled up by speculators.

Mr. HEYBURN. Mr. Chairman, an idea is suggested by the remarks of the gentleman from Ada, Mr. Gray, that I have just been figuring upon. It is the idea that if these lands are sold they come within the class of tax-paying lands, and I have figured out about the taxes these lands would pay as a revenue to the state and county. Take these lands at $5 an acre, and at the rate of percentage we have established for state taxation, they would pay $48 per section in state taxes. That is the revenue the state would be deriving from them if it sold them, and it is a constant revenue, with a prospect that it would increase as the land increases in value and is assessed at a larger sum than $5 an acre. I am taking it by sections of land, and it would pay, at the average rate of county taxation about $96 per section, making each section of land yield a revenue in the way of taxation of $144 to go into the general treasury of the county and state, while if you leave the title remaining in the state nothing but the improvements, which would amount to nothing under those circumstances, would ever contribute anything in the way of taxation to the state, so that is an item in favor of disposing of these lands to those persons who will improve them and become taxpayers upon the lands and will come in and help support the general government,

Mr. BEATTY. Mr. Chairman, I have a substitute to offer.

Mr. McCONNELL. I supposed yesterday when this

question was discussed and voted upon that it had probably been settled, but as it is such an important question I do not blame the convention for taking ample time to thoroughly understand the matter. The committee which considered this question, consisting of Mr. James Shoup, Mr. Pinkham, Mr. Harkness, Armstrong, Batten, Chaney, Hogan and Mr. Bevan, are gentlemen whom you all know. They all gave this careful consideration, not with a view of any personal aggrandizement, but with a view of what might be the best interest of our future state. We came unanimously to the conclusion that this section was about the best provision that could be made, leaving the future management of it to a certain extent to the state. Now we don't want to look upon this matter as a question of theory. We have a great many theoretical farmers. You can go into any mercantile establishment in this town, and you will find some gentleman with lily-white fingers who will tell your farmer how he can run his farm better than the farmer knows himself. You will find lawyers here, and doctors perhaps, on this floor, that know more about the management of these public affairs than men who have been engaged all their lives in business transactions of this kind. But if you gentlemen will take your pencils and a piece of paper I will give you the arithmetic of the problem and spread it before you, and you can see how we came to these conclusions. We want first to make a careful estimate of the probable amount of land which we have that would be available for sale at the present time or for rental. You understand that these lands would be available for sale for agricultural purposes and also available for rental. Now then, I estimate that in northern Idaho, looking over the situation carefully, there are not over 35 sections in the counties of Idaho, Nez Perce, Latah and Kootenai of school lands; that is, in the total, counting parts of sections and adding them together, in the aggregate there are not more than 35 sections of land in northern Idaho. And I doubt whether there are

over 40 sections of land in southern Idaho—40 sections, that is, 640 acres each. You may come down to this valley, and where you strike school sections in this valley, where it is along the river, it is good land, and you can rent it or you can sell it, but in the aggregate I estimate that that is about the amount of land that would be available now for sale under the provision which doubtless congress will enact when we are admitted as a state. Under the recent enactment of congress it limited the sale of these lands to ten dollars an acre; in the recent enactment of congress as concerned this territory, ten dollars was the limit placed, and in speaking about it I will refer to this law as passed.[1] I am certain that was the limit proposed. I believe it passed one house, perhaps more; at any rate it was the bill proposed in congress, and the bill as passed for Dakota, Montana and Washington limited them to ten dollars, so that we can take that as a precedent. I presume congress will place the same limit on us.

Now with regard to renting the lands. Of course there is no gentleman interested in any job in this convention. I would not for a moment think of suggesting such a thing, of course, but in this theory of providing for leasing lands for a term of thirty years, I begin to smell the biggest kind of a mouse. You are going to do away with renting these lands for a term of thirty years, and take it out of the power of the legislature, or the power of any commissioner, to cancel that lease, provided the rental is obtained, and how many men are there whom you will find that want to rent these lands for that number of years? Now we might as well get down to these figures on this proposition. Mr. Claggett, have you your pencil? I am taking 35 sections in the north and 40 in the south, making 75 in toto; add those.

Mr. MORGAN. Forty-eight thousand acres.

1—Referring to Platt amendment to Mitchell Bill, Sec. 14. See Appendix.

Mr. McCONNELL. At an estimated value of $15 an acre, which I guarantee it can be placed at today, it would amount to the sum total of $720,000, if my figures are correct.

Mr. CLAGGETT. How do you make that?

Mr. McCONNELL. Well, if you will use the multiplication table, you will find how it comes out.

Mr. MORGAN. That is correct.

Mr. McCONNELL. Seven hundred and twenty thousand dollars. Now it is unnecessary to say that this $720,000 can be loaned on first-class farm security at 8 per cent. In fact, I know it can be loaned for 10 per cent, and so does any gentleman who is familiar with the process of loaning money in this territory. Now that would bring an annual income, at 8 per cent, of $57,600. Now you can take the rental, as proposed by the gentlemen here, who have proposed to rent this land at a maximum price of 25 cents an acre, and you will have an income of $12,000 from this land. By the process of selling the land and loaning the money you have a great difference in favor of the school fund, all the difference between $57,600 and $12,000, or you have $45,600 per annum in favor of selling the land and loaning the money. Now it will make no difference whether my figures are correct or my estimates are correct, as to the amount of land which can be sold immediately, or not. The same ratio would prevail, the same proportion, and if there are more than 48,000 acres of land which would be available for sale or rental, just so much greater would be the difference between the proposed plans of renting and selling the land.

Now we put this down, not as a matter of sentiment, but we put it down as a business proposition. We place the figures down on a piece of paper, as I have placed them here before you gentlemen, and if there is a man here in this convention who can get up and by any process of mathematics refute this argument, I would be glad to have him do it. But this theory that land will be worth in fifty years, or twenty years, from

now, $100 an acre, or $400 an acre, is all conjecture. There are certain instances where land has enhanced very materially in value; take for instance such as real estate in the vicinity of prosperous cities; but take the lands all over the United States, and it is a notorious fact today, a well known fact to political economsts who have made a study of this proposition, that lands are not so valuable by ten or fifteen per cent today as they were 25 years ago. And for that reason I can not see the necessity of our holding these lands for speculative purposes. Of course I would not be in favor of selling these lands for a price below what would be fixed by law, but allow the legislature discretion to sell these lands. The gentlemen who come here year after year are not all dishonest. They are as much interested as we are in the preservation of these lands and this fund. Many of them are husbands and fathers, and those who are not doubtless soon expect to be, and they will take as much pains with this fund's preservation—just as much as we. I would like to hear any explanation. I don't want a theoretical explanation of this matter; that does not satisfy me; I want an explanation that gets right down to cold figures. That is my plan of formulating a business proposition.

Mr. CLAGGETT. Mr. Chairman, I want to say a few words with reference to this substitute. I took pains to write it out carefully, so as to cover what I conceived to be the facts, and my friend from Latah wants me to face the figures. He don't want any, doubtless, other than his own. It was significant of one thing that the entire argument of my friend here is based upon the proposition that all of the available school lands today that can be sold at all are limited to 48,000 acres. If you take Sections 16 and 36 of each township and then apply it to a country of 84,000 square miles, you have very nearly 5,000 square miles of public lands. But still, as matters now stand, I think his estimate is about correct, that you cannot find over about 30 or 35 sections in north Idaho, nor more

than 40 or 50 in southern Idaho that can be available to sell now at as much as ten dollars an acre. So that as matters now stand we have a school fund, on this theory of 48,000 acres of land to be sold, not of $750,000, but of $480,000. Forty-eight thousand multiplied by ten, according to the rules I learned of arithmetic would make 480,000—$480,000. He assessed these lands upon an average valuation of $15 an acre, but I want some better authority for it than the gentleman's opinion—it is a mere matter of opinion. He has been calling for facts, and I am giving you my own idea of the facts. I do not like this way of getting up and talking about theoretical propositions. This is a practical body, and can take into consideration every suggestion that is made, and it does not require that a man should go to work and ladle out sugar over a counter, nor raise nor dig potatoes, or do anything of that kind, in order to have ordinary business sense, so far as that is concerned. (Laughter). I don't think that is any particular aid in making a man have any more sense than he was endowed with originally, that God Almighty gave him. (Laughter).

Now let us take these facts and figures that are here; $480,000 we have now, on the theory of selling these lands at an average of ten dollars an acre. If you invest that in farm securities as suggested at ten per cent per annum, you will have, in all human probability to foreclose almost every mortgage you take by way of security for your land, and deducting the expense of attorney's fees and all that kind of thing, and the necessary expenses of litigation will eat up a good deal of it—and a good deal of it will be lost—but put it down on the basis that you actually receive ten per cent on that $480,000, and you have got a total annual income of $48,000 a year. Putting it, however, upon anything like a more stable security, if you invest it in government bonds, you will only have four per cent at the very highest—generally three, which will come to about $12,000, or a little more than that, for the annual

interest of your school fund. But it is safe to say, I think, that good, perfectly reliable and secure security can be obtained at six per cent per annum, which will make the total revenue about $28,000 a year. We have 18 counties already, which will make a little over $1,500 a year to each county. And taking the estimate upon the proposition which has been suggested by the gentleman himself, that is the sum total of our inheritance, so far as the school fund is concerned. Now I respectfully submit, and I do so in all perfect good faith, that so far as this little temporary aid is concerned, we have come here into this country originally from all over the states, and as was so eloquently said by these visiting gentlemen today, we have not only taken care of ourselves, but we have built large school houses and erected a multitude of little temples of learning, in which the rudiments of learning are taught to the boys and girls of this territory. We are not poor in the sense that we cannot for the next few years, for five or ten years, if necessary, support our schools in good shape, even though we do not derive the aid of a single dollar from the school fund. I say, in addition to what I have already said upon this subject, this, that these same identical lands, this 48,000 acres of land, can be rented and made to bring in more profit and revenue, that is, now, than you can by their sale, taking a period of ten years from the time they are sold.

But, Mr. Chairman, I want to say one thing further. I utterly deny the proposition of my friend from Latah that lands in the United States are depreciating in value. It is true the worn-out lands upon the Atlantic seacoast are. Why? Simply because the construction of a railroad system into the Mississippi valley, where lands are so fertile and fruitful, and the competition in railroading, has brought freights down to a point where the farmer living in Vermont or New Hampshire, where I believe the gentleman came from, or even in the more fertile states of Maryland and Virginia, cannot successfully compete in the raising of ordinary agricul-

tural products against the richer facilities or production found in the Mississippi valley. But outside of that mere local cause for the depreciation of certain lands in a certain section, I appeal to the knowledge of every man upon this floor, that for at least half a dozen years or more there has been a boom in real estate, and lands are rising all over the country, and you can pick up your paper in any part of the western country, from California to the Alleghany mountains, and you will find it portrayed. Now why have all these lands gone up so suddenly? They have gone up just at the very time when the public at large throughout the United States has discovered that the public lands of the United States capable of being settled upon and improved, without being first carved out, as it were, by irrigation, are practically exhausted, and that the great means by which the values of real estate all over the east have been so kept down for at least a hundred years, is now gone, and we are entering upon an era when the value of real estate will be substantially what it is in the European countries, where they charge and collect by way of rental as much as ten dollars an acre every year. The gentleman laughs. Let me tell him that I have not put in so much of my time going over ledgers but what I have had plenty of time to read about this question with regard to European matters. Now I want to call attention to this: If you had, in the old days, when there was plenty of land to be taken up—if you had or any man had $10,000 in his pocket that he wanted to invest in purchasing land, what would he do? Would he pay $40 or $50 an acre for it where he lived, when by going a few hundred miles further west he could buy it for a dollar and a quarter or a dollar and a half? By no manner of means. And the whole history of the country for a hundred years past shows you that the men who are seeking for investments in lands have taken their money, besides their muscle, and gone to the west for the purpose of investing in cheap lands, and this abstraction of the very

capital which was ready for investment in land in the east, being passed to the west, has kept down the value of lands as the west was opened up, by the production of an equilibrium of value all over the United States; but the very moment that it came to be understood generally throughout the country that the land was practically exhausted, from that moment, six or seven years ago, there has been a constant increase, going up year by year, almost in geometrical ratio, in the value of lands all over the country, and everybody who is familiar with the facts of the case knows it to be true.

Now why take your little 48,000 acres of land, which according to the argument of our practical friend on the other side is all we can hope to make available now, and sell it to whoever will buy it, amounting to a little over $1,000 a year to each county, when by keeping these same identical lands for a period of five, ten or fifteen years, if necessary, you can by their rental secure just as great an income, and in the end you will have the principal of your school fund, or the basis of it, absolutely intact? I say that it is the most foolish policy that we could pursue, to destroy this magnificent fund, this endowment of the general government which is given to us here for the benefit of our children, for not only now but for all time to come; and the gentleman can figure and figure until he can use up all the paper and pencils he can get in the town of Boise, and he can't change the practical result of the operation of this measure.

Mr. McCONNELL. Mr. Chairman, the argument produced by the gentleman is very amusing. He says we are not so very poor. He says this little pitiful sum only amounts to about $1,000 to a county. Now $72,000 divided among eighteen counties, if my mathematics is correct, would amount to $4,000 a county.

Mr. CLAGGETT. I was speaking of the interest; I did not propose to divide the principal.

Mr. McCONNELL. I am speaking of the interest too.

Mr. CLAGGETT. Where do you get that?

Mr. McCONNELL. $57,600 is a little over $3,000 a year for each county, and divide that among the average fifteen school districts in the county, and how much have you got? Two hundred dollars each a year for every school district in the territory, and there is something beyond this.

In the year 1883 there were surveyed in this territory 1378 sections of school land. Now according to the admission of my friend Mr. Claggett—he admits that perhaps my figures are correct—and I believe they are very nearly correct—that perhaps 75 sections would be all that would now be available for cultivation without irrigation, which would leave 1303 sections of land, left out in the wilderness, without any means provided to bring it under cultivation or have it settled, without any means provided for it bringing any income. For how much would any man give for a section of land out here, for the rental of it, out here on these sagebrush plains? What will any gentleman pretend to say these 1303 sections of land would rent for, as they are now situated, without any water on them today? What gentleman is going to work and take a lease on these lands for a term of five years, as congress will doubtless restrict us to, to bring them into cultivation—how much rent will he pay for them? Will he do that at all? Will he not think that term too brief, and that it should be ten, fifteen or twenty years? Will he not consider that at the end of the time for which he has leased this land some other man may come in and bid more than he feels able to, and he lose his improvements? I don't think there is a gentleman on this floor, no difference whether he is a lawyer, doctor, preacher or merchant, but what has too much business sense to say he would give ten cents an acre rental for these lands in their undeveloped state. I don't think they will bring anything, and I don't think there is 500 acres in the whole domain of

school lands which is now in sagebrush without water to irrigate it that would rent for a dollar. What is a section of sagebrush land worth for pasture out here on these sagebrush plains? Who wants to preserve the grass within the boundary lines on that land bad enough to fence it, when he may steal the contents of it without paying rental for it? I do not think there is a gentleman here who will hold there can be any revenue derived from these lands. The only revenue to be derived from them is from those lands that are now in a condition that they may be cultivated; the lands under the Boise river, the same as the lands on the Wood river and the Snake river, in Latah and Nez Perce and northern Idaho, now aggregating about the amount of land which we have specified—about 75 sections. Now by placing it in the power of the legislature to provide for the sale of these lands, parties will come in and buy the lands, bring on irrigating ditches, improve them and build up homes. I can't see that there is any argument for their leasing these lands; I can't see that the gentleman has brought forward any figures. Of course it has been perhaps my misfortune not to have read law books but to raise potatoes, and I have sold a lot of sugar over the counter, but when it comes to working out a little problem of this kind I don't think my very slight education has prevented me from taking up these figures.

Mr. GRAY. Mr. Chairman, just a word more with reference to this. I believe a good deal in the man that lives in the present. I think as much of my children as of my grandchildren and my great-grandchildren, and to deprive the present people, poor as we are, of all the benefits that may be derived from the school lands, and give them to some of the generations to come—I can't exactly understand it. I am in hopes that this state, if it becomes a state, will be wealthy enough in time to support its schools. I do not want these lands frittered away. But here is the theory of the gentleman from Shoshone, that if you do loan the money you have got

to foreclose mortgages, you have got to even under good management, as it appears here from this bill, that they will loan it where the mortgage has got to be foreclosed, and expense incurred, that will take away all the profits of the rental.

Now in the first place I will say that there are very few of these lands subject to rental. When they begin to sell a portion of these lands at ten dollars per acre—perhaps, as has been said here, some of them are worth more—but the idea that we must hold these lands, which as he knows, and any man that knows anything about the country knows will not be marketable for years, without the state puts money upon them and irrigates them and clears them off, they cannot yield one single cent. Now if that money is put out at interest it will yield something. We do not propose to lose what they are sold for. But we do not propose to spend any money to put them into the condition that they are put for rental. And, as I say, the present generation deserves some attention. If it is put in the hands of our legislature to do its part, until the legislature prescribes different means, I say let them manage this matter, not hold these lands forever as they are now. For I do believe that if they are situated as they are now, without any money spent by the state which is to come from the sale of land somewhere, that they will remain as long as any of us live, as worthless as they are today. I care nothing about what he may say as to the tenantry of Europe or anything of the kind. I understand the situation here, I think, as well as anybody does. I know where the lands are situated, all the school lands in this section of the country, and without there is money spent there upon them they are not worth a dollar, and neither can they be rented for a dollar—not one single dollar. You take 640 acres, and you can't get anything for it; they are not worth fencing; they are worth nothing.

And now I ask him, when he says that if the money is loaned to a man that it will not be repaid, that you

will have to foreclose the mortgage, I ask him where there is a man who can go upon that very plain over there and take land for a dollar and a quarter an acre, that will give you anything more for this school land? He must be a business man. He knows the basis of rent now; and my own idea is that you can guarantee that it is not worth anything more than that, when he can go over here and get any amount of it for a dollar and a quarter an acre. And then you say, rent these school lands! They are unimproved, no water upon them, and then you say that they will go and seek them and put improvements upon them. A man that will do that is no man at all, because he never intends to pay his rent. As I say, I think as much of my children as I ever will of my grandchildren, I know. But if you cannot show me where we are going to derive any great benefit—I am not pleading poverty; I am able to pay my school taxes and do pay them, but I do say this, that young as we are as a state, commencing now, we ask that we may have some benefit from this. In any event, probably this state will be able to pay its school taxes just as much as we are.

Mr. CLAGGETT. May I ask the gentleman a question?

Mr. GRAY. Certainly.

Mr. CLAGGETT. As long as there are lands adjacent to school lands in this arid region capable of being settled on under the preemption or homestead laws, do you suppose you will be able to sell one foot of this land for any purpose whatever?

Mr. GRAY. Not that land, but there are some other lands that we can sell.

Mr. CLAGGETT. But it comes down now to this question of barren lands.

Mr. GRAY. Yes, the barren lands.

Mr. CLAGGETT. So far as the barren lands are concerned, it would make no difference about the question of the sale or rental of any of them. For no purpose would they be in demand, unless somebody wanted

to organize a syndicate to buy desert lands for nothing and then put water upon them.

Mr. GRAY. There are men who would buy these lands now if they could purchase them in large quantities, and they would pay a fair price for them, which the state would not derive during our lifetime. If they would purchase them for that and own them themselves they would be warranted in putting improvements upon them, but without the title being in them they certainly would do nothing of the kind. The man that has means to bring water there will, if they are his own lands, but he will not cultivate them for anybody else. It costs money to put water on land, and a poor man cannot do it.

Mr. CLAGGETT. Let me ask the gentleman another question. I know a poor man cannot do it, and because a poor man cannot do it on any of these lands he proposes to have sold, you would get nothing for them. They are absolutely worthless for all purposes until your large irrigating canals are constructed. But when these large irrigating canals are constructed, then they will be serviceable, not only to the lands of private proprietors but to other lands of the state as well, and therefore if you simply leave them in that condition where they are until these canals are constructed, then you give them an immense value. But if you go to work and allow them to be sold now, in anticipation of the construction of these canals, you fritter away your lands and have nothing when the canals are done.

Mr. GRAY. I do not ask that any of these lands shall be sold below the price fixed in the bill, the lowest possible price, but I say that if some of these lands can be sold at that price, although there may be lands that are worth more, but I say if they can be sold at the price fixed in the bill, it would be better for the state, better for the school fund, better for our present people anyway that they should be sold. I don't ask that they be frittered away. The bill has provided here that they may be bought at ten dollars per acre. And

when they can be sold at ten dollars an acre or over, I say there are plenty of these lands that had better be sold. And there may be men that would purchase these lands, if they can purchase them, even at that price, if they could own them, but they will not cultivate them on rental, and there will be nothing derived from them in any other way. (Cries of "Question").

Mr. MORGAN. I don't want to detain the convention of the committee in the discussion of this question tion long, or but very little longer, at any rate. It seems to me that this whole ground was gone over yesterday, and the committee decided by a very decisive vote that they did not want this proposition; and it seems to me strange that it has been presented again and pressed as strongly as it has been, and I am sorry to differ from the distinguished gentleman who has addressed the convention on this subject, but my view is that in this sagebrush country here you cannot rent these lands. They say you can't rent them for ten cents an acre. I say you can't rent them for ten cents a quarter section, for the reason that no man would put a fence around this land that he would be required to put upon it, for the use of it. It will cost him a dollar a rod to fence it. There are 1280 rods around a section of land, and there is not a man in this country that will take one of these sections of land that is nothing but sagebrush—unless there is water on it—and fence it, if it cost him but 50 cents a rod, for the use of it. If it cost him only twenty cents, there is no man in the country that has any business sense that will do it. That is the sagebrush land that I am speaking of. I don't know how the land may be in northern Idaho; it may be in a different position, but that is the fact with reference to this land. Now with reference to the land north of Pocatello, on the Snake river, that land can be sold at ten to twenty dollars an acre, and people will buy it and put ditches upon it and cultivate it and move their families on to it and pay their taxes. We are not going to fritter away this fund if we sell

this land. We have the power to appoint men who are supposed to be careful men to invest this money and put it in such a position that we will receive annual interest on it forever. This money will be just as safe as the land is, and will produce ten times as much rental as the land would. It is a proposition, it seems to me, that there can be but one side to. We cannot rent this land to tenantry; it must be sold and must be improved in that way, and we can put our money out at interest and make something from it; otherwise we can get nothing. I beg the pardon of the committee for detaining it so long. (Cries of "Question").

Mr. PARKER. There may be a great deal of truth in what has been said on this floor, and from that the interest on the purchase price of these lands would bring us more revenue than if we kept the title in the state and leased or rented them. But, Mr. President, there are more things than that to be considered. We must consider, for instance, that if these lands are sold it will put in the educational fund a large sum of money. We may as well agree, too, that while that sum of money is in the treasury it is a temptation to extravagance, Mr. President, and it is not only a temptation to extravagance in educational matters, but it is a temptation to the state treasurer who has charge of these funds to steal them and make way with them. (Laughter). I am in favor of having the state lands tied up so that this temptation to extravagance and dishonesty shall not exist. Mr. President, Governor Taylor of Ohio once said that it was easier to run a badger in a hole than to run a government with a surplus in the treasury, and that is an example of the thing if this measure is put into effect here. (Laughter). Now I say drop this idea of generosity and tie these lands up and put them under lock and key, so that we can put our hands upon them at any time. I say let us preserve the integrity of these school lands, and let us not act the part of a foolish business man and squander our capital. Let us rather preserve these

school lands as our principal, and from the annual interest derived therefrom we will have a large sum of money for our school expenses, almost enough, Mr. President, to pay the annual expenses of maintaining our public school system as it exists today. Mr. President, every mine that is opened in this territory, every new road that is completed, every settler that comes into the territory to make a home, every acre of land that is plowed and fenced, enhances the value of these school lands; and the tide of immigration is only just commencing to flow into the fertile plains and valleys of this territory. What brings all these people from Europe, Mr. President, what brings this tide of immigration from the eastern states into these western territories but the desire to acquire possession of land? Land is what brings them here, Mr. President. As Plato says, land is the source of all value. From it we derive our subsistence. It is the basis of all wealth, and when we die we return again to our Mother Earth. (Applause). Now, Mr. President, in my own bailiwick in northern Idaho—and I am pretty well posted there, I venture to say that if these lands are not tied up, every acre of valuable school lands in the counties of Idaho, Nez Perce and Latah will be owned one year after the first session of the legislature meets by a syndicate of Lewiston and Moscow bankers. (Laughter). I am not making any reflection on my friend from Latah county, Mr. McConnell. He is a business man, and if you sell these lands he will have the privilege that we all have of buying these lands and holding them for speculative purposes. (Laughter). But by and by, Mr. President, when all the lands are sold, we shall be in the position of a state without resources, a state without lands. My experience in Oregon teaches me the same thing. Adjoining my land in the county of Umatilla in the state of Oregon are school lands lying there today just as the Almighty left them ten thousand years ago. (Laughter). That section of school lands, Mr. President, adjoining my own quarter

section, a preemption right, is just lying idle, and it is owned by people in the Willamette valley, in the city of Portland. Now, Mr. President, I know the temper of my own people in my own bailiwick of Idaho county. They did not send me down here to give away these lands. I was expressly instructed by an almost unanimous vote of these people of mine to do what I could to preserve those school lands and to keep them for themselves and for their posterity. (Cries of "Question").

The CHAIR. I would like to ask Mr. Batten if his amendment was to the section as it stands or to the substitute?

Mr. BATTEN. It was a substitute to the section, and will come in after that is disposed of.

The CHAIR. Yes, if it comes in at all.

Mr. REID. I would like to hear it read.

The CHAIR. Will the secretary read it?

Mr. REID. I spoke of the one Mr. Claggett offered.

SECRETARY reads: "Section 10 (8). The title to all lands which may be donated to the state by the United States for the support of the public schools shall forever remain in the state, unencumbered, except as herein provided, and in trust for the benefit of the public school fund of the state. The legislature shall prescribe by law the terms and conditions upon which the said lands may be leased, but no lease shall run for a longer period than thirty years. The legislature shall by law as far as practicable preserve all leased lands from deterioration and secure the greatest amount of revenue from their use. This section shall not be construed to prevent the sale of all merchantable timber on the school lands of the state under regulations to be prescribed by law."

The CHAIR. Please read the substitute of Mr. Batten now.

SECRETARY reads: "It shall be the duty of the state board of land commissioners to provide for the location, protection, sale and other disposition of all

lands heretofore or which may hereafter be granted to the state by the general government. For the purpose of sale said board shall appraise all school lands within the several counties, first selecting and designating for sale the most valuable lands, and said board shall ascertain all of such lands as may be expected to become valuable other than agricultural, and shall cause the same to be separately classified and subdivided, in order that the highest price may be obtained therefor. No land shall be sold for less than its appraised value, and in no case for less than eight dollars an acre, and shall be sold at public auction to the highest bidder. Such lands as shall not be specially subdivided shall be offered in tracts of not more than 160 acres. All lands designated to be sold, not sold within four years after appraisal, shall be reappraised by the board of land commissioners as hereinbefore provided for before they are sold. No sale shall operate to convey any right or title to any land for sixty days after the date thereof, nor until the same shall have received the approval of the said board of land commissioners. The first legislature convening after the adoption of this constitution shall provide in detail the mode, manner, means and method of carrying this section into effect."

The CHAIR. The question is now upon the adoption of the substitute offered by Mr. Claggett of Shoshone. Are you ready for the question? (Cries of "Question"). (Division; rising vote shows 17 ayes, 31 opposed).

The CHAIR. The motion to adopt the substitute is lost. Was there a motion made to adopt the substitute of Mr. Batten? (Moved and seconded).

Mr. AINSLIE. I have an amendment to offer to the section. I don't know where it comes in.

The CHAIR. It has been the rule that all substitutes take precedence.

Mr. AINSLIE. Mine is an amendment to the original section.

The CHAIR. The question is upon the adoption of the substitute of Mr. Batten.

Mr. BATTEN. Mr. Chairman, I desire to explain it a moment or two. This section is substantially as Section 10 (8) now reads, with simply a little amplification. It leaves the details to the legislature, but fixes certain principles, certain general principles, establishes a certain system which the legislature cannot depart from. Now the features of that general system are simply this. We have provided here a board of land commissioners. That board will have certain definite duties prescribed for them when the legislature meets. Now I propose in this substitute to establish the system which the board of land commissioners, after they have had all the details of its working given to them by the legislature, shall carry out. Now by this system the board of land commissioners are authorized and directed to appraise these lands, but inasmuch as there are certain lands, for instance timber lands, of special value, they shall classify them separately and distinguish them from the general body of agricultural lands. Now in this appraisal they are limited; the minimum limit is eight dollars per acre. They can go beyond that if they see fit, and some of the lands can probably be appraised at a valuation of twelve dollars, some ten, some fourteen, as in the good judgment of this board may seem proper. That is one feature of it. Another feature is that after a certain length of time, four years, when probably, owing to the growth of the country, lands may increase in value, they can re-appraise the lands, such as have not been disposed of. Another feature of the system is that lands shall be sold at auction to the highest bidder. Another feature is that no title shall pass to the purchaser until the expiration of sixty days. That gives this board of land commissioners ample time to inquire into the responsibility of the purchaser, as to whether he is able to make good his purchase, under such terms, times and conditions as the legislature in carrying out the system here shall prescribe. It will give the board of land commissioners time to look into all this matter, to guard against fraud

of any kind, and simply pass title where they think the purchaser is entitled to it. That is in general terms the system which my substitute proposes. It is substantially the system which they incorporated in the Sioux Falls constitution for South Dakota.[1] I think it is an admirable one, and that it meets some of the objections I have heard urged on the floor. I will anticipate objection, probably, from the gentleman from Ada, Mr. Gray, who is so careful to see that no legislation shall creep into our constitution, by saying this, that I will admit some part of the system planned in this substitute is in the nature of legislation, but we cannot avoid that in all respects. We must at times, if we desire to be explicit upon certain matters, put some matters in the constitution which will savor strongly of legislation, and I simply propose to put in the general system, leaving all the details, the minutiæ and rules of the system, for the legislature to prescribe, and I have stated here what the general system is. I think this provides safeguards which the section as it now reads has not provided. The section as it now reads leaves the whole matter open to the legislature; they may devise any scheme or plan which they may see fit; they may change the plan. One legislature may adopt one system, and a subsequent legislature may change the whole system and adopt something new, but my idea is to put up certain fixed barriers, certain well-defined principles as a sort of skeleton, and leave the filling in to be done by the legislature. I will propose after that to retain all of Section 10 (8), commencing with the word "No" in line 5, and call that Section 11—add that after this substitute.

I don't wish to take up any further time in this matter. It has been pretty thoroughly discussed, and I know the gentlemen are getting somewhat tired of it. It is however an important matter, and sometimes it is better to pass, and consider important matters thor-

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1—Const. So. Dakota, 1889, Art. 8.

oughly before we act upon them finally. (Cries of "Question").

Mr. HAMPTON. I desire to offer an amendment.

Mr. CLAGGETT. I want to call the attention of the gentleman from Alturas to one thing. This morning the convention, on motion of my friend from Nez Perce, adopted this amendment, which is now a part of this section, that no school lands shall be sold for less than ten dollars an acre nor in any other way except at public auction. As the convention knows, I am opposed to the whole principle of selling them at all, a single foot of them, but the convention has pledged itself, so far as this question is concerned, to the proposition of their sale, and it has not only done that, but provided right in here that no poor man shall ever buy any of these lands, that they shall be turned over to the speculators and syndicates. If you want to obtain a price for your land, sell it to the poor man on the instalment plan, and let him pay for it in twenty years' time, and allow the purchase money to bear interest.

Mr. BATTEN. That is for the legislature to provide.

Mr. CLAGGETT. But you have put it in your constitution that it shall be sold only at public auction.

Mr. McCONNELL. It can be sold on the instalment plan.

Mr. CLAGGETT. No sir. The language, sale at public auction, I take it is a legal phrase that has a well defined meaning, that cannot be wrested away from it in any way.

Mr. REID. By the amendment adopted this morning—which seems to have been adopted, there is full power given to this board to sell, how? At public auction. The sale has got to be in that way, which is the only limitation. The preceding section and this section itself gives to the board the right to sell and dispose—"or other disposition." I asked the gentleman this morning for an explanation. He was about to give it, and the chairman of the committee, Mr. Pinkham,

explained it, that they could sell, if they saw fit, in that way. Now this gives power to sell and dispose of these lands by sale, lease or any other way. Now we come in and put a limitation on it, how? Sell it, but sell it at public auction. Now the legislature may come in and provide that it may be sold on the instalment plan, and that is what I would do if I were the legislature—I would have the matter put in that condition—have the party show his good faith, become a settler as well as a purchaser. That cuts out speculators, and it cuts out syndicates too. But I would not have it less than ten dollars. My attention has been called to the fact that every enabling act passed for the other territories has that limitation in it, and also that the enabling act passed very favorably upon by the senate and house committee, admitting Idaho, has that identical section in it.[1] Now if the original clause is adopted, as the committee has adopted it, I propose to offer this amendment; to add at the end of Section 10 (8), changing the words adopted, to sell at public auction, to "sell it on instalments." That is what you can do, fix the minimum price, and provide that no more than one section in each township shall be sold until the expiration of the ten years. That compromises the matter. You have then one section left in every township. Paying one-tenth down, it will take ten years to dispose of it, and if the system works well, then put up the other section. You are not then conveying away all the school land. You are trying the plan, and in ten years we can dispose of half of it in this way. Now when we get into the Union we are going to get more land granted us, if our delegate is diligent, and I know he will be, and I have examined the other enabling acts. We will get what we have, and more in addition. Then sell half and save half—try the plan. Invest this board with the right to dispose of your land at public auction on the instalment plan, which will let in the poor man

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1—Sec. 14, Platt amendment to Mitchell bill. See Appendix.

who actually settles. Fix the minimum price, and it should not be sold to the poor man or to the rich man for a cent less than ten dollars an acre. However, if you find the plan is not working well, if the amount of money you get is not sufficient, if there is a disposition to squander it—I have seen school funds squandered. I have seen funds given us by the United States to establish our agricultural college—the only fund left in our state—and it seems that Providence protected it. Public credit, private credit; public bonds, private bonds —all went down in sharp succession, but we had the patrimony left us by the general government, and I lived in a state where the legislature went in and paid themselves mileage at the rate of twenty cents a mile out of the children's money, to pay their own expenses. But this fund was saved for their patrimony.

If you do this way, then you have compromised the matter. Try both plans, and if you find the sale is working well during the ten years, then sell the balance. If it does not work well, you have half of your patrimony left.

Mr. CLAGGETT. Making a suitable change for the instalment plan.

Mr. MORGAN. That already adopted provides that half shall be sold.

Mr. REID. That was stricken out, only that part I mean left in which says it shall not be sold for less than ten dollars.

Mr. BATTEN. I am willing by common consent to substitute ten for eight dollars, and then if my substitute should prevail, I would propose to offer this balance of Section 10 (8) as an independent section, numbered 11, with the words "public auction" stricken out, inasmuch as it appears in the substitute. (Cries of "Question").

Mr. HAMPTON. I would call for the reading of the amendment I sent up.

The CHAIR. Do you offer this as an amendment to the substitute?

Mr. HAMPTON. I do.

The CHAIR. It was not adopted.

Mr. ALLEN. I call for the reading of it.

SECRETARY reads: To amend the substitute of Batten by adding "Provided that the title of at least one-half of all lands granted to the state for school purposes shall forever remain in the state."

The CHAIR. There is no support to the amendment offered.

Mr. CLAGGETT. I second the amendment.

Mr. GRAY. I would like to hear the substitute read.

Mr. CLAGGETT. I seconded the last paper that was just read.

The CHAIR. Well, it is hard to tell whether they are motions or what they are. There are amendments to the substitute, and a substitute for the substitute, and amendment to amendment, and we will never get to a regular vote upon the main question.

Mr. CLAGGETT. I understood the gentleman from Bingham, Mr. Anderson, sent up an amendment a long while ago, and that was the amendment I believe which has just been read, that one half the lands shall never be sold.

Mr. ANDERSON. No, that was not my amendment.

The CHAIR. I desire to state that I understand that when a substitute to a section is offered, that that substitute takes precedence of an amendment to the section. If you adopt the substitute, then the amendments to the section are cut off. You will never get this matter settled if these continual amendments are sent up, as numerous as they have been heretofore. The question is upon the adoption of the substitute of Mr. Batten. (Division. Rising vote shows 12 ayes, 34 opposed). The substitute is lost. The question is now upon the amendment proposed to Sec. 10 (8). (Cries of "Question").

The CHAIR. Question upon what?

Mr. MORGAN. On the amendment.

The CHAIR. On what amendment? The clerk will

please read the first amendment to the section, taking them up in order.

Mr. VINEYARD. That was Mr. Anderson's.

The CHAIR. I don't know whose it was; there are about twenty.

Mr. AINSLIE. I offered the last amendment, before that vote on Mr. Batten's substitute.

The CHAIR. Mr. Clerk, read those.

The SECRETARY. We have the amendment by Anderson, followed by the substitute which was offered by Mr. Heyburn. There is an amendment by Mr. Parker, and also a substitute which has been disposed of. Then we had Mr. Batten's substitute, which has been disposed of. Mr. Ainslie sent up an amendment to Section 10 (8), and Mr. Hampton sent up an amendment to the substitute, which was read. If you go back to the amendments in order, Mr. Anderson's is the one. Disposal of the substitute disposes of the amendment offered by Mr. Hampton. Mr. Ainslie's amendment is: Amend Section 10 (8) by inserting after the word "time" in the 13th line the following: "not to exceed twenty sections in any one year, and subdivisions of not to exceed 160 acres to any one person, company or corporation." Mr. Anderson's amendment is: Amend Section 10 (8) by adding after the word "grants" in the 14th line, the following: "*Provided,* That no other land than Section 16 in each township be sold during the first twenty years."

The CHAIR. What is the pleasure of the committee?

Mr. REID. I move Mr. Anderson's amendment be adopted.

Mr. McCONNELL. That would prevent the sale of university lands entirely, and any grants that may be made for agricultural college purposes, or any other purposes, except just that one section in each township of school land. I desire that the committee vote intelligently on it. It would cut out the state from selling any of these other lands.

Mr. CLAGGETT. The reservation of Sections 16 and 36, granted to the common schools, has nothing to do with the university lands.

Mr. McCONNELL. Well, those are lands of the state.

Mr. AINSLIE. I would like to have the amendment of Mr. Anderson read, and then my amendment to follow, read afterwards, to see if they cannot both go together as a proper amendment to be consolidated.

SECRETARY reads: Amendment of Mr. Anderson. Amend Section 10 (8) by adding after the word "grants" in the 14th line, the following: *"Provided,* That no other land than Section 16 in each township be sold during the first twenty years." The amendment by Mr. Ainslie to amend Section 10 (8)——

Mr. AINSLIE. Just read the words I propose to insert.

SECRETARY reads: "—not to exceed twenty sections in any one year, in subdivisions of not to exceed 160 acres to any one person, company or corporation."

Mr. AINSLIE. If the gentleman will consent to an amendment to his, I will strike out the first part of mine, as to where it is inserted, and consolidate it with his.

Mr. ANDERSON. I will accept that consolidation.

The CHAIR. The question is then upon the adoption of the amendment.

Mr. HASBROUCK. Now let us have it read as it will appear.

SECRETARY reads: Amend Section 10 (8) by adding after the word "grants" in the 14th line the following: *"Provided,* That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions of not to exceed 160 acres to any one person, company or corporation."

Mr. TAYLOR. In order to obviate the objection Mr. McConnell makes, would it not be well to amend that to make it read "no other school lands?"

Mr. CLAGGETT. I think that was the intention of the mover.

The CHAIR. The question is upon the adoption of the amendment; is the committee ready for the question? (Cries of "Question." Upon rising vote, 25 ayes and 24 nays).

Mr. GRAY. I have an amendment.

The CHAIR. There is an amendment proposed by Mr. Parker to Section 10 (8).

SECRETARY reads: Section 10 (8). It shall be the duty of the state board of land commissioners to provide for the protection, lease or rental of all the lands heretofore or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible revenue therefrom. No laws shall ever be passed by the general assembly granting to any person or persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the revenue to be derived therefrom shall be diminished, directly or indirectly. The general assembly shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust for the use and benefit of the special objects for which said lands were granted. The title to all such lands shall remain forever vested in the state, and they shall never be encumbered by lien or mortgage for any purpose whatsoever. The general assembly shall provide for the lease or renting of any of said lands from time to time, and for the faithful application of the proceeds therefrom in accordance with the terms of said grants. (Cries of "Question").

Mr. BRIGHAM. There is an amendment I wish to offer.

The SECRETARY. There was an amendment laid on the desk by Mr. Gray.

The CHAIR. Is this an amendment to the one just offered?

Mr. BRIGHAM. No sir.

The CHAIR. The question is upon the amendment offered by Mr. Parker. (Cries of "Question." Vote). The amendment is lost.

SECRETARY reads Mr. Gray's amendment: Strike out in the second line the words "other disposition," and insert in lieu thereof "fair rental."

The CHAIR. Is the amendment supported.

Mr. CLAGGETT. I second it and move its adoption.

Mr. GRAY. The phrase "or other disposition" is a little too uncertain. It would then read: "for the location, protection, sale or fair rental of lands" and so forth. I object to those words "or other disposition." I don't wish the legislature to have the power to mortgage them. (Cries of "Question." Vote, and carried).

The CHAIR. The amendment is adopted. The question is now on the amendment proposed by the gentleman from Latah, Mr. Brigham.

SECRETARY reads: Amend Section 10 (8) by adding "*Provided,* That none of said lands shall ever be sold to other than actual settlers."

The CHAIR. Is the amendment supported?

Mr. McCONNELL. I second the motion. (Cries of "Question." Vote).

The CHAIR. The noes have it; the motion is lost.

Mr. AINSLIE. I now move the adoption of the section as amended.

Mr. GRAY. Let's have it read.

SECRETARY reads: Section 10 (8) as amended. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or fair rental——"

Mr. GRAY. Well, the fair lease or fair rental of all the lands.

The CHAIR. How does the amendment read?

The SECRETARY. "Fair rental" in the second

line. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale——

Mr. GRAY. Strike the word "fair" out.

SECRETARY reads: It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor; *Provided,* That no school lands shall be sold for less than ten dollars per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time and for the faithful application of the proceeds thereof in accordance with the terms of said grants; *Provided,* That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions of not to exceed 160 acres to any one person, company or corporation.

A MEMBER. Mr. Chairman, I wish to offer an amendment to lines 11 and 13, to make it conform. Strike out in line 11 the words "at public auction" and in line 13 the word "sale," and insert "disposition."

The CHAIR. Is the amendment supported? There seems to be no support. The question is now upon the

adoption of this section as amended, unless there are some other amendments.

Mr. ALLEN. Mr. Chairman, it seems to me that this includes all grants of land to the state, if I understood the purport of the article. Is that true? If that is true, we are prohibiting the state from selling any lands granted for irrigation or other purposes, except Section 16, which are school lands. I think we have become confused somewhat in regard to the true character of the lands. Now by the provisions of the admission bill, a grant of lands was provided for, for the purpose of reclamation.[1]

The CHAIR. This convention cannot make any disposition of lands except those already granted to the state, which are school lands.

Mr. ALLEN. It says "or which may hereafter be granted."

Mr. TAYLOR. I offer this amendment: Strike out in line two the word "the" and insert "school" therefor.

Mr. REID. I second the amendment. (Vote).

The CHAIR. It is adopted. Are there any other amendments?

A MEMBER. I offered an amendment to line 11. It reads "subject to disposition at public auction." You will see by reading the fore part of the section——

Mr. SHOUP. I move that the committee rise, report progress, and ask leave to sit again.

The CHAIR. The gentleman is out of order; there is a gentleman on the floor addressing the chair.

A MEMBER. The amendment was to make it conform to the spirit of the fore part of the section; that provides for their disposition and sale.

The CHAIR. There is no question before the committee. I call the gentleman to order.

Mr. BEATTY. I move the adoption of the section as amended.

1—Sec. 25, Mitchell bill. See appendix.

The CHAIR. It is moved and seconded that the section be adopted. (Vote). The ayes have it and the section is adopted. It is moved and seconded now that the committee rise, report progress, and ask leave to sit again.

Mr. SHOUP. I will withdraw the motion.

Mr. GRAY. I will make the motion. (Seconded).

The CHAIR. It is moved and seconded that the committee rise, report progress, and ask leave to sit again. (Division shows 21 ayes, 26 nays). The motion is lost.

Section 9.

SECRETARY reads Section 11 (9).

Mr. GRAY. I ask to be excused, Mr. Chairman.

The CHAIR. The gentleman will be excused, if there is no objection.

Mr. GRAY. Well, there seems to be objection.

The CHAIR. Then take your seat. It is moved and seconded that Section 11 (9) be adopted. (Carried).

SECTIONS STRICKEN OUT.

SECRETARY reads Section 12, and it is moved and seconded that the same be adopted.

Mr. CLAGGETT. I move to strike that out. It has nothing to do here; that should be left to the legislature.

Mr. GRAY. I second the motion.

The CHAIR. It is moved and seconded that Section 12 be stricken out. (Division shows 35 ayes, 11 nays). The motion prevails.

SECRETARY reads Section 13.

Mr. CLAGGETT. I move to strike that section out. (Seconded).

The CHAIR. It is moved and seconded that Section 13 be stricken out. (Vote and carried). The section is stricken out.

Section 10.

SECRETARY reads Section 14 (10), and it is moved and seconded that the same be adopted.

Mr. CLAGGETT. I move to strike that out.

Mr. BEATTY. I move to strike out a portion of it.

Mr. SWEET. I will offer a substitute, which I will read: "The location of the university of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises and endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university and exclusive control and direction of all the funds of, and appropriations to the university, under such regulations as may be prescribed by law." I move its adoption. (Seconded).

The CHAIR. It is moved and seconded that the substitute offered be adopted.

Mr. CLAGGETT. It was all well enough for the territory of Idaho to provide for franchises and so on in regard to this university at Moscow, because the territory of Idaho through its legislature had the full power to modify, change or repeal those provisions at any time; but when we come in here and make it a part of the organic law of the state perpetuating the territorial status, and taking the whole subject of the control of the university and university funds away from the legislature and away from any and every other authority, and of the lands also given to the university, I think we are going altogether too far, and I offer as a substitute that the section be stricken out, and the whole matter can be left to the legislature, just as it is left to the legislature now, which is where it ought to be left.

Mr. SWEET. The substitute does leave it to the legislature, and directs that all appropriations and moneys appropriated to the university shall be handled by the regents as prescribed by law. It simply con-

firms an act that has been already accomplished, and does not take from the state of Idaho any control over this institution, nor do we seek to do it.

Mr. BEATTY. Mr. Chairman, I was about to make a motion to amend by striking out the last part of this section. Now the substitute of the gentleman from Latah is open to the same objection. What I desired stricken out from the section is this: "The regents shall have the general supervision of the university and the exclusive control and direction of all the funds of and appropriations to the university." That part I wished stricken out of this section, or, if this substitute is offered, to strike the same part out of the substitute, but I believe the amendment of the gentleman from Shoshone is the proper one, to strike the whole section out, because the provisions of the first part of the section is simply reiterating what the law now provides. The laws already grant certain rights and immunities to this university, and it is unnecessary to repeat that same thing here in the constitution which the laws now provide,[1] and which this constitution will not repeal. Therefore instead of offering any amendment to the substitute or the original section, I support the amendment of the gentleman from Shoshone to strike the entire section out.

Mr. SWEET. It is very peculiar that it is not thought necessary to strike out all other provisions with reference to the insane asylum and other institutions that have been created by the territorial legislature. It seems to me that it is absolutely proper and right to confirm these sections, or reject them, if the convention sees fit to do so.

Mr. MORGAN. I would like to have the substitute read again.

SECRETARY reads: The location of the university of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises and

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1—Act of Jan. 30, 1889; Sess. Laws 1889, p. 21.

endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university and the exclusive direction of all the funds of and any appropriations to the university, under such regulations as shall be prescribed by law.

Mr. REID. They went so far even as to provide for the location of the penitentiary before the government turned it over to us, and there is no state in the Union that has a university system that does not provide for it in its constitution, and part of it at least should be adopted, that part which locates and establishes the university, which simply goes so far as to say that the university is established, and then puts it upon the legislature to support and maintain it. Now the capital is located, the insane asylum is located, in the same bill, and no objection was made to that. I am in favor of this, and the main reason is because it located this university. It does not locate every branch of it that may be established under it—we may want branches established in other places—but this establishes a permanent university and provides for the general control of it. I am as much in favor of striking out legislation as anybody, but I don't want it left to the legislature to come in here, if we do not put it in the organic law, and change the location of this university. I am in favor of its staying where it was put. It went there by the unanimous consent of the people, almost, through the legislature, and we want it to remain there in northern Idaho. The other institutions of the state are down here in southern Idaho, and permanently located by this instrument, and I want this instrument to speak out as plainly for any institution we have in the north as it does for the institutions we have in the south.

Mr. AINSLIE. It seems to me that the provisions of this Section 14 (10) are within the province of the committee on Schedule, for this committee to take up, as they are to report (reading) "the manner and time of the submission of the constitution to the people for

adoption, and to consider and report the preservation of existing rights and existing laws in the transition of the territorial to a state government" etc. I do not believe there is any probability of the rights of the University of Idaho being interfered with. I suppose the decision of the Dartmouth College case would govern that; it is liable to be good law yet. I think the motion to strike out is correct.

Mr. BEATTY. I do not want to be understood as aiming or attempting to injure the university; that is not the object of the suggestions I made at all. I claim that the provisions in that section there are simply what the law now guarantees to that university. I propose to strike out the authority and power given the regents, because the sections above that with reference to the appointment of regents are stricken out, and, more than that, I would not be willing to leave this authority and power in the hands of the regents; I would rather strike it out entirely.

Mr. REID. I call the gentleman's attention to the fact that the danger of arbitrary power is limited by the words "as prescribed by law."

Mr. BEATTY. Yes, but I will ask the gentleman then, why put it in? Why name the regents, and at the same time leave their power——

Mr. REID. I have no particular desire to put that part in; I don't think it does any good or any harm. All I want in is the location of the university to be established, and I want the place fixed.

Mr. BEATTY. Well, I think the place of the university is fixed, and I do not suppose anybody proposes to change that, and I do not suppose anyone proposes to interfere with the rights and immunities already granted by the legislature.

Mr. REID. I think the gentleman who offered the substitute does not care particularly about that part of it, and I would suggest that he drop that part of it, so far as the powers of the regents are concerned. After the establishment of the university, it follows that it

can come in clothed with the machinery and powers necessary, and he could leave that part of it out; but there is a part, the establishment of the university, its location and the form of its government, which is important.

Mr. BEATTY. If that is all the gentleman desires, I have no objections, for one, to that; only I think it is unnecessary to repeat in the constitution; but if they desire it and it is any benefit to them, or more permanently secures the institution to them, certainly leave it in; but I do not think it does. I think their rights are already fully provided for. But if that substitute goes in, I would insist on having stricken from it the last clause furnishing the regents all their power, commencing with the words: "the regents shall have," and so on.

Mr. SWEET. That is practically the law as it is now. Mr. Chairman, when this question was before the convention the other day on another article, it was so broad as perhaps to induce the convention to believe that there was a desire on the part of the friends of that institution to prevent any co-ordinate branch of that institution ever going to any other portion of the territory. It occurred to me in reading over this bill that the same objection might be raised to Section 14 (10). I therefore consulted the chairman of the bill and told him I believed it raised that difficulty, and asked permission to submit a substitute that I thought would obviate that objection. That substitute I have now submitted. I do not care particularly about those words submitted by Judge Beatty; it is the substance of the law as it now exists. So far as Mr. Ainslie's point is concerned, that would also go to the question raised by Judge Beatty. All I desire is, the authority under this constitution to transfer that institution, just the same as the committee on Schedule will transfer the insane asylum and the penitentiary and the capitol to the people of the state, together with the location of those institutions.

Now this provision is less specific, it does not go as far as the other articles in this constitution locating these public buildings, and I do not care that it should, because I do not wish to legislate in the matter myself, but I have simply submitted it, and I am not caring about striking out Sections 12 and 13 because Judge Claggett says they are legislation—they are all provided in this bill—which, after the substitute is adopted we can report through the committee on Schedule, as was suggested by Mr. Ainslie.

There is nothing unfair in this substitute; there is nothing in it under which the present management of the university can cut off any co-ordinate branch of that institution, and so far as I am concerned I would be most happy to see a very prosperous and successful co-ordinate branch of it in every city in Idaho; because I do think, with our climate, with our peculiar resources, our peculiar location, we should have the finest state from an educational point of view in the Union. I believe we can have it. We have commenced without running in debt; we have commenced the building of the state university. We can commence pretty soon on its co-ordinate branches without running in debt, and in a very short time we can have a reputation second to no state on the coast, having our educational advantages, and at the same time not being in debt one solitary cent for them. And I beg leave to suggest to the convention, and I believe you will accept it if true, that there is no institution in connection with this state, there is no feature of the state, if we are admitted into the Union, that will be more cherished by the people of this country who are seeking homes, than first class educational institutions; and this simply emphasizes what the legislature has said upon that proposition, without robbing or intending to interfere in the location of any co-ordinate branch in any part or portion of the state. And when it comes to that particular work of building up the educational interests of Idaho, you will find the people of Moscow and that portion of the

territory generally, who I dare say are as much interested in the educational progress of the territory, and who already take great pride in building up this institution, ready to help any other part of the territory to some co-ordinate branch of that institution.

Mr. SHOUP. I would like to hear the substitute read.

SECRETARY reads the substitute again.

Mr. BEATTY. I desire to make an amendment to that last clause first.

The CHAIR. The question is upon the adoption of the substitute.

Mr. CLAGGETT. I would like to ask the gentleman if he would be kind enough to strike out that word "exclusive" in the last line?

Mr. SWEET. Yes, I will do that.

Mr. BEATTY. Well, that is all we ask.

Mr. SHOUP. I will say, in regard to this section, that it is precisely the same as a section in the constitution of Minnesota.[1] That territory had also a territorial university just as we have, and it was transferred to the state when Minnesota became a state, and this section is copied verbatim from the constitution of Minnesota. (Cries of "Question").

The CHAIR. I understand that it is stricken out by consent?

Mr. SWEET. Yes, it may be stricken out, the word "exclusive."

The CHAIR. The question before the committee is upon the adoption of the substitute of Mr. Sweet. (Vote and carried). The substitute is adopted.

SECTIONS STRICKEN OUT.

SECRETARY reads Section 15.

Mr. CLAGGETT. I move to strike it out. It is mere legislation. It is embraced in every school law in the United States. And Section 16 is substantially

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1—Const. Minnesota, 1857, Art. 8, Sec. 4.

the same thing, prohibiting the legislature or anybody else by law from prescribing what books shall be used.

Mr. AINSLIE. I second the motion to strike out Section 15. (Vote and carried).

SECRETARY reads Section 16.

Mr. SHOUP. I move to strike it out.

Mr. CLAGGETT. I second the motion. (Cries of "Question." Vote and carried).

The CHAIR. Section 16 is stricken out.

The SECRETARY. Mr. Parker sent up a substitute for Section 16.

The CHAIR. I think, gentlemen, It might be proper to listen to the substitute for Section 16; it might be something——

Mr. REID. Mr. Parker arose to address the chair before the motion was put, but he was not seen.

SECRETARY reads Parker's substitute for Section 16: The board of commissioners shall have power to prescribe the text-books to be used in the public schools of their respective counties under legislative regulations; *Provided*, That in counties where universities, independent school districts or night schools exist, the said power shall reside in the faculty thereof.

Mr. CLAGGETT. Mr. Chairman, I move the adoption of the substitute as Section 16. I think the board of education are proper persons to——

Mr. McCONNELL. He says the board of commissioners.

Mr. CLAGGETT. Well, that makes it still worse.

The CHAIR. It is moved and seconded that the substitute be adopted as Section 16, offered by Mr. Parker. (Cries of "Question." Vote and motion lost). The substitute is lost.

SECTION 11.

SECRETARY reads Section 17 (11), and it is moved and seconded that the same be adopted.

Mr. AINSLIE. I offer this amendment: In line 2 strike out "farm lands" and insert "real estate." I

suppose they can loan on real estate in a city as well as on farm lands. (Seconded).

The CHAIR. It is moved and seconded that——

Mr. AINSLIE. There is a suggestion made by the gentleman here; I think it should be "improved real estate within the state of Idaho"—not loan it outside the state.

Mr. REID. I offer an amendment to the amendment, to add: "or bonds of the state of Idaho."

Mr. BEATTY. I have just one suggestion on that, Mr. Chairman. "Improved real estate" would include, as a matter of fact, town lots or other improvements. I am afraid that in these days of fires, when everything is swept away, that would leave the school fund without any protection. I believe "farm lands" was better.

Mr. HEYBURN. Mr. Chairman, with reference to that, it seems to me that the amendment which has been accepted by the gentleman from Idaho, offered by the gentleman from Nez Perce, including real estate of all kinds within the state, and state indebtedness in the shape of bonds, would certainly be a wise provision. It is very certain that our state bonds will be a good investment. I can think of no better or safer investment than our own indebtedness, and as to what the gentleman from Alturas says, that the loans ought not to be made upon town property because the buildings may be destroyed, I take it that the powers that loan this money will see to it that the portion of the value represented by the buildings will be covered by insurance policies.

Mr. McCONNELL. I hope this amendment will not be adopted. I think this is one of the most important sections in this act. You are well aware of the past history of this territory, of the history of our mountain towns particularly. My first experience in loaning money in this territory was in the town of Placerville, six months after I placed that mortgage on that property there I could not have got two bits on the dollar for it, and I never did get a cent out of it. The value

of property in the town went down; and there was where the trouble came in with the Oregon funds, referred to the other day—that was not sufficiently secured. I refer to an institution in Baker City, where they had improved real estate there, and an educational institution, and I remember they wanted and they got a loan from the state treasury of the school money, and it was a loss to the state—an entire loss. The loan that was on a lot of real estate in the hills west of Portland was a loss; and I do not see any security that is permanent, real security, other than perhaps the territorial bonds and improved farm property. There might be on some business street, particularly in a city like Boise, or in some of the towns in agricultural districts, loans that will be all right, but it will be many a year before that time will arrive, when a better rate of interest can be acquired on farm loans, and the investment made more safely than on any other loans in the territory. The objection to loaning them on state bonds is this, that while the state might be benefited by using the money at a low rate of interest, the school fund would be injured by it, because it would reduce the rate of interest below that made upon farm lands.

This is a matter that should not be passed upon hastily. While it may be desirable to distribute this money around in different parts of the country where there are not good farm lands to be found, as a matter of justice to the children we should pass upon this very coolly and intelligently.

Mr. ANDERSON. Mr. Chairman, I have an amendment to offer to Section 17 (11).

The CHAIR. The question before the committee is the adoption of the amendment proposed by the gentleman from Boise, Mr. Ainslie. (Cries of "Question." Vote).

The CHAIR. The ayes seem to have it. (Rising vote shows ayes 18, opposed 24). The amendment is lost. The question is now on the amendment of Mr. Reid.

Mr. CLAGGETT. I will offer as an amendment to insert after the words "farm lands" the words "or bonds of the state."

The CHAIR. There is an amendment by Mr. Anderson, which the secretary will read.

SECRETARY reads: In Section 17 (11), line 1, after the word "monies" insert "not needed for current purposes."

Mr. BEATTY. I ask what has become of the amendment proposed by Mr. Reid?

The CHAIR. That was incorporated, I understand, in the amendment by Mr. Ainslie.

Mr. ANDERSON. Mr. Chairman, I desire the secretary to put in the word "current *school* purposes."

Mr. McCONNELL. The bill provides that the interest shall be divided among the counties and the principal shall remain intact. It is the object to use the interest of this fund among the different schools of the state.

Mr. REID. The way the section reads now, it includes every dollar collected for school purposes, even the per capita taxes—all monies belonging to school and university funds. You levy taxes for any purpose, school purposes or university funds, it says they shall be loaned; there is no portion left. You must loan it out and use the interest for each year collected. The amendment offered by Mr. Anderson covers that case exactly; it says all monies not needed for current school expenses. I take it the object of this section was, that all the money derived from the sale of lands and so forth shall constitute a permanent fund, but the way the section is drawn, it says all monies belonging to school and university funds.

Mr. VINEYARD. That was the object of it exactly, as Mr. Reid states it. There is no limit here at all; it makes it, all the money to be loaned out.

The CHAIR. The question is upon the adoption of the amendment proposed by Mr. Anderson; are you ready for the question? (Cries of "Question." Vote).

The chair is in doubt. (Rising vote shows ayes 31; number of noes uncertain).

Mr. CLAGGETT. I just rise for the purpose of calling attention to the fact that this amendment does not reach the point. Putting it "all monies not needed for current school purposes" would still leave it subject to the objection that the principal of the public school fund derived from the sale of land could be distributed around to pay current expenses.

Mr. REID. You are right about that too.

Mr. CLAGGETT. We have gone as far wrong this way as we were the other way before. "All monies belonging to——"

Mr. REID. I think that section should be drawn over again.

Mr. CLAGGETT. I move that the committee now rise and recommend to the committee to draw a substitute for the section here, ready to report tomorrow morning; that the committee now rise, report progress and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. MAYHEW. I am instructed by the committee of the Whole to make the following report: Mr. President, the committee of the Whole have had under consideration the report of the committee on Education, have come to no conclusion thereon, and ask leave to sit again.

The CHAIR. If there is no objection the report of the committee of the Whole will be received and lie upon the table. It is moved and seconded that the convention now adjourn until tomorrow morning at nine o'clock. (Carried).

SEVENTEENTH DAY.

WEDNESDAY, *July 24, 1889.*

Convention called to order by the President.

Prayer by the chaplain.

Roll-call shows absent: Messrs. Batten, Harris, Howe, Hendryx, McMahon, Steunenberg, Sweet; excused: Messrs. Beane, Cavanah, Crook, Hagan, Hammell, Stull, Woods.

Reading of the journal.

The CHAIR. Are there any corrections to the journal? If not, it will stand approved as read.

Presentation of memorials and petitions? None.

Reports of standing committees.

Mr. HAYS. The committee on Revenue and Finance wishes to report.

SECRETARY reads: Boise, Idaho, July 23, 1889. Constitutional Convention. Mr. President, I herewith submit the report of the committee on Revenue and Finance for the consideration of the convention; also a detailed statement of the annual expenses of a state government under the proposed constitution, and recommend that the same be printed for the information of members. Hays, Chairman.

Mr. REID. Mr. President, I ask unanimous consent that that report be printed in full. It contains information that every member would like to have in his possession. It will cost but little more to print all of it, and therefore I make that request. (Seconded).

The CHAIR. It will be so ordered, unless objected to. Are there any further reports of standing committees?

SECRETARY reads: Boise City, Idaho, July 23, 1889. To the Members and President of the Constitutional Convention: Your committee on Names, Boundaries and County Organization beg leave to submit the accompanying report. Respectfully submitted, James W. Reid, Chairman.

The CHAIR. The report will lie upon the table and be printed. Are there any further reports of standing committees? None. Final readings? None. The regular order of business is exhausted.

Mr. McCONNELL. I move that the convention resolve itself into committee of the Whole for the further

consideration of the report of the committee on Education. (Seconded and carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. MAYHEW in the Chair.

The CHAIR. Gentlemen, you had under consideration last evening a section of the report.

Mr. McCONNELL. I desire to offer a substitute for Section 17 (11).

SECRETARY reads: Section 17 (11). The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide.

It is moved and seconded that the same be adopted.

Mr. HEYBURN. I offer a substitute for the substitute.

SECRETARY reads: Substitute for Section 17 (11). The monies constituting the permanent school fund shall be invested in United States bonds, bonds of the state or first mortgage securities in the state, at no more than one-half the value of the lands. The interest and income of the money so invested to be used for the schools of the state.

The CHAIR. What is the pleasure of the committee?

Mr. REID. I move that it be adopted. (Seconded).

Mr. McCONNELL. Mr. Chairman, I hope this substitute will not be adopted. It does not specify on what lands it shall be. It may be held that they may be loaned on improved lands in the town of Placerville, or the town of Wardner, or in some other place. It does not specify, as I understand it, on farm lands, but it may be on any lands out here in the mountains. I don't think that kind of security would be any security to our school fund. If the legislature of the territory of Idaho wants to loan its permanent school fund in United States bonds, I have all respect for them, but I do think an intelligent management of our state

government could provide for a better revenue from the use of that money than loaning it on United States bonds, and I think they can also provide a safe manner of investing it, but it certainly would not be by loaning it on improved lands without specifying what class of lands it shall be.

Mr. REID. When this substitute is voted on, if adopted, I desire to offer this amendment, to one or the other, to preserve the coal lands of the state.

SECRETARY reads: All coal lands which the state may acquire shall never be sold, but such lands may be leased.

Mr. REID. I will withhold it until the convention has acted, but I would like to hear Mr. Heyburn's amendment.

SECRETARY reads: The monies constituting the permanent school fund, etc.

Mr. REID. I will support the substitute last offered, for this reason: The first substitute that has been offered by the committee, it seems to me presents the same difficulty that we had at first. It says the principal of the money. The last substitute offered by Mr. Heyburn says the permanent school fund. I think the permanent school fund can be defined by the legislature as money coming from lands. That principal of the money does not cover the case. And, furthermore, Mr. Heyburn's amendment provides and announces the general principle, but with this limitation, it shall never be loaned for more than half the value of the land. Now you may take off all the buildings, and that is the rule, that without reference to them it shall always be confined to the land *per se*, not with the improvements on it, but the land itself, whether it be in the country or in the towns. I am not in favor of legislating in favor of any class. I represent an agricultural constituency; I would like to see them get all the money they desire to run their farms, and loan it upon their farms, and they will have an equal chance. But if a man wants to start a shoe shop, a blacksmith,

undertaker's or carpenter shop, or a store or anything else in the town, and he will offer as security a town lot, and on that let him have money to half the value of the lot, it says there—and it is worded carefully—half the value of the land upon which the loan may be had—then I am in favor of his participating in this school fund. Then you will have every man interested in it. But the way the committee has drawn it, nobody but farmers or men owning farm lands can borrow this money, and no matter what the value—you may offer them a lot in this city worth thousands of dollars, with no improvements upon it, and yet you could not get a dollar on it because it is not farm lands. Now what right have they to limit it to farm lands only? I take it we would not have demand sufficient for it. We have companies loaning money all through the country on these farm lands; farmers get supplied from that source; they will perhaps get all the money they want; or they will have competition in that respect, but you are confining it so that nobody but a farmer or one who owns farm land can borrow a dollar of school money. He may have real estate in a city, he may be improving it, he may not be cultivating any crops at all, but by the amendment proposed, the first objection is that the money may include taxes, but the last amendment cuts that off by saying "permanent school fund," and taxes could not get into a permanent school fund, and if they did it could be provided for by legislative enactment. And furthermore, while I represent an agricultural constituency, I am not willing to say that nobody but a farmer or a man owning farm lands shall borrow school money, especially if he have sufficient security, especially when you loan it to parties to improve their property and increase its value.

Mr. MORGAN. I would like to ask what would be done under circumstances such as this, which I know to be the case in this territory in half a dozen towns—mining towns, and I presume every man in the country who is acquainted with the mining portions of this

coast is acquainted with instances of the same kind. Ten years ago I knew lots in this territory worth from $1,000 to $1,500, and people were quarreling over them and cheating one another for the purpose of getting title, getting hold of any of them, that could not today be sold for $5 apiece. What will you do with school money loaned on such lots as those? And there are a great many of them.

Mr. REID. If I had charge of the school fund I would not loan any money at all in a town of that sort, but I would take a town like Boise City, or Hailey, or Lewiston, or Moscow—a permanent town, that does not depend on a mining camp for its sustenance. I take it that no matter what the value was, a prudent commissioner, acting for himself—and that is the rule that governs a trustee, as the gentleman knows—if a man was loaning any money he would not put it in a place of that sort, and therefore the same rule that governs him in its interpretation, that of a prudent, cautious business man, ought to govern him when he is handling school funds, and I take it that no man would loan any money at all in a place of that sort, but in a place like Boise or other permanent town he would loan it.

Mr. MORGAN. Where is the man living who can tell what town is going up and what town is going down? There is not any question in my mind but what school money loaned upon lots in the city of Boise would be well secured, but there are very few towns in the country that we know anything about their future, whether they will be good or bad or indifferent in a very few years. We are not able to tell. Towns which are in an agricultural territory surrounded by agricultural lands are safer, certainly, than those in mining camps, but as I say, it is impossible to say what towns are going up and those that are going down. If we could tell this there would be no difficulty about it, and I would be in favor of loaning it to anybody who had good security. But this school money is not to be held to favor any particular class of people; and it is

not to favor the farmers, or to favor people living in a town. We loan it to favor the school fund, in order that it may produce a permanent interest which shall enure to the benefit of the school fund forever, and we loan it where it shall be safe; that is the only reason. It is not to favor farmers. It is not an advantage to farmers in any event to be able to borrow money on their land, and I think it is admitted that he is going on the road to ruin when he does borrow money.

Mr. REID. Let me ask the gentleman a question. Suppose a permanent town like Boise—not a mining camp. Mr. Heyburn offered an amendment; I do not feel at liberty to accept any amendment in his absence, or I would accept an amendment to restrict loans from mining camps. But there is a difference in this territory between those—it is a great difference, and it is this case. Suppose my town wanted to build a graded school, like this over there, and would bond the town or county or school district to pay for those bonds; you could not invest this school fund in a security of that sort.

Mr. MORGAN. The gentleman must excuse me, but we are not talking, Mr. Chairman, about what might be done; we are talking about the substitute that is here pending. That provides that the money may be loaned on all sorts of real estate to the extent of one-half the value of the land, and I am opposed to it for that reason. If you restrict it to certain classes of bonds, it is all right. If you desire to take state bonds of this state, they will be perfectly good security, in my opinion, forever. If you desire to put it upon the bonds of the United States, they will be good security. If you put it upon farm lands at one-half the value of the land, that will be good security, but there are very few towns where any man can say in the near future, within ten or fifteen years, whether the security shall be good or not, and therefore I am opposed to the substitute as it reads.

Mr. CLAGGETT. Mr. Chairman, I would like to

offer an amendment, striking out those words in the substitute offered by Mr. Heyburn, one-half of the value of the lands, and insert instead of it, one-quarter of the market value of the lands at the time of the loan. And in advocacy of that amendment I wish to say this: that it is not a safe, bankable proposition to loan money on real estate at half the value of the land. In any case, and especially in the country, there is frequently a shrinkage of fifty per cent in the course of a year in value, and the interest account, which is constantly accumulating, is liable in case a foreclosure of the mortgage is necessary—you take the shrinkage, the interest account, the principal, the necessary expenses of foreclosure and sale, and it is liable to leave the security deficient. I do not think, however, on this proposition which has been discussed here, that we ought to discriminate in the matter of the kind of lands. I will admit that farm lands as a rule, have a better more stable value than town lots, and yet there are exceptions to that rule, for while farm lands frequently deteriorate, city property where the city is permanent is almost constantly in the condition of improving in value, and I think that that matter should be left to the discretion of the authorities who have charge of this business. But it does not look well to put in the constitution a provision that discriminates in favor of one class of securities and cuts out all other securities. Miners will object to this. They do not care whether they receive any part of the school fund or not, but they do not want anything put in the constitution which is an advertisement to the world at large that they consider mining property of uncertain value.

Mr. McCONNELL. I am glad my friend Mr. Claggett is becoming converted to the idea that farm lands do depreciate in value sometimes. That is doubtless a fact, but it is also a fact that while we are representatives here of farming constituencies, we are nearly every one of us from a town, and it is doubtless also a fact that we might as well face if we act with safety,

that it is not wise for our citizens in these towns to borrow money on their town lots. I think the town in which I have the pleasure to live, Moscow, is as permanent a town as there is in the territory and will be in the future state of Idaho. Yet if any commissioner would go there today for the purpose of looking up the matter of investing school funds, he would find property valued far beyond what he would think or any other gentleman would think it would be safe to loan money, at even half or one-third. And this thing becomes or may become a question of privilege as to who will borrow these funds. It has been my experience in the loaning of school funds that during the seasons when we have political elections, that the privilege of loaning these monies for the state has been and always will be used as a political leverage to obtain power. I desire for that very reason to take this entirely out of the hands of this board, and specify particularly as to what class of securities they may loan this money upon. While I would not be in favor of putting anything in the constitution against mining towns or any class of towns, one as against another, yet I will recognize the facts, as will every other gentleman on this floor, that these towns which are mining towns are not safe security, or that property in those towns is not safe security. I do not desire to discriminate against any class of people or industry, and that was not the object of this committee in making this report, but the sole and only object was to secure the perpetuity of this fund. I have no objections to the amendment, so far as relates to the wording of the "permanent school fund." I think it would be a good amendment to offer, but I take it that this substitute will be voted down, and then that amendment may be made to the first line of the original substitute. Then it will be far safer. There may also be an amendment to place it in the power of the commission to loan money on United States bonds. However, I do not think there would be any money loaned in that way, because I think there will always be oppor-

tunity to loan this money to obtain a higher rate of interest than on United States bonds. I hope the substitute will be voted down, and then any amendments the gentlemen may desire to offer to the original substitute may be entertained.

Mr. BEATTY. Mr. Chairman, I do not remember these substitutes, but I would like to hear the one we vote upon first, in order to see whether these loans shall be first mortgage loans.

Mr. McCONNELL. There is that provision in it.

Mr. GRAY. I shall certainly oppose the lending of any money upon any town property or any mining property or anything connected with the mines. I remember it says in the original text here, "improved farm lands." As a matter of course I would think security upon Boise City property would be good, but there are very few towns I would feel that way towards, and therefore I would want to exclude them all. If a restriction is put upon it, let it be upon it as in the text, that it shall be "improved farm lands." There is no mining town—I care not how prosperous it is now—I have seen mining towns come and go, when property was, you might say, at a fourth of its value, and in ten years, from fabulous prices, there was nothing. But with farm land, that is not the case; therefore put the restriction so there can be no question about it. I have seen this town of Idaho City, where I will say I have rented the bare ground for $100 a month, twelve foot front, without a thing on it, that is not worth a dollar today—not a dollar. One hundred dollars a month rent for that very ground, and it is not worth a single cent today. I am opposed to anything only as specified in the text.

Mr. CHANEY. Mr. Chairman, in 1882, in the town of Silver Cliff, Colorado, to my certain knowledge town lots sold for five and six hundred dollars. In three years, to my certain knowledge, you could not get ten dollars for those lots. That is the kind of security that

is proposed by the honorable member from Shoshone, Mr. Claggett, that we invest these school funds——

Mr. CLAGGETT. No, I did not make any amendment to that effect.

Mr. CHANEY. In real estate, when we know by the history of the past that this real estate of these mining camps is as insecure as anything you can possibly imagine.

Mr. MYER. The other day we had a startling example in the way of language in regard to what the farm lands of Idaho amount to when they are used a little. One gentleman told us that as soon as water strikes them all the productive elements of the soil are washed away, and another gentleman told us that up in north Idaho as soon as they begin to plow and till the soil and let it lie idle a little while, thistles, cockle-burrs, briars and wild oats get hold of it. Now I would like to have some gentleman—they all seem to know what mining property is going to be worth in the future, and what city property has been worth—I would like some gentleman who knows all about farming property to get up here and let this convention know what farm lands are going to be worth in the future.

Mr. McCONNELL. I think that was fully explained by my honorable friend Mr. Claggett yesterday. He explained to this convention that farm lands in a few years would be worth $400 an acre all over this country. (Laughter).

Mr. CLAGGETT. Mr. Chairman, I don't think there is any use in indulging in this kind of cross-fire back and forth. The reason why I object to limiting this matter in the constitution to farm lands, is not because I want any of this school money loaned on real estate of any kind of uncertain or indefinite value, but I object to any kind of plan that throws into the hands of a few bankers, scattered here and there through the agricultural regions, the exclusive handling of the school funds of the state. That is where the thing comes to in the end. If the school board or boards of

county commissioners are proposing to lend this money, and are limited to the people to whom that loan is to be made, certain syndicates will be formed—they necessarily must be formed—school commissioners would get together all over the state and negotiate individual loans; they will make certain bankers in certain portions of the country, or certain agents for them, to negotiate loans and notify them in regard to it, and in the meantime the school fund will go there—it will be there, subject to loan. I propose to put this thing into the hands of the board of education in such a way that they may go to work and loan it upon good security, not to exceed one-quarter of the market value of the lands—the market value of them at the time the loan is made. I want to call the attention of the convention to another thing. Although farm lands as a rule are much better security on long loans than other forms of real estate, they do not begin to be as good security on short loans, and nowhere is a farming community as good and prompt in the payment of loans and debts as they are in a live, growing and progressive city. You can get a larger interest upon your investment and still have it perfectly secure, if you leave the matter in the discretion of the board of commissioners.

We all know that as a rule farmers turn their property once a year, market their crops and pay their debts. You take a business man engaged in business, who is a citizen in a live, progressive city or town—and we need not talk about mining camps; I do not care about loaning anything there, except as I said before, I do not want this constitution to forbid it—but you take any given amount of money and you can loan it at better rates of interest on short loans, than you can go to work and loan it for five, ten or fifteen years to a farmer. You can go on and practically compound your interest once a year. I do not want to see the school fund crippled by being limited to any form of real estate, but I do want to see such provisions put in here as will protect the school fund, by limiting the amount

of loans, in accordance with the amendment I suggest, to one-quarter of the market value at the time. Another thing. Gentlemen need not go ahead and refer, as my friend from Ada does, to Idaho county and Idaho City. I will ask the gentleman as to whether a loan on real estate in Idaho City would not have been perfectly good at one time?

Mr. GRAY. Perhaps at one time it would, and in another six months it might not.

Mr. CLAGGETT. But at the time it was loaned, at the time Idaho City was prosperous, I will ask the gentleman whether a six months loan would not have been good on real estate?

Mr. GRAY. I can't tell you about the years it would have been good. In one year it was prosperous, and in six months it was not worth the taxes.

Mr. CLAGGETT. I should not wonder if that were so, but I assume this board of education will have sense enough to know what lands to loan it upon, and will be acting under the obligations which will be imposed upon them by law. I do not like these discriminations, and I do not like this idea of going to work and putting in the constitution that none of the school money, or any other money, shall be loaned except to certain classes of people; it is class legislation under the guise of security for the school fund. (Cries of "Question").

The CHAIR. The question is upon the adoption of the substitute offered for the substitute.

Mr. STANDROD. Will the secretary please read Mr. McConnell's substitute?

SECRETARY reads: Substitute for Section 17 (11): The monies constituting the permanent school fund shall be invested in United States bonds, bonds of the state or first mortgage securities in the state at no more than one-half the value of the lands; the interest and income of the monies so invested to be used for the schools of the state. Heyburn.

Mr. McCONNELL. That is the substitute for the substitute.

Mr. REID. The other substitute is called for.

SECRETARY reads: The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide.

Mr. REID. Was the substitute just read the one introduced by Mr. Heyburn?

Mr. McCONNELL. That was the substitute I offered.

Mr. REID. I would like to hear Mr. Heyburn's substitute read, and the amendment offered by Mr. Claggett.

SECRETARY reads: The monies constituting the permanent school fund, etc. Mr. Claggett offered the amendment "one-quarter of the market value of the lands at the time of the loan."

Mr. REID. Do we vote on the amendment of Mr. Claggett first?

The CHAIR. No sir, we vote on the substitute first. (Cries of "Question").

The CHAIR. The question is upon the substitute offered by Mr. Heyburn. (Vote). The noes seem to have it; the noes have it; it is lost. That disposes of the substitute, and also the amendment of Mr. Claggett. The question now before the convention is the substitute offered by Mr. McConnell of Latah, for Section 17 (11). (Cries of "Question").

Mr. GRAY. Read it.

SECRETARY reads: The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. (Cries of "Question").

Mr. CLAGGETT. Is that subject to amendment?

The CHAIR. I think it is better to adopt it first.

All in favor of the substitute offered by Mr. McConnell say aye. (Vote and carried). It is adopted.

Mr. CLAGGETT. I move to——

Mr. REID. There was an amendment I offered if this was adopted, by adding after the section.

SECRETARY reads: All coal lands the state may acquire shall never be sold, but such lands may be leased.

The CHAIR. That is to amend the section.

Mr. CLAGGETT. I move now to strike out the words "the principal of all educational funds," and insert the words "the monies constituting the permanent school fund." The way it is now, it is subject to precisely the same objection it was yesterday.

Mr. McCONNELL. We will accept that, with the consent of the convention. I don't think the committee will have any objections.

Mr. CLAGGETT. Then I offer this further amendment, which I offered before, and let it come in at the proper place.

The CHAIR. Those words should be stricken out—and by consent of the convention—and those others inserted. That had better be done at once.

Mr. CLAGGETT. I will now offer this as the sense of the convention, and that is, that the quantity of money loaned shall not exceed one-quarter of the market value of the lands at the time of the loan. I will say, Mr. Chairman, there is not a banker in the territory of Idaho——

The CHAIR. Is the amendment supported? (Seconded).

Mr. CLAGGETT. There is not a banker in the territory of Idaho that will loan money at current rates of interest for more than one-half the market value of the land. It is not regarded as good security or a good loan, and practically the highest they will go, when they are doing a prudent and conservative business, is to advance one-third of the value of the land at the time of the loan, but in dealing with the school

fund I think it would be best always to limit it to one-quarter, and that on first mortgage bonds, and then you will have good security.

Mr. McCONNELL. I do not think it necessary to tie up the commission by putting in a clause of that kind, because it is left entirely to the legislature as to the provisions on which this money shall be loaned. I do not think it is necessary to make a voluminous constitution in order to put these things in. The legislature has got to act intelligently in this matter. They are restricted as to the class of securities. I have a few times in my life had a few dollars to loan, and frequently found it to my advantage to loan a larger proportion than that on the value of land. I take issue with the gentleman's assertion as to what bankers do in loaning money on lands. I think it frequently occurs that half the value of the land is a good investment and good security.

Mr. CLAGGETT. It may be in a well conducted bank and when a prudent banker does it. The laws of the United States absolutely forbid all national banks to loan money on real estate at all. (Cries of "Question").

The CHAIR. The question is upon the amendment offered by Mr. Reid.

Mr. MORGAN. I don't think that is germane to the section at all, or even to the article; I rise to a point of order.

Mr. GRAY. I don't understand that coal lands are school lands, under any construction.

Mr. REID. I will ask the clerk to read the amendment, and maybe the gentlemen will understand it then.

SECRETARY reads: All coal lands which the state may acquire shall never be sold, but such lands may be leased.

Mr. REID. The point is this: Suppose under this grant from congress, when we come into the Union, which we get from the national government, it should turn out that these sections reserved happened to be

coal lands, or some part of them, or some of the grants that are issued to the state, which includes not only school lands but lands for irrigation or any purpose whatever. The state is made a grant, and it turns out that some of them are coal lands. It is just the provision put in the Dakota constitution.[1] The object of the amendment is to keep the coal lands from being sold. However, if the convention desires it should go in, if the gentlemen object that it is not germane to that clause, I will withdraw it and offer it at another point.

The CHAIR. The chair is satisfied that it should be placed in some part of the constitution.

Mr. REID. If not, we can put up mineral lands and sell them for ten dollars an acre. Coal would be quite an item, if the discovery should be made in this territory.

Mr. MORGAN. I have no objection to it in its proper place, I think it is proper. Have we no article refering to other lands that may be given by the government to the state?

Mr. REID. We cannot take up any other section now, unless we move reconsideration, because we have gone through the constitution, and these amendments are offered in committee of the Whole.

Mr. MORGAN. I don't think that is germane to any section in this bill.

Mr. REID. The chair held it was germane to this section.

The CHAIR. No, I should rather think it was not. I think it would be prudent to make it an independent section.

Mr. REID. Well, I will withdraw it for the present and offer it as an independent section.

Mr. ALLEN. The bill for the admission of Idaho provides that no mineral lands shall be included in the

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1—"The coal lands of the state shall never be sold, but the General Assembly may by general laws provide for leasing the same. The word 'coal lands' shall include lands bearing lignite coal."—Constitution of North Dakota, Art. 9, Sec. 155.

school lands,[1] and I think that is a provision of the United States laws. It separates it from the school lands.

Mr. REID. The gentleman does not understand me. Suppose that this grant is made, that they grant so many acres, and afterwards, after the state gets title to it, it is holding it and it is located, somebody makes a discovery of coal. They may not know it is mineral land at the time; it may be laid off as agricultural land, but I take it that this amendment will govern a case of that sort. It will prohibit the land commissioners from selling mineral lands that may be discovered, but the state can lease them.

Mr. ALLEN. I will answer that by reading the section. I find in the admission bill for the territory of Idaho (reading) "that sections sixteen and thirty-six in every township within said state, or in case any of said lands have been disposed of under the provisions of any act of congress to settlers or purchasers from the United States, or in case any of said sections sixteen or thirty-six are fractional in quantity, or wanting by reason of the township being fractional, or shall be found, when surveyed, to be mineral lands, or worthless for agricultural purposes, * * * "[2]

Mr. REID. Suppose that that is not surveyed, but will be the moment we are received into the Union, and after they are surveyed and located there is a discovery of coal made on them before the commissioners sell it, then this amendment provides that they could not sell it, but could lease it.

Mr. ALLEN. That is controlled according to this provision, which says: "other lands, equivalent in quantity thereto, in legal subdivisions of not less than forty acres, to be selected within said state in such manner as the constitution and legislature thereof may provide, * * * * "[3]

1—Sec. 16, Platt amendment to Mitchell Bill. See Appendix.
2—Sec. 16, Mitchell Bill.
3—Continuation of first quotation from Sec. 16, Mitchell Bill.

Mr. REID. But that cannot be after the United States has parted with its title altogether, they cannot select other lands. The moment we are in the Union the United States loses all control of that land and the grant becomes complete and we may dispose of every acre. We may get hundreds of thousands of acres for irrigation and other purposes. The only idea of this amendment is that if these lands are discovered by the irrigation commissioners, or other commissioners appointed to handle lands for any purpose, to be coal lands, then they shall not sell them.

Mr. GRAY. I understand where mineral lands have been laid off as school lands—I don't know what the rule will be after it becomes a state, but if it is as it is now, when mineral is discovered, you make application to the land office to have it set apart as mineral land, if it has been surveyed and returned as agricultural land. Then you make the application to the land office, setting forth the fact that it is mineral land of any kind, and then it is withdrawn from the market, and also, as I understand, from the school lands, and other lands are taken. I don't know if the United States intends to part with the title to part of its lands, and I don't know but, as we get it from the United States, the United States could give other lands in lieu thereof. I don't know but there might be such a thing as a state law that might control these matters, and it would be necessary, but I believe we better cross the river when we come to it. Let the thing stand as it is now. However, as the gentleman from Bingham says, I can't see where it is germane to this subject in any respect. I hardly know whether the title to them would be regarded, even if we became a state, as school lands, if they are found to be mineral lands. If it did, it would have to be under state law, sure.

The CHAIR. An amendment is offered to the substitute.

SECRETARY reads: One-quarter of the market value of the lands at the time of the loan.

Mr. CLAGGETT. In the substitute as adopted there is no limit whatever. If the land is worth $1,000, they can loan $10,000 on it as security. There is no provision, no safeguard whatever, in the substitute. That was in the substitute offered by Mr. Heyburn, one-half, which was voted down. We now have before the convention the amendment I offer, namely, to limit the amount of money to be loaned to one-quarter of the market value at the time of the loan.

The CHAIR. The amendment of Mr. Claggett, as offered to the section as it now stands, has not been voted upon.

Mr. REID. I would like to ask the chairman of the committee of there is any limit, if you couldn't even loan double the value on it? There is no protection.

Mr. McCONNELL. The security is provided, in that it shall be loaned under such regulations as the legislature may provide.

Mr. REID. The question I asked is answered; it leaves it to the legislature. We have limited how much they may sell; we have made class legislation by saying you shall not loan it only on a certain class of lands, although, as stated by Mr. Myer, these farm lands may prove valueless. The gentlemen argue here that we cannot loan it on other lands, that the value may be fluctuating, and yet you put it in the constitution and clothe the legislature with power to loan these funds to any extent—the school money, to any extent, and there is no safeguard around it whatever.

Mr. WILSON. I desire to amend the amendment Judge Claggett makes by inserting the word one-third instead of one-fourth. (Seconded). And the reason for that is merely that all the loan companies in this country make that their rule—one-third of the value of the property, and I think as financiers they are better able to judge what the security is than we are; I think that is a proper amendment.

The CHAIR. An amendment to the amendment?

Mr. CLAGGETT. The only objection in the world

to such an amendment as that is this. Take a man who is loaning money and is always on the ground, he can safely loan one-third on the market value; he is there all the time to look after it. But when you come to loan the money of the state you cannot expect that careful and prudent supervision of loans which you will in the case of a private individual, and therefore I think the quantity of money loaned should be less than that which a banker is willing to advance or a money loaner, when his whole business consists in going around through the country looking after the security, and that is the reason I put it one-quarter, something below what an ordinary banker would loan it at.

Mr. WILSON. I would answer that by saying that I do not believe money can be loaned at one-fourth the value of the land, to any extent. In fact it is hard for these loan companies to loan much money at one-third the value of the land. If you want to loan money you cannot do it at one-fourth the value of the land, unless you give it a fictitious valuation. And the loan companies have their agents here, and the school fund would have a sworn officer as their representative and agent, and I think the school fund should have a man to represent them on the ground as well qualified to judge as the loan companies.

Mr. HEYBURN. I would like to have the substitute and amendments read, so that we may know how they stand.

The CHAIR. The amendment you offered has been voted down by the committee. The substitute as offered by Mr. McConnell has been adopted, and an amendment offered by Mr. Claggett, which the clerk will please read.

SECRETARY reads substitute for Section 17 (11). The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide.

Mr. CLAGGETT. That was amended by consent to "permanent school funds of the state."

Mr. McCONNELL. I would have it, instead of the "permanent school funds," "permanent educational funds."

Mr. CLAGGETT. Very well, that is all right.

SECRETARY. Shall I add that word here, "the principal of all permanent educational funds?"

Mr. McCONNELL. "The permanent educational funds belonging to the state."

The CHAIR. That is done by unanimous consent.

SECRETARY reads: —shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide; one-quarter of the market value of the lands at the time of the loan.

Mr. CLAGGETT. I suggested when I offered the amendment, that it was the sense of the convention that the amount of money loaned should not exceed one-quarter of the market value of the land at the time. It is not incorporated in there; I will have to draw it up afterwards.

Mr. HEYBURN. I would like to ask a question. When he uses the term land, is it exclusive of the value of the buildings? If not, Mr. Chairman, I desire to amend by adding to that the words; "exclusive of the value of buildings." If they are going to discriminate in favor of land, we will have the bare land.

Mr. CLAGGETT. I will accept the amendment.

Mr. HARRIS. I have got an amendment, Mr. Chairman.

Mr. WILSON. Mr. Chairman, I rise to a point of order. Mr. Heyburn's amendment is an amendment to an amendment.

The CHAIR. No, it is an amendment directed towards the section; it does not interfere with your amendment.

Mr. WILSON. There are two amendments already.

Mr. HEYBURN. There may be twenty at the same time.

The CHAIR. The question now before the committee would be the adoption of the amendment to the amendment offered by Mr. Wilson, to strike out the word "one-quarter" and insert "one-third." I will state that Mr. Claggett is preparing an amendment, as you will see by the reading of it; it does not read as it should be, to the section, and this only goes to the quantity, to strike out "one-fourth" and insert "one-third," and when that amendment is prepared by Mr. Claggett, your amendment will be more proper than it is at the present time.

Cries of "Question."

The CHAIR. What are you calling "question" for, gentlemen?

Mr. CLAGGETT. I will offer this in the shape of a proviso at the end of the section.

SECRETARY reads: Add at the end of the section: "*Provided*, that no loan shall be made of an amount of money exceding one-quarter of the market value of the lands at the time of the loan." Mr. Heyburn's amendment is, by inserting thereafter the words "exclusive of the buildings."

The CHAIR. Do you accept that amendment?

Mr. CLAGGETT. I will accept the amendment.

The CHAIR. The question is on the amendment proposed by Mr. Claggett to section 17 (11); are you ready for the question?

Mr. McCONNELL. I hope this convention will not tie up the Board by any such amendment as this. If you take into consideration one-third of the appraised value, or one-fourth, exclusive of buildings or improvements, it will place the Board in such a position that they cannot loan these funds other than on state bonds, and if the state did not want to borrow the money, the money would have to be locked up in the treasury. I suppose it will doubtless occur sometimes that we may have a treasurer who would like to hold the money and take care of it himself. I hope this amendment will not be adopted. I hope the convention will leave the

matter so the legislature can attend to it, as different conditions and circumstances arise in this territory. We cannot say as to what the future of our territory is going to be, and we ought to leave a little something open to the legislature. I am, as my friend Gray from Ada suggested the other day on the floor,—I have a little confidence in our state legislatures. If we are going to think they are incompetent and dishonest, we had better adjourn and go home and not have any constitution, not have any state.

Mr. HEYBURN. He is considering it on the proposition that there is some honesty left in the people, and would be some in those of the people that would go into the legislature. But the gentleman at that time seemed to think it was doubtful, and wanted to tie up this fund so that it could be loaned only upon improved farm lands. He did not think the legislature would be competent or honest enough to secure safe loans upon any other class of property than farm lands, and did not want to leave any latitude to them. This morning his confidence in the honesty of the people and the legislature has somewhat grown. The amendment I offered this morning before being compelled to leave the hall, which in my absence was disposed of, provided a refuge in case there was no market for this money, that it might be invested in government securities, which can always be done, and for which there is always some rate of interest provided, so that there need never be one dollar of this fund lying entirely idle. It might not be drawing the highest rate of interest, but whenever a better rate of interest can be obtained for it, government bonds can be converted, as government bank notes can, into cash and the money always available, and it would be invested in the very best security.

Mr. McCONNELL. I rise to a point of order, the amendment he is talking about has been disposed of.

Mr. HEYBURN. I am discussing the amendment that I have just offered. I have a right to refer to these matters as I see fit. The matter was referred to in the

substitute offered this morning, that these funds might be invested in government securities, in order that they may at no time be entirely idle, and it was intended to provide against that contingency of this absence of a market for money which the gentleman seems to be afraid of. Now to secure this class legislation,—for that is all it amounts to,—that money shall be only loaned to one class of people, that is, the farmers,—and it excludes every other class, the gentlemen admit,—the argument is made that land is something permanent and something that cannot be disturbed or interfered with, and this security would always be good. Now I assent to the making of this rule, but I want to see that it shall be lands and lands alone that are security for this money, not a section of land that without any buildings is worth two dollars and a half an acre, but happens to have a value of $10,000 worth of buildings on it; I don't want this money to be loaned on the basis of this value of the land with these buildings, but upon the basis of the value of the land alone, so that if you are going to provide an absolutely sure security based upon this land, have it upon the land without the buildings. Because the buildings in a city,—the buildings and improved property in a city are just as safe from fire and just as absolutely protected by insurance as the buildings of a farmer in the country, with his haystacks and inflammable material all around them. So that I say, let us be consistent about this thing and not be carried away by this idea of farm lands. Farm buildings are no more secure than city buildings; they are no better security for a loan than city buildings. The value of farm lands can be taken away, destroyed, according to the argument that was advanced by this gentleman the other day; it may go down the stream. Or, according to the argument of this other gentleman we had the pleasure of hearing the other day, this land may depreciate in value very much, and then it is not as good security as city property. Let us not be carried away by this idea that there is no other security in the

world but land. The experience of every attorney on this floor who has had to do with the collecting of loans, mortgage loans, in the last twenty years, is that there is no class of loans as difficult to realize upon as the loans made to farmers, when you exceed about one-half of the value of their property. When a farmer is bankrupt, he is about the worst bankrupt in the world.

Mr. McCONNELL. I would like to have that amendment read again.

SECRETARY reads: *Provided,* that no loan shall be made of an amount of money exceeding one-quarter of the market value of the lands at the time of the loan, exclusive of buildings.

Mr. GRAY. Mr. Chairman, just one word. There is no question but what farm buildings should be insured, and the insurance may go to the protection of the mortgagee,—no question about that. I cannot see any reason why they should exclude the buildings. The gentleman from Shoshone seems to think that, while we are excluding all lands but farm lands. There are towns, plenty of them perhaps in the territory, where the security would be good, that is, with the insurance, but if we can name them I don't want to name them. But, as I said before, I am opposed to loaning the state money upon town property situated in a mining country; I have seen them fluctuate too much. All those who have lived in mining countries have certainly seen towns where property at one time would be very valuable and at other times worth nothing. But I have confidence in the legislature, and if they want to leave it all to the legislature and this Board, I am willing to do that, but if you are going to make restrictions I want to have them made properly; that is, if we are going to restrict them at all let us have it entirely. But, as I say, I am not opposed to loaning upon farm lands, but I don't see why it should be exclusive of the buildings.

Mr. MAXEY. Mr. Chairman, I hope the convention will not lost sight of the original text as proposed by the committee. We have been working upon this sec-

tion now a part of two days, and we are just about where we commenced,—we are not advanced one step. Therefore I hope the convention will not lose sight of the original text: "The monies belonging to the school and university funds shall be loaned on first mortgage on improved lands under such regulations as the legislature may provide."

Mr. McCONNELL. Mr. Chairman——

The CHAIR. That was the substitute that was offered for that section which was adopted. I desire to call the attention of gentlemen to the fact that there is an amendment to the amendment of Mr. Claggett, to strike out the word "one-fourth" and insert "one-third," offered by Mr. Wilson.

Mr. McCONNELL. The question before this convention, as I conceive it to be now, is whether as a matter of good policy it is better for us to go on with this legislation in this convention any further, or leave it to future legislatures. If we are to go on and prescribe the amount of money which is to be loaned on land and the manner of loaning it, I think the amendment offered by the gentleman from Shoshone, (Mr. HEYBURN,) is all right so far as excluding buildings, because my own experience in taking securities on property where there are buildings, is that it is a great deal of trouble for me to look after these insurance policies. The Board may have that provision, that it shall be insured in favor of the Board; but sometimes insurance policies are neglected: I know I have a great deal of trouble in keeping my insurance account up, and any gentleman who has any improvements to insure has the same difficulty, and sometimes buildings are neglected, policies will expire. But I am willing to have the legislature provide for the amount, and to provide whether or not buildings should be assessed in valuing this property, but if we are going to do it here, if this convention thinks it is better for us to do it, I am entirely willing. That is the only question, I think, that is to be decided by us. I am inclined to think we had better leave it

to the legislature; if the convention thinks otherwise I am agreeable to go on and prescribe the limitations upon which the money shall be loaned. I think one-fourth too small. I would be in favor of making it one-third, if I was a member of the legislature, and make it exclusive of buildings, so as to have it entirely safe, but one-fourth is entirely too little if we exclude the buildings.

Mr. CLAGGETT. I concede that, and will accept the amendment of the gentleman from Ada, inasmuch as the buildings are excluded in the amendment.

Mr. McCONNELL. I would like to have the convention vote on it, and give their views. (Cries of "Question").

The CHAIR. All in favor of striking out in the amendment as offered by Mr. Claggett the word "one-fourth," and inserting in lieu thereof the word "one-third," say aye. (Vote and carried). The question is now on the adoption of the original amendment, after its amendment by striking out the word "one-fourth" and inserting "one-third." The clerk will read the amendment to the committee.

SECRETARY reads: *"Provided,* That no loan shall be made of an amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

The CHAIR. Are you ready for the question? (Cries of "Question." Vote and carried). It is carried. Are there any further amendments? I believe there was an amendment sent up by Mr. Harris that has not been read.

SECRETARY reads: Amend by saying "one-half" instead of "one-quarter" or "one-third."

The CHAIR. There is no second to the amendment. The question is now before the convention of the adoption of the section as read. It is moved and seconded that the same be adopted. (Vote and carried). The section is adopted. What is the pleasure of the com-

mittee? The question now before the committee is the adoption of Article 9 as amended. It is moved and seconded that the same be adopted. (Vote and carried).

Mr. McCONNELL. I move that the committee rise, report progress, and recommend to the convention that this article be adopted.

Mr. REID. Mr. President, before we rise, I move to amend the motion, that the report be laid aside, and when the committee rises it report to the convention and recommend that it be adopted, and that we continue with the order of business.

Mr. McCONNELL. I will accept the amendment.

The CHAIR. It is moved and seconded that when the committee rise it report the article to the convention and recommend that it be adopted, and that the committee continue with the further order of business. (Vote and carried).

Mr. REID. I move that we take up the report of the committee on Public and Private Corporations. (Seconded and carried).

The CHAIR. I desire to state that I was chairman of the committee on Public and Private Corporations, and desire to have some other member in the chair of the committee of the Whole.

Mr. PRESIDENT in the Chair: Will the gentleman from Nez Perce, Mr. Poe, take the chair?

Mr. POE in the Chair: Gentlemen, you have now under consideration the report of the committee on Public and Private Corporations.

REPORT OF COMMITTEE ON PUBLIC AND PRIVATE CORPORATIONS.

The CHAIR. What is your pleasure?

SECTION 1.

SECRETARY reads Section 1, and it is moved and seconded that the same be adopted. (Carried).

Section 2.

SECRETARY reads Section 2.

Mr. SHOUP. Mr. Chairman, I desire to offer an amendment.

SECRETARY reads: Amend Section 2 by striking out all after the word "created" in line 5.

Mr. SHOUP. Mr. Chairman, I understand that the legislature can do it anyway; I think it is not necessary in the section. (Seconded).

Mr. MAYHEW. I don't know as I understand the gentleman's motion exactly, in offering an amendment to this section. I am under the impression, Mr. Chairman, that this matter should be left to the legislature as far as possible, to regulate matters in relation to public and private corporations. His amendment is to strike out that portion in line 6 which provides that any such law shall be subject to future repeal or alteration by the legislative assembly. I don't know of any reason from what the gentleman stated,—I don't know that there is any strong reason for his suggestion, or I might be perfectly willing to adopt it.

Mr. SHOUP. What I understood was this, that this provides that after the legislature passes a law, that that law shall be subject to repeal; I think that is unnecessary.

Mr. MAYHEW. Then if it is unnecessary, as this matter stands, it is here as surplusage merely.

Mr. SHOUP. Yes, that is my view of it.

Mr. AINSLIE. Mr. Chairman, I rather think it would be preferable to retain that proviso in the section, to place it beyond dispute in the future. These corporations are very hard to fight sometimes, especially where the legislature passes a bill infringing upon what they consider their vested rights, and in order to prevent the possibility of any future litigation upon the action of future legislatures of the state of Idaho by these corporations, I think it would be a matter of

safety to leave it in. It certainly does no harm, and is in the interests of the people at least.

The CHAIR. Those in favor of the adoption of the amendment say aye. (Vote). Contrary no. (Vote). The noes have it.

Mr. CLAGGETT. I really do not understand the section.

Mr. VINEYARD. I move to strike out all after the word "state" in the third line.

Mr. MAYHEW. I don't know what the gentleman means by that; I will say it is not supported.

The CHAIR. Is there any support to that motion? (No second). What is the pleasure of the committee?

Mr. HARRIS. I move an amendment to the article.

Mr. MORGAN. I suggest that the words "legislative assembly," where they occur in Section 2, be stricken out, and the word "legislature" inserted.

The CHAIR. I think that that order may be given to the secretary, that that change will be made hereafter in any bill that comes before the convention, wherever it occurs in any report, and it is the judgment of this convention that the words "legislative assembly" shall be stricken out by the clerk and in lieu thereof the word "legislature" shall be substituted. If there is no objection that will be the order of the chair. There is no objection and it is so ordered.

SECRETARY reads amendment offered by Mr. Harris, which proves to be the same as suggested by Mr. Morgan. It is moved and seconded that Section 2 be adopted.

Mr. CLAGGETT. Mr. Chairman, I would like to ask a question of the chairman of the committee on Corporations. I do not understand the section, and I want light. It seems to me it defeats itself. It says: "No charter of incorporation shall be granted, extended, changed or amended by special law." Then follow certain exceptions, which might go in parenthesis, and then "provided, that any such law shall be subject to future repeal or alteration by the legislature." We

will apparently prohibit the passage of a special law, and then seem to anticipate the legislature will violate such a provision, and so provide that all legislation shall be subject to repeal. That is the way it reads to me.

Mr. MAYHEW. I understand that the legislature, after the formation of the state, shall not pass any special law for any particular corporation or association; that it shall be done in the future by general laws. But this section sanctions such special laws as are now in existence by the laws of this territory passed heretofore. I will state now——

Mr. CLAGGETT. I see the point. I would suggest that the gentleman amend that last proviso, as special laws and general laws are both included in it, that he insert after the words "any such" in line five, the word "general," so as to read: "*Provided,* That any such general law shall be subject to future repeal or alteration by the legislature."

Mr. MAYHEW. I accept the amendment, and move that the word "general" be inserted. (Seconded and carried).

Mr. MORGAN. I want to suggest to the chairman of the committee having this bill in charge, that by the clause in the legislative department adopted by the committee, Section 21 (19), "the legislature shall not pass any local or special laws in any of the following cases," that is to say, line 42, "creating any corporation."

Mr. MAYHEW. Well, that does not interfere with this at all.

Mr. MORGAN. It makes this unnecessary, it seems to me.

Mr. MAYHEW. This section is absolutely necessary, and it does not conflict.

Mr. SHOUP. I would like to understand what is meant by "penal corporations." What kind of a corporation is that?

The CHAIR. I do not think it is proper to take up the valuable time of this committee in having explanations made about particular sections. There might be a great many men here that did not understand some particular term. While I am in the chair I shall not entertain anything of that kind, and shall entertain nothing but what is legitimately before the house. The matter that is now before the house is upon the adoption of Section 2 as amended. Are there any further amendments? (Cries of "Question"). All in favor of the adoption of the section as amended say aye. (Vote and carried). It is adopted.

Mr. MAYHEW. Since the question was asked me, I think perhaps it would be advisable at this time to inform the gentleman upon that point, that penal and reformatory corporations are such corporations as may have been established, whose object and purpose is to prevent or aid and assist in any way under the general laws of this territory in matters that would be contrary to law and criminal in their nature. I have observed, Mr. Chairman, that in drafting this article——

The CHAIR. The next thing in order is the consideration of Section 3.

Mr. MAYHEW. Yes, but Mr. Chairman, I have been asked a question, and I desire to explain to the gentleman. If the chair thinks it unnecessary——

The CHAIR. I do not think it is proper.

Mr. BEATTY. Mr. Chairman, I would like to ask if the rule is going to be made that we cannot ask for explanations. If the chair makes that ruling I shall appeal from it.

The CHAIR. The chair does not rule that.

Mr. BEATTY. I just desire only to suggest that there are many times when by a little explanation of the chairman we may save amendments and time.

The CHAIR. I shall not rule that the chairman of the committee may not make such necessary explanations as are necessary to enlighten the convention. At the same time, so far as this section is concerned we

have passed upon that and it is adopted. The voice of the convention has been uttered in relation to that matter, and if there is any gentleman that does not understand it, he has now ample opportunity, and will have in the convention, to inform himself, and if there is anything wrong, he will have opportunity to offer an amendment at another time and place. But I do not think it is necessary now, after we have adopted it, to continue making explanations; because there might be a great many men in this convention at this time who did not understand it. We might consume the whole day in explaining an article which we have passed. So far as any article is concerned that is to come up for consideration, if there is any member who is in doubt as to the interpretation of it, I shall not rule that he shall not have the right to ask for information.

SECTION 3.

SECRETARY reads Section 3, and it is moved and seconded that it be adopted. (Carried).

Mr. AINSLIE. Mr. Chairman, I rose before that motion was announced. It seems to me, Mr. Chairman, that that section is giving too much power to the legislature. "The legislature shall have power," etc. Now that is a question of law, as to whether it would be injurious to the interests of the state, and I do not see how the legislature can well make a judicial body of itself. It seems to me it should be amended in some way, to the effect that the legislature shall have the power to provide by law for the alteration or revoking or annulling of any charter of incorporation. Any corporation, like an individual, is entitled to its day in court, and I think we are infringing upon the inalienable rights of corporations, which are the same in law as those of an individual, to say that a legislature, elected by the people, without any notice at all, or showing, can come in and annul a charter of incorporation already existing; it is placing too much power in a legislative body. They should have their day in court.

Mr. BEATTY. I would like to call the gentleman's attention to one word in there which saves it; otherwise the whole thing ought to be stricken out. This applies to those charters which are revocable. But for that one word it should be stricken out, for you cannot revoke the charter of a corporation any more than you can revoke the right of an individual; but the clause seems to be guarded by the word "revocable." Now I understand from this report that it is meant to apply only to such charters as are absolutely void or revocable, or where a corporation has failed to comply with some provision, and therefore the charter is rendered invalid or revocable; otherwise of course we could not put such a provision in the constitution. We cannot revoke a corporate right any more than an individual right, and I take it that word saves the objection the member from Boise has suggested. I think there is a great deal of point in what he suggested, that it ought not to be left entirely to the legislature to say just when it should revoke and when not.

Mr. MAYHEW. I presume to say that the gentlemen discussing the section miss its nature and purport entirely. That is the section as it stands. If the object of the proposed amendment is to defeat the section or to prevent the adoption of the section, then I do not think it should be done. If you will observe, Mr. Chairman, the language of this section, "revocable at the time," etc., and "that no injustice shall be done to the incorporators." Now I think this section has perfect safeguards thrown around all incorporators, by providing that no injustice shall be done to them by revoking, annulling or repealing any law or charter existing at that time. You will observe this fact, that this section says in its very language "charters revocable." I understand the section to mean that all corporations that have forfeited their charter should be repealed and revoked. Now if you strike out the words "in the opinion of the legislature" you take from them that which justly belongs to the legislature. It

does not strike me in the way of argument, that because it says "in the opinion of the legislature," it constitutes that body a judicial body. They must have some grounds, they must have some cause to revoke or repeal or set aside any charter of incorporation. The very language of this section itself says that they shall not do so when it shall be doing injustice to the corporation. It gives the legislature some latitude to act upon, in their opinion. I cannot see how it is giving them any power as a judicial body to set aside any rights of any citizens at all; it does not strike me in that light. You could not take from the legislature, Mr. Chairman, certain judicial rights; that is, you could not dissuade any legislature from looking upon subjects in a judicial light in order to aid them in passing any law or legislative enactment. All legislatures in passing any law look to the judicial effect, to the bearing of all acts which they may pass, and unless the gentlemen can bring something more valuable than is expressed in this section, I am in favor of adopting it as it stands, although I desire, Mr. Chairman, to say that I am not going to insist upon the adoption of these sections, when any member of this body can offer any amendment to any section that shall be agreeable to this body. I am not asking or insisting that it shall be done, but there is no amendment offered yet that strikes me, that places this section in any better light than it now stands.

Mr. AINSLIE. I have sent an amendment up which I think covers the power of the legislature.

SECRETARY reads: Strike out after the word "to" in line one down to "any" in the same line, and insert the following: "provide by law for the alteration, revocation or annulling of."

Mr. HEYBURN. I second the amendment.

Mr. HASBROUCK. I would like that read again; I don't understand it.

Mr. MORGAN. I have an amendment.

SECRETARY reads: The legislature may provide

by law for revoking or annulling any charter of incorporation.

Mr. MORGAN. The objection that I have to yours, Mr. Ainslie, is that it provides that the legislature may provide by law for altering.

Mr. AINSLIE. That is in the text of the original section.

Mr. MORGAN. I see it is; but if the legislature is to provide by law, it should simply be for revoking or annulling incorporations.

Mr. AINSLIE. I accept the amendment of the gentleman from Bingham; I think that is proper.

Mr. MORGAN. I suggest also that the words in the third line as follows be stricken out, in order to make it harmonious; "whenever in its opinion it may be injurious to the citizens of the state."

Mr. MAYHEW. That is the very language adopted in many states, the state of Colorado[1] and several other states, and several other proposed constitutions of the different territories. This was examined by the committee, the different constitutions of the different states and territories in the preparation of their constitutions to become states, and we simply adopted the very language in those constitutions. Although I am not one of those men who think that because you find language or ideas expressed in other constitutions we should not deviate from it, but in the committee we adhered to the idea that it was a prudent and proper proposition, more according to my suggestion, to leave it to the opinion of the legislature. I desire now to have the section read as it would read if the amendment were adopted.

Mr. AINSLIE. I will withdraw my amendment and

1—"The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the state, in such manner, however, that no injustice shall be done to the incorporators."—Const. of Colorado, 1876, Art. 15, Sec. 3.

accept the amendment proposed by the gentleman from Bingham.

Mr. CLAGGETT. Then I offer an amendment to it which will cover the whole ground in two words: "the legislature shall have the power by law to" etc. I do not suppose it is contemplated that the legislature is going to pass any general law for the purpose of revoking charters; they simply propose to act upon charters which are injurious to the state. They will do it by law anyway. I don't think there is any necessity even for my amendment; the section is good enough as it is.

SECRETARY reads: The legislature may prescribe by law for revoking or annulling any charter of incorporation existing and revocable at the time of the adoption of this constitution, in such manner, however, that no injustice shall be done to the corporators.

Mr. MAYHEW. I don't exactly get the idea; how does it read?

SECRETARY reads the section again. Cries of "Question."

Mr. GRAY. What amendment are we acting upon now?

The CHAIR. Judge Morgan's. (Vote). It is carried. (Division called for, and rising vote shows ayes 35, noes 9).

Mr. MORGAN. I now move the adoption of the section as amended. (Seconded and carried).[1]

SECTION 4.

SECRETARY reads Section 4, and it is moved and seconded that the same be adopted.

Mr. KINPORT. Mr. Chairman, I have an amendment.

SECRETARY reads: Amend Section 4 by adding

1—It is to be noted that in the constitution as finally adopted the word "altering" is inserted before the word "revoking," although it was expressly stricken out in the committee of the Whole, by Morgan's amendment, and does not appear to have been inserted later by the convention.

thereto the following: "or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors shall not be elected in any other manner." (Seconded).

Mr. KINPORT. Mr. Chairman, the amendment which I offer is one that was taken from the proposed constitution of the state of Montana,[1] and I consider it a very wise provision, inasmuch as it may secure a minority representation on a board of directors. The clause as it now stands can be so taken and acted upon by a majority of the directors, no matter how small that majority may be, to the utter exclusion of the minority; and I think it nothing more than right and just that this amendment should be adopted, in order that the smaller stockholders cannot be frozen out and excluded from representation on the board of directors.

Mr. BALLENTINE. I will just state that the committee had this matter under consideration and objected to it for this reason, that it would give the minority the chance or the power to elect the majority of the managers or directors for any corporation, if it saw fit. That was the objection that was raised in the committee, and I think it is an objection to be raised in this convention —not to adopt any system of that kind whereby the minority can control a vote to elect the majority of the board of directors.

Mr. CHANEY. I would like the gentleman to show, or any other gentleman to show, how it is possible under this amendment for the minority to elect a majority of that board. The amendment provides that the minority may at least have some representation on these boards. To illustrate, we will suppose that I hold 100 shares in the stock of a corporation. Now this provides, in case there are five members to elect, instead of being

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1—Sec. 4, Art. 15, Const. of Montana, 1889.

compelled to distribute my 100 shares among those five men who are to be elected as directors of this corporation, I may concentrate my 100 votes on one man, instead of giving twenty votes to each of five men. That is simply to give the minority at least some representation on these boards, and that is just and proper, and there is no departure from justice in this provision. That is the rule that has been established and is now in vogue in the state of Illinois,[1] in regard to the election of members of the legislature. It has proven satisfactory; it is nothing but a safeguard thrown around the minority; I think it is proper and I hope the convention will adopt it.

Mr. HEYBURN. I would like to ask a question of the chairman of the committee. Is it intended or supposed that a party owning a given number of shares can vote them all for any one of four or five directors that are being elected?

Mr. BALLENTINE. He simply votes them all.

Mr. HEYBURN. If a man owns a hundred shares in a corporation, and there are five directors to be elected, he votes the hundred shares to just one director?

Mr. BALLENTINE. Yes.

Mr. HEYBURN. That would be vicious, to allow one man to vote more shares than another.

Mr. BALLENTINE. He votes the number of shares, but according to the number of officers to be elected.

Mr. HEYBURN. It seems to me you are invading the province of the by-laws of the corporation, and instead of making a constitution for the state are making by-laws for a corporation, and although I do not want

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1—"In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected." —Secs. 7 and 8, Art. 3, Const. Illinois, 1870.

to enter largely into this, I think it would be wise to strike the entire section out. I do not know why the constitution should be making laws for the government of the private corporation.

Mr. MAYHEW. Mr. Chairman, I have nothing further to add to what has been explained by the two members of the committee, Mr. Ballentine and Mr. Chaney; as they have expressed it they are correct in their views. When that matter was discussed before the committee, the committee concluded to report just as the report has been made. It seemed to be the desire of some of the committee, when this matter was referred to the convention, that it should be included, in order to have the matter discussed there, and this amendment the gentleman offers, who is also a member of the committee, was on the understanding that it should be reported just as it is, and that this matter should be amended by considering it in committee of the Whole or in the convention.

Now the purpose of the committee in drafting this as it is, is to restrict these corporations in a great measure as to their action. It has gone to such an extent throughout the length and breadth of this country that corporations should be in some measure checked, that is to say, to hold them within the bounds of reason and compel them, if possible, to do justice not only to the people as a general thing but to themselves. Now this section provides as it stands that "the legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons are there are managers or directors to be elected." I do not understand that because of the provisions here we are interfering with the action of any incorporated company, or attempting to legislate by the adoption of this section, or passing any by-laws whatever for the corporations, but in other words it goes to the proper protection of the parties to the corpor-

tion. It in fact prevents these corporations in many instances from having permission when they are incorporated to freeze out and destroy one another. Mr. Chairman, I have seen some of these corporations in the section of the country I have lived in, a number of them—they call them corporations, and I have no doubt they are corporations—but whenever you go to attach under the old system that existed in this territory to get hold of these corporations, they had nothing. They would run considerably in debt and accumulate property, illegitimately in many instances, and after they had accumulated property and by representations of their property incurred a large indebtedness, when you went to collect old debts there was hardly anything in existence that looked like or had the semblance of a corporation. Now I think it is time that the legislature should take some steps to prevent many things that may occur and many attempts that would be made by the different corporations to impose upon the people at large. While I am in favor entirely of the protection of corporations everywhere, and of every kind of corporation that is organized or chartered under our laws or the laws that may hereafter be passed by the state, while I believe in protection for all of these corporations, I further submit that it is necessary by an article of our constitution to so engraft in the constitution as to prevent these corporations from imposing upon the masses of the people, and for that reason this section was engrafted in this report. I will say again that this has been the view of California, and has been the constitution of California,[1] and the constitution as adopted at one time by Montana,[2] and it strikes me that the provisions are wholesome and legitimate. I cannot look at it in the same light as my colleague Mr. Heyburn does, that it is attempting to legislate in the way of passing by-laws for these corporations. I hope the amendment will

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1—Art. 12, Sec. 12, Cal. Const. 1897 (same language).

one time by Montana,[2] and it strikes me that the provis-

2—Art. 15, Sec. 4, Montana Const. 1889 (same language).

be accepted. It will be for the protection of the minority in corporations. I have the honor to be a member of one of those corporations where the church is dominant, and we are in the minority. If we can look around Sodom and find one or two just men, we can concentrate our strength and elect them to that corporation, or elect them as directors of that corporation, and so I hope the amendment will be adopted.

Mr. AINSLIE. I considered this question a little when the committee on Corporations was in session, and I must say I am in favor of an amendment to the extent offered by the gentleman from Bingham. The way the present law of incorporation stands upon the Idaho statutes, and upon the statutes of most of the states, it vests absolute control of the corporation and its property in the hands of an exceedingly small majority. Take a corporation with one hundred thousand shares, under the present law, as proposed in this article of the constitution, a syndicate holding 51,000 shares out of the 100,000, by electing the board of directors, have the absolute control of the corporation, and can conceal from the minority the entire transactions of the majority of the board of directors. The history of corporations in the state of Nevada, Sir, should be a lesson to us to be careful in securing protection for the minority stockholders. There is hardly a corporation existing in the state of Nevada in the mining interests but what has frozen out everybody that invested one cent in that corporation that did not happen to be inside of the ring.

Now take a syndicate holding 51,000 shares and let those men incorporate; they can elect their directorate under the proposition as reported by this bill, they can elect every single one of the five directors, or every director on the board. The minority, representing 49,000 shares, will have no voice whatever in the business of the corporation, and are deprived frequently from access to the books of the company when they desire it. There is nothing to prevent fraud or any

rascality upon the part of the full board of directors in a corporation organized under this section as proposed in this constitution. But if you give the minority a representation, as proposed by the gentleman from Bingham, by allowing them to cumulate the vote of their whole number of shares upon a certain number of directors, the 49,000 shares can now be represented upon the board of directors; where it is composed of five, they can get two directors out of the five. Now it is a theoretical, a mathematical, a geometrical impossibility that the majority of the stockholders can ever be placed at the mercy of the minority. That system has been worked out so far in the state of Illinois that under the plan existing there a minority of the voters in any section of that state, by cumulating their votes upon a member of the legislature, where the other party is in the majority, will have their proportion of representation in the state legislature, and I think it is a very proper provision, and one that should be adopted throughout the whole country. And sir, I say that the proposition made by the gentleman from Bingham tends to go a great way to correct the abuses that exist under the present system of corporation management in the United States. By cumulating their votes the minority would be entitled to representation upon a board of directors; they could secure two out of five, but under the present system they cannot elect a single director. Fifty-one thousand shares out of a hundred thousand can elect every director, and that ring of directors elects the officers of the corporation, elects a superintendent, who can appoint the bookkeeper, and the secretary and treasurer, and the minority representing the other 49,000 shares may have no knowledge for a year of what is going on or being done by the board of directors of that company. But by allowing the minority to cumulate their votes and concentrate them upon two directors, you have a check upon the action of the majority, and will be able to expose their fraudulent acts and bring them before a court of justice. I think the

amendment should be adopted, Sir. (Cries of "Question").

The CHAIR. The question before the house now is the amendment offered by the gentleman from Bingham. (Vote). It is carried. It is moved and seconded that the section as amended be adopted. (Carried).

SECTION 5.

SECRETARY reads Section 5.

Mr. BEATTY. Mr. Chairman, I offer an amendment to this section.

SECRETARY reads: Amend Section 5 by striking out all after the word "control" in line 2, down to and including the word "state" in line 5. (Seconded).

Mr. MAYHEW. I would like to hear some reason for that.

Mr. CLAGGETT. I second this amendment for one reason, and only one reason. I am certainly in favor of the state having the power, as set forth here in this section, but I object to putting it in here for this reason, that without this language the state has the power just the same, but by inserting it here at this time it will give rise to considerable opposition to the constitution that should be avoided. The supreme court of the United States has decided repeatedly that the state by virtue of its sovereign powers as a state can regulate freights and fares, but there is no necessity for putting it in the constitution. There is no question with regard to the power of the state in the premises. If I had the slightest doubt that the power did not exist, I would be in favor of retaining it.

Mr. BEATTY. Mr. Chairman, I favor that amendment for several reasons: first, I am opposed to putting anything in this constitution which will tend to discourage the building of railroads in this territory. We want all the railroads we can get, the more the better. I object to that provision and some others that are in this article, because their tendency is to discourage railroads from building in this territory and this

country. So far as this provision is concerned, it is entirely unnecessary. As you will see by reading the section, we would be as well off without it. "All railroads shall be public highways, and all railroads, transportation and express companies shall be common carriers and subject to legislative control." That I propose to leave in. Now strike out all the rest, and the legislature has all the control that is needed to meet every abuse referred to in the part which I propose to strike out. Gentlemen might ask why, then, strike it out? My reason for striking it out is because it appears rather offensive. It is a clause that railroads proposing to build here would seize upon as an objection. The other clause does not seem so objectionable upon first blush, although it contains within itself the power of the legislature as absolutely as if you put in this obnoxious provision, and I am not in favor of putting any advertisement in this constitution—plainly written, at any rate—that we propose to legislate against railroad companies or organizations that attempt public enterprises. It may be argued that it is a sly way of retaining in this constitution the power while we apparently are striking it out—well taken, too. I admit that that would be the logical conclusion, for I believe the legislature has, without a word in there, the right to regulate and control, as much power as it would have by leaving this objectionable clause in it. But wherever I can see a provision that it certainly seems to me would discourage the building of railroads, I shall object to it, for I for one want all the railroads we can get, and I don't want to publish any advertisement to the world that we do not want them or do not encourage them. On the contrary we want to encourage them all we can.

Mr. MAYHEW. Mr. Chairman, I have a few words to say about this matter. I do not agree with my distinguished friend from Alturas. I cannot see how this language in this section is so particularly obnoxious and so offensive to my friend and these railroad corporations. I do not understand that it is put in here to

discourage or interfere with the construction of railroads in this territory. I presume to say that every member of this body is in favor of encouraging railroads and the construction of railroads, but that does not argue that the state should not have the power to control the rates for passengers and freight. Now that is put in here, as it is in other states, for the purpose of giving the legislature the power of regulating matters of fare and freight. Notwithstanding it may be that the legislature does possess this power, being one of the co-ordinate branches of the government, and that they might control it—notwithstanding that fact I cannot see why this section should not remain in this constitution. It brings to the legislature notice that they have the power and control of such matters, and leaves to the legislature that question. I don't know of any decision, although there may be a great many, that has decided that the legislature has the power to pass such laws to regulate them. That is the position assumed by my friend Mr. Claggett. And if that is his reasoning, and the reasoning is sound upon that proposition, I would have no objection to striking it out. But the reasoning of the distinguished gentleman from Alturas is upon another ground, upon the ground that he thinks it is obnoxious, and to whom, to the railroads? How can it be obnoxious to the railroads? He certainly is aware that such a law was passed by the congress of the United States, that this authority as engrafted in this constitution has been exercised by the congress of the United States in regulating rates of fare and freight by its intercommerce law. That did not seem obnoxious to congress. It did not seem obnoxious to railroad men generally throughout the United States that such a law as that was passed, but on the contrary, so far as I have been able to read, I have understood that the railroads throughout the United States were in favor of the intercommerce law.

Now, Mr. Chairman, it is not exactly my opinion as an attorney at law that the state would have the right

to regulate fares and freights upon railroads that are already existing, and have been built and were running their lines through this territory before it was organized as a state. But it strikes me that we should do something, and legitimately too, to regulate these fares. While I say that, I cannot see how this is so wonderfully obnoxious. I have not heard any railroad men say so, and I have asked their opinions upon this section as it is engrafted in here. It seemed to meet with their approbation, and this is the first time, and the gentleman is the first one I have heard utter a single word, in the convention or out of it, that such a law as this was an obnoxious provision. It does not seem obnoxious to them, but on the contrary they have adopted it and accepted it everywhere. And if that is the objection of the gentleman, because it will not give them pleasure, I hope it will not meet with the approbation of this convention. But on the other hand, if the legislature has the power to control this matter and regulate fares and freights within the limits of this territory, or within the state of Idaho, then I say that such a provision should be engrafted in the constitution. I don't see that it is going to do any injustice to the people. It only holds these great corporations, these powerful bodies of capital in the state, more under control, prevents them from overriding the wants and compels them to serve the necessities of the people. I hope the amendment will not prevail. (Cries of "Question." Vote).

The CHAIR. The amendment is lost.

Mr. HARRIS. I move that the committee now rise, report progress and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. POE. Mr. President, your committee of the Whole have had under consideration the report of the committee on Public and Private Corporations and report

progress, and ask for further time for the consideration of the bill.

The CHAIR. The question is upon receiving the report of the committee; if there is no objection the report will be adopted.

Mr. MAYHEW. Mr. Chairman, as chairman of the committee of the Whole, I wish to report that the committee of the Whole having had under consideration Article 9 beg leave to report at the incoming of the convention this afternoon.

The CHAIR. If there is no objection it will be granted. It is moved and seconded that the convention take a recess until two o'clock. (Carried).

Afternoon Session.

Convention called to order.

Mr. SHOUP. I move that the report of the committee on Preamble and Bill of Rights be taken up and considered.

Mr. MAYHEW. The committee of the Whole having had under consideration Article 9, instructed me to make the following report:

COMMITTEE OF THE WHOLE REPORT ON ARTICLE IX.

SECRETARY reads: Mr. President: Your committee of the Whole have had under consideration the report of the committee on Education, Schools, School and University Lands, and recommend as follows:

Amend the report by striking out the words "Legislative Assembly" wherever they occur in the report, and insert "Legislature" in lieu thereof.

Adopt Section 2.

Amend Section 3 by striking out all of the section after the word "state" in the third line.

Adopt Sections 4 and 5.

Strike out Section 6.

Amend Section 7 by inserting "religious" after "sectarian" in the last line.

Amend Section 8 by adding at the end of the section the following: "and no books, papers, tracts or documents of a political, sectarian or denominational

character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article."

Adopt Section 9.

Amend Section 10 by inserting after the word "therefor" in line 5 the following: *Provided,* No school lands shall be sold for less than ten dollars per acre." Strike out in the second line the words "other disposition," and insert in lieu thereof, "rental." And after the word "grants" in the 14th line, the following: "*Provided,* That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions of not to exceed 160 acres to any one person, company or corporation." Strike out in line 2 the word "the" and insert "school" therefor.

Adopt Section 11.

Strike out Section 12 and 13.

Substitute for Section 14: "The location of the University of Idaho as established by existing laws is hereby confirmed. All the rights, immunities, franchises and endowments heretofore granted by the Territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law."

Strike out Sections 15 and 16.

Substitute for Section 17: "The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. *Provided,* That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

And that the report be adopted as amended. A. E. Mayhew, Chairman.

The CHAIR. Under the rules the first thing in order is the consideration of the report of the committee of the Whole that has just been read. The clerk will read the bill and the amendments, section by section.

SECTION 1.

SECRETARY reads Section 1. "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general uniform and thorough system of public free common schools."

SECTION 2.

Sec. 2. "The general supervision of the public schools of the state shall be vested in a board of education, whose powers and duties shall be prescribed by law. The superintendent of public instruction, the secretary of state and attorney general shall constitute the board, of which the superintendent of public instruction shall be president." No amendments.

It is moved and seconded that it be adopted. Carried.

SECTION 3. (STRICKEN OUT).[1]

SECRETARY reads Section 3. "The General Assembly shall as soon as practicable provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state——"

Mr. GRAY. I moved that that be stricken out.

The CHAIR. The secretary will read the section as amended in committee of the Whole. We are now considering the report of the committee of the Whole, the section as amended.

1—See p. 868.

SECRETARY reads. "—wherein all residents of the state between the ages of six and twenty-one years may be educated gratituously. One or more public schools shall be maintained in each school district at least three months in the year. Any school district failing to have such school shall not be entitled to receive any portion of the school funds for that year."

Mr. GRAY. Is that the way it reads now? If that is the way that reads——

SECRETARY. The amendment is to strike out all of the section after the word "state."

Mr. GRAY. I move that the same be adopted. (Seconded and carried).

Mr. HASBROUCK. Mr. President, I notice you are adopting these sections as read. I didn't understand that Section 1 was adopted.

A MEMBER. No sir, I didn't either.

The CHAIR. The chair considered it was adopted by unanimous consent, there being no amendments to it.

Mr. PINKHAM. Mr. President, I call the attention of the convention to the fact that Section 3 as adopted here is almost verbatim what is provided for in Section 1. I don't see any necessity for two sections of the same character in the same article of this constitution.

The CHAIR. The secretary will read the next section.

SECTION 3.

SECRETARY reads Section 4 (3). "The public school fund of the state shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the state, and shall be distributed among the several counties and school districts of the state in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested, as

may be by law directed. The state shall supply all losses thereof that may in any manner occur."

It is moved and seconded that the same be adopted. (Carried).

SECTION 4.

SECRETARY reads Section 5 (4). "The public school fund of the state shall" etc. (No amendments to it).

It is moved and seconded that the same be adopted. Carried.

SECTION 5.

SECRETARY. Section 6 was stricken out. Section 7 will be Section 6 (5) now. (Reading): "Neither the legislature, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose."

It is moved and seconded that the same be adopted. Carried.

SECTION 6.

SECRETARY reads Section 7 (6). "No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public

schools, nor shall any distinction or classification of pupils be made on account of race or color, and no books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school money in which the schools have not been taught in accordance with the provisions of this article."

It is moved and seconded that the same be adopted. Carried.

SECTION 7.

SECRETARY reads Section 8 (7). "The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law."

It is moved and seconded that the same be adopted. Carried.

SECTION 8.

SECRETARY reads Section 9 (8). "It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the school lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and

carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of such grants. *Provided,* That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions not to exceed 160 acres to any one person, company or corporation."

Mr. TAYLOR. That was also amended by inserting in line 5: "*Provided,* That no lands shall be sold for less than ten dollars per acre."

Mr. MOSS. Mr. President, I would like to ask the chairman of this committee if there is anything in this article that would prohibit the sale of timber from off the public school lands—logs or timber?

The CHAIR. I think there should be a further proviso, providing for the sale of timber on lands, that the state may at any time sell the merchantable timber thereon; otherwise it would be cut off before it was sold, probably.

Mr. MOSS. I wish to offer an amendment.

Mr. McCONNELL. I presume under these provisions the lands could be rented with the understanding that the timber should be taken off for the use of the land, for cutting the timber a certain number of years.

SECRETARY reads: Amend by inserting after the words "time to time" in line 13, "and for the sale of timber on the public school lands." Seconded.

It is moved and seconded that the amendment be adopted. Carried.

Mr. GRAY. I have an amendment.

SECRETARY reads: Strike out all after the word "grants."

Mr. GRAY. I will not object to changing the language of the section as it now stands, so as to allow one section to be sold in a township, but the idea of selling

No. 16 only, I don't see what sense there is in that—not allowing them to sell 36.

Mr. MORGAN. I would like to know where the amendment comes in.

Mr. GRAY. Strike out all in the printed bill after the word "grants." There has an amendment been made there which says that you must sell Section 16, and I don't see any sense in limiting it to Section 16. If they want to limit it to one section in each township, I shall not object, but the idea of selling only Section 16—I don't see by what rule of reason we can vote for that and put it in the constitution. Therefore I am inclined to think that we had better have no limitation on that further than it has been fixed in the bill.

Mr. VINEYARD. The object of that simply was to keep these land commissioners or purchasers from selecting such lands as were to be sold from wherever they chose; that is, to select the better class of school lands and leave the worse class unsold. In other words, it would give these men the pick of the best lands and leave the worse lands still unsold, and the idea of that amendment was simply to provide that if these lands were to be sold they were to be taken from the 16th section.

Mr. GRAY. How do you know that the 16th section is not the best land to be sold, or whether it is or not? It is like throwing up a copper.

Mr. VINEYARD. We have got to take one class or a portion of this land in some way, in order to avoid the indiscriminate sale of this land in every direction, and it was thought by the mover of this amendment, Mr. Anderson, that that would better effect the object than any other way that the bill could be amended. I am opposed to the indiscriminate sale of these lands, that a man should go on the 16th or on the 36th section, or wherever the best land is situated, and I say there should be a limitation, and that is a wise provision in the bill.

Mr. GRAY. Mr. Chairman, I cannot see why we

are protected any because they designate Section 16. I have confidence in the board here and I have confidence in the legislature. I don't think that all the honesty of the territory is embodied here. (Laughter). Not that I do not think we are honest men, but I don't think all the honesty is embodied here. And I would even give them some limit. But to sell only Section 16, it may carry out just the very thing that the gentleman from Alturas is afraid of, in enforcing the sale of 16. If they want to sell one section, I am willing to do that, but I would rather have it just as it is in the printed bill.

Mr. ANDERSON. Mr. President, the reason I want to put that in as Section 16, is that I thought of going through the various townships in Idaho by taking one of those numbers. I would just as soon have Section 36, but by taking one of the numbers we strike an average of good land and bad land in the whole territory; and I want to give this plan of renting the land a fair trial and the plan of selling it a fair trial. If after the establishment of this state we find that the sale of this land is the better plan, then we will have half the good land left, provided a general average brings it about equal. But if we find it is not wise to sell them, then we retain the balance of the lands.

Mr. SHOUP. Mr. President, I second the amendment of the gentleman from Ada upon that question, and demand the ayes and nays.

Mr. AINSLIE. Mr. Chairman, the amendment by the gentleman from Ada to strike out Section 16, carries with it the limitation as to the sale of these lands, not to exceed twenty sections of land per annum.

Mr. GRAY. Yes.

Mr. AINSLIE. So that would allow all the lands belonging to the public schools of Idaho territory and the university to be sold in any one year, if they saw proper. That is throwing open the doors again, if such an amendment should be adopted as proposed by the gentleman from Ada, to these speculators and syndicates here. This matter has been passed upon for the

preservation of the school lands to some extent, and I am in favor of supporting the action of the committee of the Whole in limiting the sale of lands, as the action of the committee shows. I think it is nothing more than fair and right, and to throw this open to speculators at this time—I am utterly opposed to it. I propose to stand by the action of the committee.

Mr. GRAY. Mr. Chairman, one word.

The CHAIR. The gentleman from Ada has already spoken twice on this question.

Mr. MAXEY. I do not understand that the gentleman from Ada objects so positively to the number 16, but he objects simply to being confined to the number 16.

Mr. GRAY. That is it largely, but I would just as soon have the section without that at all.

Mr. MAXEY. Then why not insert "one section?"

Mr. GRAY. Because that would be just as bad. The ayes and nays have been called for, and I second that.

Mr. POE. Mr. President, the difficulty of designating Section 16 is this. My opinion is that it was the intention of this convention when they passed that, that there should be authority for selling one-half of the school lands, that that was the intention. Now it would seem they have limited that to Section 16. Now it is a well known fact, Mr. President, that prior to the survey of these lands many school sections were settled upon by actual settlers, and under those circumstances when the land became surveyed they had established a right to it, and it could not be taken away from them, and it became necessary, and is the law in reference to public lands, that in such cases they have other lands in lieu of that given to the schools. You will at once then see, Mr. President and gentlemen, that when you designate Section 16, Section 16 may be taken out and owned by private individuals, and there may be other lands which are given in lieu of Section 16. Now I think, as I said, it is the intention of this body to sell

one-half of the school lands, and I simply say that when they designate Section 16 they may not have the right to sell Section 16 at all, because it may be in the hands of individuals. And if I understood the gentleman's amendment, it was to authorize the sale of one-half of the school lands, instead of saying Section 16. We then would have made the prohibition and would have acceded to the intention of this convention.

Mr. GRAY. I would just say this——

Mr. MAYHEW. I understand my friend's motion is to strike out the entire section?

Mr. GRAY. Oh no; strike out the amendments.

Mr. MAYHEW. Well——

Mr. GRAY. But I——

Mr. MAYHEW. Remember, no more speeches.

The CHAIR. The gentleman from Ada is out of order.

Mr. GRAY. Well, let me state what I——

The CHAIR. The chair cannot let you so state unless the convention so orders, under the rules.

Mr. WILSON. I move that the gentleman be allowed to make the statement.

The CHAIR. I would like to hear the gentleman from Ada myself, but I must adhere to the rule.

Mr. POE. I call for the reading of the amendment.

The CHAIR. The secretary will again read the section as amended, for the information of the convention. (Secretary again reads it).

Mr. SHOUP. Mr. President, it will be noticed that this applies to all land that may hereafter be granted to the state. Now we may get a great deal more school land than these two sections in each township, and if we do, No. 16 is all that can be sold. What you get hereafter——

The CHAIR. The question is upon the motion made by the gentleman from Ada that this proviso at the end of this section shall be stricken out, and upon that the ayes and nays are demanded.

Mr. TAYLOR. Mr. President, I move an amendment

to that amendment of his; that all that part of it down to and including "twenty years" be stricken out.

The CHAIR. The secretary will read that part of it to be stricken out.

SECRETARY reads: *"Provided,* That no other land than Section 16 in each township be sold during the first twenty years."

Mr. MORGAN. Is that your amendment, Mr. Taylor?

Mr. TAYLOR. Yes.

Mr. GRAY Then it reads that none but Section 16 shall be sold.

Mr. TAYLOR. No sir; that is what I strike out.

Mr. GRAY. I will accept the amendment of the gentleman from Bingham.

Mr. AINSLIE. That would not leave any sense to the preceding portions of the section.

The CHAIR. The question is upon the adoption of the motion of the gentleman from Ada, as amended by the motion of the gentleman from Bingham, whose motion is accepted by the mover, to strike out that portion of the proviso which limits the sale of school and public lands belonging to the state to Section 16 for the period of twenty years. (Vote). The nays seem to have it; the motion is rejected. What is your pleasure with regard to this section?

Mr. McCONNELL. I offer an amendment.

Mr. GRAY. The ayes and nays were called on that, However, I don't care particularly about it.

The CHAIR. Five members did not second it.

Mr. AINSLIE. I want to bring this question before the——

The CHAIR. If the gentleman desires a roll-call, I will order it.

Mr. AINSLIE. I call for the previous question on the section, as amended by the committee of the Whole. (Seconded by a number of members).

The CHAIR. It is moved and seconded, gentlemen, that the——

Mr. McCONNELL. In the interest of the school fund I wish the gentleman would give me an opportunity to explain.

The CHAIR. Does the gentleman from Boise yield?

Mr. AINSLIE. I do not desire to cut anybody off; I will give the gentleman an opportunity.

Mr. McCONNELL. In our zeal to do what is right, Mr. President, in this matter, I think we have made some very grave mistakes, and I think if the convention will look the matter over it will conclude it is better to remedy them now while we have an opportunity than to leave them on our statute books. You will find (reading): "It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the school lands heretofore or which may be hereafter granted to the state by the general government" (mind, the term "school lands" is used) "under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. *Provided,* That no school lands shall be sold for less than ten dollars per acre." Now this refers entirely to school lands—this entire section. We have other lands, and will have large quantities of school lands provided for educational purposes, and I think in this section we should not lose sight of them. There should be as well a similar limitation placed upon university lands, and there will doubtless be some lands donated to this state for agricultural purposes, and there is no provision as to their protection or how they shall be sold, no limitation as to condition or quantity or time at which they shall be sold, and I don't think we should lose sight of those. I will equal any gentleman on this floor in being zealous to do the very best I can to protect this fund.

Mr. MAYHEW. I don't desire to discuss this matter, but just ask you this question. Do you intend by this amendment to protect other lands, independent of school lands?

Mr. McCONNELL. I think the word "school lands" —the word "school" as it has been put in by amendment, should not be in there. I think there should be some other provision to prevent the sale of some of the outside lands, or provide for it—some of the outside lands which we may in the future get, but I don't think that word should be there.

Mr. MAYHEW. I would like to ask another question for information; might not the amendment you propose interfere, in the very nature of it, with the article we are trying now to adopt? This committee— its purpose was, as I understand—it was for the purpose of regulating the manner in which our school system should be governed and conducted, and for the protection of school lands and university lands, and any other lands that may be donated by the general government.

Mr. McCONNELL. It limits it to school lands.

The CHAIR. Gentlemen, this debate is all out of order; the previous question has been moved and seconded, and this has been allowed by the chair by consent. The question now is——

Mr. McCONNELL. I want the ayes and nays on this question.

Mr. AINSLIE. I suggest that Brother McConnell prepare another section to settle the entire question.

Mr. McCONNELL. I call for the ayes and nays on this previous question.

The CHAIR. The question is now, shall the main question be put? On that motion the ayes and nays are demanded. The secretary will call the roll.

Mr. SHOUP. Under Rule 19 I understand five members have the right to demand the previous question.

The CHAIR. It has been seconded by at least eight or nine.

Roll-call—

Ayes—Ainslie, Allen, Anderson, Armstrong, Bevan, Clark, Coston, Crutcher, Harris, Hasbrouck, Hays, Jewell, King, Kin-

port, Mayhew, Pefley, Salisbury, Sinnott, Standrod, Steunenberg, Taylor, Vineyard, Whitton, Mr. President,—24.

Nays—Ballentine, Brigham, Campbell, Chaney, Glidden, Gray, Hampton, Harkness, Hendryx, Heyburn, Lewis, Maxey, McConnel, Melder, Myer, Morgan, Moss, Pinkham, Poe, Pritchard, Pyeatt, Reid, Savidge, Shoup, Wilson—25.

The SECRETARY. Mr President, on the motion to call for the previous question, there are 24 ayes and 25 nays.

The CHAIR. The motion is lost.

Mr. McCONNELL. Mr. Chairman, I desire to offer an amendment.

SECRETARY reads: Strike out all of line 14, Section 10, after the word "grants," and insert "*Provided,* That no more than one-half of said lands shall be sold during the first twenty years."

Mr. GRAY. I second the motion.

Mr. AINSLIE. I have an amendment to offer to that, Mr. Chairman.

SECRETARY reads: *Provided,* That not to exceed twenty sections of such lands shall be sold in any one year, to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation."

Mr. GRAY. Mr. President, can I say a word?

The CHAIR. Yes.

Mr. GRAY. I have been taken down considerably, but it seems to me when you are discussing Section 16, that some man has got his eye on Section 16 that wants to buy it. I want him to allow this board to sell what it thinks is best to sell, not tell them he has got his eye on some Section 16, like my friend from Alturas, Mr. Vineyard. (Laughter). I don't want the board to be restricted in any manner. The amendment of the gentleman from Latah I am perfectly satisfied with. I am willing that one-half be sold, but the idea of selling just Section 16 I can't understand. If we are going to leave any liberty to the board to say what is best to sell, or what it is to the best interest of the school fund to sell, that is what I want, but the reason for taking Section 16 I cannot understand. I am content

with one-half—I am willing to support anything of that kind.

Mr. AINSLIE. Mr. President, the amendment I offer to the amendment of the gentleman from Latah does not say anything about Section 16 or Section 36 or any other section. It only provides that you can sell twenty sections a year, and another very important provision in that amendment which I think members will notice—one-half the school lands under the amendment of the gentleman from Latah can be sold in one year, and can all be sold to one corporation or syndicate. My amendment to the amendment of the gentleman from Latah provides that only twenty sections shall be sold in one year, and sold in subdivisions of not to exceed 160 acres to any one individual or corporation. Persons seek homesteads in this country. One hundred and sixty acres of land is a very fair farm for a person to make a living on. If you open the door, as the gentleman from Latah opens the door, you help the monied syndicates in putting around your lands a fence to keep population and settlement out. I am in favor of reserving all these lands and selling them under a restriction like the one contained in my amendment, and sell them to persons who will become permanent residents of our territory, instead of making monied men's cattle ranches.

Mr. MAYHEW. I have just one word to say, and that is with reference to the remark of Mr. Gray of Ada county. He says it seems to strike him, by the amendment offered by Mr. Ainslie, that some member has got an eye on some section. Now I am peruaded——

Mr. GRAY. No, not Mr. Ainslie.

Mr. MAYHEW. Well, whoever it was; I don't know who you are alluding to. I thought you alluded to Mr. Ainslie.

The CHAIR. The gentleman will please confine himself to the subject.

Mr. MAYHEW. I am confining myself to the sub-

ject. I was alluding to the last amendment to the amendment. I want to call the attention of the convention to this fact, that the adoption of the amendment just offered by Mr. Ainslie does away with and destroys the effect of any person's eye upon any section. It only allows one person to enter and hold 160 acres of land. I think the amendment is right, and the amendment does cut off and estop any syndicate or any corporation, or any person or set of persons or association of persons from gobbling up more than 160 acres of land.

Mr. ANDERSON. Mr. Chairman, I offered that amendment to allow only Section 16 to be sold in any township, and I did it in order that the best land might not be gobbled up. I don't want any Section 16 in the world. And I make a motion, to cover that point, that Section 36 be substituted for Section 16 in that clause.

Mr. McCONNELL. Mr. President, I would like to say a few words to the question of the adoption of my amendment as offered. If this convention sees fit to adopt this amendment I would be willing to have engrafted in that amendment the provision made by the honorable gentleman from Boise, Mr. Ainslie, that the sale of these lands should be limited to 160 acres to any one purchaser. I heartily agree with him in that, and in regard to incorporating it in my amendment. But I don't see the necessity of restricting the sale of these lands to twenty sections. I accept the amendment "in any one year," especially as I believe the convention will see the necessity of striking out that word "school lands," and making some provision for the protection of other lands before they get through with this. I cheerfully accept that amendment, so far as providing that no purchaser shall be entitled to the title of more than 160 acres. But I do not believe in limiting this board to the sale of only twenty sections in any one year, for I doubt whether it will be able to sell much more than that.

Mr. AINSLIE. The gentleman from Latah figured up that there was not more than 75 sections in the whole territory, and if that is so, it will not take long to exhaust them.

Mr. GRAY. Mr. President, let them fix it to sell one-half in each township, and let them sell that which would be the most advantageous. I myself am willing to trust this board, and if they can sell it to better advantage by selling an entire section for the benefit of the school fund, let them do it. We are not now talking about immigration or anything of that kind, or getting people here. The idea is to sell it for the best interest of the school fund, and I don't say whether you shall sell 160 or 320 or 640 acres. I don't see what the point is, that it is for the purpose of immigration at the expense of the school fund. Let the board say where it can sell it and to the best advantage.

Mr. ALLEN. Mr. President, under the provisions of this act there are two sections set aside for school lands, in 18 counties. Under the provisions of these amendments, in twenty years' time, one section in each township and twenty sections in each year, is 400 sections, or 250,000 acres permitted to be sold, and I believe that is as much as the people really intend should be sold during the first twenty years.

The CHAIR. Is the motion of the gentleman from Bingham seconded, to strike out 16 and insert 36? (Seconded).

The CHAIR. The first question arises on the last amendment made, to strike out 16, as contained in the proviso at the end of the section, and insert 36.

Mr. HAYS. Mr. President, I do not see that this amendment remedies the difficulty at all. The difficulty in designating a section of land, 16 or 36, is this, to my mind. There are a great many people who have settled upon the school lands, and if you designate either section—if you designate 16, perhaps you will find some one on that land, or if you designate 36—

you will find some one on one of those sections who has been there a long number of years, and you can't get title. If it is 36 it makes no difference. Why not leave it blank? Designate the number of sections to be sold, without designating Section 16 or 36. It doesn't make any difference. Let the land commissioners be the judges of that; let them sell any lands they judge may be proper. There is another thing too. I do not believe that the majority of this convention think that these lands should be held for twenty years. I believe they should be sold as rapidly as possible. We must take into consideration that we are in a desert country, and that the water in the various sections of the country is being monopolized as rapidly as possible, being taken up, and these lands are entirely worthless unless you can bring water on them. For that reason I believe it would be better to sell the lands as rapidly as possible, in order that it may be some inducement to outsiders to purchase these lands and bring water upon them. If you do not, if you hold them for twenty years, you will have them forever, perhaps, because you can't get the water—it is not within the territory. I believe it would be better policy to let the land commissioners sell these lands as rapidly as they can, without designating Section 16 or 36—it makes no difference.

Mr. AINSLIE. I would ask the secretary to read that last amendment I offered, as I think that probably the gentleman from Latah and I may agree.

The CHAIR. The first question is with regard to substituting 36 for 16 in the section as amended by the committee of the Whole. (Vote). The noes have it; the amendment is rejected. The secretary will now read the original proviso at the end of the section reported by the committee of the Whole, and then the amendment of the gentleman from Ada, and the amendment to that amendment by the gentleman from Boise.

SECRETARY reads: *"Provided,* That no other land than Section 16 in each township be sold during

the first twenty years, not to exceed twenty sections in any one year, in subdivisions not to exceed 160 acres to any one person, company or corporation." "Strike out all of line 14, Section 10, after the word 'grants,' and insert '*Provided,* That no more than one-half of said lands shall be sold during the first twenty years.' McConnell. "*Provided,* That not to exceed twenty sections of such lands shall be sold in any one year, to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation." Ainslie.

Mr. AINSLIE. Mr. Chairman, after consulting the chairman of the committee, the gentleman from Latah, I believe he is willing to accept my amendment, provided I will substitute 25 sections instead of 20. That probably will settle the dispute, and he will withdraw his amendment. If he accepts that, I will move to amend my substitute.

Mr. McCONNELL. I will accept that.

The SECRETARY. Twenty-five sections, Mr. Ainslie.?

Mr. AINSLIE. Yes.

Mr. GRAY. Why not say half?

Mr. AINSLIE. Because I am opposed to it; that's the reason. Twenty-five sections is enough.

The CHAIR. The question is now upon the adoption of the amendment of the gentleman from Latah. or rather the gentleman from Boise, with the word "twenty" stricken out and the word "twenty-five" inserted, which is accepted by the gentleman from Latah. The secretary will read the proviso as it is now before the convention.

SECRETARY reads: *Provided,* That no more than one-half of said lands shall be sold during the first twenty years. *Provided,* That not to exceed 25 sections of such lands shall be sold in any one year, to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation.

Mr. McCONNELL. Mr. President, I think my amendment should be stricken out, and merely substi-

tute the amendment offered by the gentleman from Boise. I think there is no need of engrafting the language of both amendments in there. My idea was to withdraw mine and let his be substituted for it.

Mr. AINSLIE. That was my understanding.

The CHAIR. That being the case, the secretary will read the original proviso and then the amendment the gentleman offered as a substitute for it.

SECRETARY reads: "*Provided,* That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions not to exceed 160 acres to any one person, company or corporation." In lieu of which is proposed: "*Provided,* That not to exceed 25 sections of such lands be sold in any one year, and to be sold in subdivisions of not to exceed 160 acres to any one person, company or corporation." (Cries of "Question." Vote).

The CHAIR. The substitute is adopted.

Mr. MAYHEW. I now move that the——

Mr. McCONNELL. I desire to strike out the word "school lands" where it was inserted in committee of the Whole yesterday—the word "school," and I will state this, if you will examine down in the section you will find (reading): "It shall be the duty of the board —no law shall ever be passed by the legislature, etc.— "The legislature shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made." Now it would make no difference what grants of land were made to this state hereafter; it would be the duty of the legislature to preserve those grants for their respective objects, but I think adding the word "school lands" as amended yesterday, is taking away any provision for the protection of any of these other lands. This board may go to work and sell the uni-

versity lands, and sell the agricultural lands, without any restrictions, but if we strike out the word "school lands," where it was inserted yesterday, and add the word "school" to the amendment just adopted, providing that no more than 25 sections of school lands shall be sold, I think it will answer the purpose. It would not be the object of this convention to restrict the entire lands of this territory to 25 sections. I offer an amendment that we strike out the word "school" where it was inserted in committee of the Whole yesterday, and insert it in the amendment offered and adopted today, by Mr. Ainslie.

SECRETARY reads: Strike out the word "school" in the second line of Section 10, and strike out the word "such" in what would be the 15th line, or the first line of Mr. Ainslie's amendment as adopted, and insert the word "school" in lieu of the word "such," which makes it read: *"Provided,* That not to exceed 25 sections of school lands shall be sold in any one year," etc.

Mr. AINSLIE. That does not affect the proposition; I was attempting to save the school lands. There might come in applications for the sale of school lands donated by the general government, for the purpose of irrigation. I suppose the legislature will cover that, if we have not in the amendments here.

The CHAIR. It is moved and seconded that the word "school" be stricken out in the second line of Section 10, and inserted in lieu of the word "such" in what would be the 15th line after it was printed, being the first line of Mr. Ainslie's amendment as adopted.

Mr. McCONNELL. Let me explain, Mr. President. By the adoption of that amendment, by adding the word "school" in the second line yesterday, it cut off the duty from this board of land commissioners of locating and providing for the protection of any other lands only the school lands. It specified that it should be their duty to locate—the land commissioners—to provide for the location of "school lands," and by striking it out, it will read to provide for the location and

sale of all of the lands of the state donated by the general government. (Vote and carried).

The CHAIR. The amendment is adopted.

Mr. MAYHEW. I move that the section be now adopted as amended. (Seconded).

The CHAIR. There were a few amendments incorporated by the committee of the Whole. The secretary will read it now as it stands, ready for action.

SECRETARY reads Section 9 (8).

Mr. POE. Mr. President, before we proceed to that question, I will state here that there was an omission or oversight upon my part in reference to Section 8 (7), the adoption of that.

The CHAIR. That may be brought up hereafter, but the convention is now considering this report. Did you wish to go back to the previous section?

Mr. POE. I wish to move the reconsideration of the preceding section.

The CHAIR. The motion is now for the adoption of this section.

SECRETARY reads: It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. *Provided,* That no school lands shall be sold for less than ten dollars per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction,

for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the sale of timber on the public school lands, and for the faithful application of the proceeds thereof, in accordance with the terms of said grants. *Provided,* That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation."

Mr. REID. Has that substitute just read been considered in committee of the Whole?

The CHAIR. It has been considered and amended and re-amended in convention.

Mr. REID. I know, the original section; but has the one just read ever been considered in committee of the Whole?

Mr. McCONNELL. Oh, yes.

Mr. REID. Is this a redraft or a new one?

The CHAIR. I would call the attention of the gentleman from Latah to the fact that in striking out this word "school," the limitation now as represented by the price of ten dollars an acre is limited to school lands, which leaves university and all other lands to jobbed off as you see fit. I suggest that the word "school" be——

Mr. TAYLOR. I move that the word "school" be stricken out where it comes in; it is in the fifth line.

The CHAIR. All in favor of that motion say aye.

Mr. AINSLIE. Whereabouts is that?

The SECRETARY. It comes in in the midst of line 5; it reads as follows—after the word "therefor"—"*Provided,* That no school lands shall be sold for less than ten dollars per acre."

Mr. HEYBURN. Mr. President, we may possibly be mortgaging the future a little in that. It has been suggested that we may receive a donation of lands for irrigation purposes, and if we do there would be a large portion of them desert lands, and that would cover

all classes of lands to be received from the government hereafter. I think there should be some saving clause. These lands will not sell for ten dollars an acre, in all probability, all of them, and it would not be well to make a general price of ten dollars per acre for all classes of lands to be received from the government at any time in the future. If we strike out those words that will be the effect of it.

The CHAIR. The question is upon striking out the word "school" so as to leave the limitation on the price of all lands at ten dollars per acre. (Vote). The motion is lost. It is moved and seconded that the section as amended be adopted. (Carried). The section is adopted.

The CHAIR. I would like to ask the convention before we proceed further—I don't want to be cut off from my rights as a member of the convention simply because I am in the chair—whether the convention intends that the university lands shall also have no limit as to price. That is the effect of voting down the last amendment.

SECTION 9.

SECRETARY reads Section 10 (9), (11 of the printed copy): "The legislature may require by law," etc. It is moved and seconded that the same be adopted.

Mr. HEYBURN. I move to strike out the word "eighteen" in the third line and insert "fourteen." (Seconded. The question is put and the amendment lost).

The CHAIR. The motion recurs upon the adoption of the section. (Vote and carried). The section is adopted. Section 11; the report of the committee is to strike out the next two sections. The next section, which will be 11 (10), is 14 on the printed copy.

SECTION 10.

SECRETARY reads Section 11 (10). "The location

of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises and endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law."

Mr. McCONNELL. I would like to offer an amendment, Mr. President, which will include the object you expressed a while ago. "*Provided,* That no university lands shall be sold for less than ten dollars."

Mr. SWEET. I second the amendment.

The CHAIR. If there is no objection the amendment will be inserted.

Mr. AINSLIE. I suggest that an amendment be inserted similar to the one adopted in Section 9: "*Provided,* That university lands shall be sold, not to exceed 25 sections in any one year, in subdivisions not to exceed 160 acres to any one individual, company or corporation, and for not less than ten dollars per acre."

Mr. SWEET. I will accept that amendment.

The CHAIR. I think if the gentleman examines the section, he will find this to be the case, that the amendment as adopted in Section 9 (8) limited the sale of all public lands to 25 sections per year.

Mr. McCONNELL. All school lands

Mr. AINSLIE. I suggest that after the word "school" we insert "university," so as to save putting it in another section.

Mr. GRAY. I understand that the two together—you can sell in university lands and school lands altogether not to exceed 25 sections.

Mr. McCONNELL. I would object to that.

Mr. GRAY. That is what I thought. (Laughter).

The CHAIR. The question before the convention now is the adoption of Section 11 (10).

Mr. McCONNELL. I will move that Section 11 (10) be amended by adding the words at the end of

line 8: "*Provided,* That no university lands shall be sold for less than ten dollars per acre." (Seconded).

Mr. AINSLIE. Will you continue it to include the limitation as to quantity?

Mr. McCONNELL. Well, in some respects that would be desirable, whereas in others it would work a great disadvantage to this fund. For instance, where these sections are located in the mountains, in timber lands, no milling company would want to establish a mill of that kind—build a sawmill, for the timber only on 160 acres of land. We must not lose sight of this; while on the open prairie lands susceptible of cutivation, it would be more desirable to have them divided up into small tracts. It might be to our interest in the mountainous districts to sell them in larger tracts. I don't know but it is a good plan to leave it to the legislature—I think perhaps it is.

Mr. GRAY. That is my idea. (Laughter).

The CHAIR. It is suggested that at the end of the section the amendment shall be added limiting the sale of university lands to ten dollars per acre, that is, to provide that they shall not be sold for less. All in favor of the amendment say aye. (Vote and carried).

Mr. MOSS. Mr. President, I move that the word "school" be stricken out of the amendment in line 13 of Section 9 (8). in order that it may be in conformity with the changes in the prior part of it.

The CHAIR. That is out of order without a motion to reconsider; we have already passed it, and there is a matter now pending before the convention to be disposed of first.

Mr. SWEET. I move the adoption of this section.

Mr. AINSLIE. I offer an amendment to the section, at the end of the proviso offered by the gentleman from Latah.

Mr. REID. Mr. President, I would like to make a parliamentary inquiry. Under Rule 55 it says: (reading) "The final vote upon agreeing to each proposition, and upon agreeing to the instrument as a whole shall

be taken by the yeas and nays." Is this the final vote on this proposition?

The CHAIR. No sir.

Mr. REID. The point is this: I do not want to interrupt the business of the convention, but there are one or two amendments offered.

The CHAIR. Rule 52 says: "When such proposition shall have been considered in committee of the Whole and amendments proposed thereto have been disposed of by the convention, the question shall be on ordering the proposition to a final reading, and fixing the time thereof."

Mr. REID. I want to call the ayes and nays on one or two propositions offered in committee of the Whole, and that is the reason I ask. I suppose I have a right to do that.

The CHAIR. I don't think there is any doubt about it at all. There is an amendment offered by the gentleman from Boise.

SECRETARY reads: "And in subdivisions not to exceed 160 acres to any one person, company of corporation."

Mr. McCONNELL. Mr. President, I move to amend by adding to his amendment the words: "unless otherwise provided by law." That will give the state the right to sell these lands in future years without first submitting the question of a constitutional amendment to the people. If you restrict the sale of these lands to ten dollars an acre they never can be sold for several years, until you have the constitution amended, and if the legislature in future years can say that these lands can be sold for less than ten dollars per acre ,they can pass a law to that effect, but this in the meantime will remain the act on our statute books as the minimum price to be obtained for these lands, until such time as it is seen they cannot be sold for that price. I think it is better than it is to put that in our constitution and afterwards to have to go before the people and ask

them to adopt a constitutional amendment. (Seconded).

Mr. MAYHEW. Mr. President, I desire to say with regard to the amendment offered by Mr. McConnell, that there is a great deal of merit in the proposition, with this exception. I have been informed, and in fact I have seen heretofore, that the enabling acts of congress admitting different territories into the Union, provide that these lands shall be sold at a minimum price, as I understand. If that is so, we do not know what congress may do in the future in donating lands to this state and about fixing the price of these lands, and if that is the case and congress should do so, then the legislature has no power to interfere with it, and I don't see how the amendment of the gentleman would be of any value.

Mr. McCONNELL. Congress may repeal the law and doubtless will when the time arrives that the necessity for its repeal would be apparent. We can go up to congress with our representations that all the lands which would have been valuable under that act have been sold—that all the lands which will bring that price have already been disposed of, and that we have a large tract, which you all know that we shall have, that will not bring that, and congress will then doubtless repeal that law and give us the right to dispose of it as we see fit, and if we add this ten dollar clause to our constitution we cannot then through our legislature repeal it; that is, we have got to go before the people with a constitutional amendment, and at a considerable expense, and I think it would be better for us to leave it to the legislature, and I think this amendment which I offer to the amendment of the gentleman from Boise should be adopted.

Mr. AINSLIE. The proposition coming from the gentleman from Latah fixes the price at ten dollars, but does not limit the quantity of land to be sold to any one person or corporation. Now large land grants always retard the development of any country. The state of

California labored under that for a great many years on account of those excessive Spanish grants, as they covered the greater portion of the state, and California never developed into the great state that it is today and acquired more population, until these great landholders of the Spanish grants subdivided their grants by selling them out into small farms. The wonderful progress made by the state of California today in the development of its resources and in increase of population is entirely due to the large landholders dividing their tracts up and selling them to small farmers. My object is to take advantage of this lesson, to learn from the mistakes of others, and engraft a system of land laws in this territory that will result in the rapid development of Idaho and increase of its population, but if you place no limitation on the amount of public land to be sold, that any one individual can purchase, we may sell these lands off in large tracts and retard the settlement of the country, and I believe it is to the interest of the territory and of the new state that we should say that no more than 160 acres of these public lands should be sold to any one individual or any company or corporation, and with that object in view—the sole object I have, I offered that amendment limiting the amount that any one person shall take.

Mr. GRAY. I would advise to sell it that way; if it can be sold better in larger quantities, let us sell it in larger quantities.

Mr. AINSLIE. I will answer the gentleman; if a man can pay ten dollars an acre, for $1,000 he can buy 100 acres.

Mr. GRAY. Well, if you can sell it for more than ten dollars an acre for no larger quantities, I would advise that, but I can't see why you must sell it in quantities of 160 acres; it matters not what the price was, so that it was ten dollars.

Mr. AINSLIE. I would prefer it at ten dollars an acre for 160 acre tracts, than at twelve or fifteen dollars for larger tracts, say 640 acres, because you get

more settlers into the country and derive more taxes and revenue from these lands from the more proprietors, and the more proprietors we have the better for the country.

Mr. GRAY. I understand; it is the number of settlers.

Mr. ALLEN. I think it is well to call attention to the fact that the act of 1881[1] which granted these lands the university lands, to the territory of Idaho, limits the price that they must be sold at to eight dollars an acre, and that the provisions of the legislature, or what the legislature may establish, are subject, it says here in the enabling act[2] of Idaho Territory, to the limitations and provisions of said act. Will this clause interfere with that? I think it is necessary that the amendment of the gentleman from Latah be passed, in order that the legislature may provide such provisions as may be necessary.

Mr. McCONNELL. I think the enabling act would not be in the way of our adopting this, because they merely restrict us to the effect that we shall not sell for less than eight dollars, but they would have no objections to our getting sixteen or twenty-four if we could.

SECRETARY reads: "In subdivisions not to exceed 160 acres to any one company or corporation," is Mr. Ainslie's, and add "unless otherwise provided by law," by Mr. McConnell.

The CHAIR. The secretary will now read for the information of the convention the entire proviso and amendments, specifying each amendment.

The SECRETARY. I will read what will be Section 14 on the printed copy—Section 11 (10) now: "The location of the university of Idaho, as established by existing laws, is hereby confirmed. All the rights,

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1—21 U. S. Stat. at L. 326.

2—Referring to the provisions of Sec. 22 of the Mitchell Bill. See appendix.

immunities, franchises and endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law. *Provided,* That no university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed 160 acres to any one person, company or corporation, unless otherwise provided by law."

The CHAIR. Does the gentleman from Boise accept the amendment of the gentleman from Latah, "unless otherwise provided by law?"

Mr. AINSLIE. I don't like that.

The CHAIR. Then the question is upon the amendment to the amendment, adding the limitation, "unless otherwise provided by law." (Vote). The noes have it. The question is now upon the adoption of the amendment of the gentleman from Boise, which has just been read.

Mr. McCONNELL. Mr. Chairman, I doubt whether this convention understood the last motion; I am sure I did not. I would like to have the ayes and nays on that question.

PARLIAMENTARY DISCUSSION.

Mr. REID. Mr. President, I would like to rise to a parliamentary inquiry. The rule states that when these propositions have been made in committee of the Whole and we report them back to the convention, as has been done, we take them up, section by section, and read them, and then have a vote, yea and nay. What I wish to know is, can any amendments be offered in the convention that were not offered and acted upon in the committee of the Whole?

The CHAIR. My own idea in regard to that is that the rule requires amending to that effect, limiting all amendments in convention to amendments that were

offered in committee of the Whole, but the rule as it reads does not provide that.

Mr. REID. Well, that was the intention, Mr. Chairman.

The CHAIR. I have no doubt it was the intention, but it does not read that way.

Mr. REID. Then these amendments come up in the committee of the Whole, and come back here, and if new ones can be offered, there will be so many amendments that we can never get through; we will be here until winter.

The CHAIR. That is where the difficulty comes.

Mr. REID. My understanding about the committee of the Whole was, that in order to facilitate business a legislative body transformed itself into committee of the Whole, and there amendments were offered, but the previous question could not be called, a vote could not be had by yeas and nays, and motions for delay could not be entertained to delay business, but any member who wanted to amend offered it there and it was voted upon. Then when we went back into the body, whether committee of the whole house or whole convention—I mean, whether it was the house or the convention, when you get back in there the propositions come up in their order and you vote yea and nay on them. I know that is the rule of the house of representatives, but under our rule you have voted upon them whether in the committee or in the convention. I know that when we take up each proposition singly and vote yea and nay, that it will take a great deal of time, but my understanding is that only propositions that were considered in committee of the Whole can be considered in the house, and the question is then only whether you will take a vote, yea and nay, upon it. But I notice here gentlemen offer new amendments, amendments to amendments and substitutes to amendments. We are proceeding in convention just as we did in committee of the Whole, and if we do that there is no necessity of going into committee of the Whole, and so

I make the point of order that we are limited in this body only to vote on those questions which were considered in the committee of the Whole, and that was the reason I made the inquiry awhile ago. There are one or two amendments I desire to call the yeas and nays upon. I refer to Rule 52, and——

Mr. McCONNELL. Read Rule 49, and see if that does not settle the matter.

The CHAIR. There is a matter here that calls for some action by the convention. That particular rule should be modified, so as to make it read as it was intended by the committee on Rules that it should, namely, that when the convention goes into the committee of the Whole and amendments are offered, that then when it goes back into convention, no amendments should be considered in convention except those which were offered in committee of the Whole and rejected, and on this proposition the yeas and nays can be demanded.

Mr. REID. The gentleman from Latah called my attention to a rule which I think covers the very point—the latter clause of Rule 49.

The CHAIR. That is the one I am talking about.

Mr. REID. (Reading): "After being reported, the propositions," that is the original article, with amendments, "shall be immediately taken up for consideration." But we have by consent waived that from time to time; "and again be subject to discussion or amendment, before the question to engross for final reading shall be taken up." But only those propositions which were voted on, and here are brand-new propositions, offered here to different sections. We only consider the propositions, the original propositions and the amendments, that we considered in committee of the Whole. I know that was the intention of the committee on Rules when we made it.

The CHAIR. Gentlemen, we will proceed to finish up on this matter. The question now is upon the adoption of the amendment offered by the gentleman from

Boise, and which has been read two or three times to the convention. All in favor of the the adoption of that amendment to Section 11 (10) say aye. (Vote). The ayes seem to have it. Now Rule 49 says that "after being reported, the propositions, with amendments thereto, of the committee of the Whole, shall be immediately taken up for consideration, unless it shall be otherwise ordered by the convention, and again be subject to discussion or amendment." That is, the whole proposition, and the amendments made by the committee of the Whole, for discussion or amendment. If that language were stricken out, "or amendment," and limit it to such amendments as were offered in committee of the Whole and which were rejected in committee of the Whole, and which the party desires to offer again in convention and get the ayes and nays on, we would get rid of half the labors of this convention. As it is now——

Mr. SHOUP. Mr. President, I will state that the committee on Rules copied that from one of the rules of the last Ohio convention, and that convention proceeded in just the way Mr. Reid stated, in all their proceedings through the entire convention. I have their entire proceedings, and they certainly understood the rule just as the gentleman from Nez Perce has stated. No new amendments were offered at all.

Mr. POE. In order to get at this matter, I will give notice of an amendment to that portion of Rule 49. I believe it can be amended so that the——

Mr. MORGAN. I think it may be done by unanimous consent at once.

The CHAIR. The chair will entertain the motion.

Mr. POE. Then I would ask that unanimous consent be given that Rule 49 be changed so as to strike out all after the word "convention," that this portion be stricken out; "and again be subject to amendments," etc.

Mr. MORGAN. Just say strike out "or amendment." That will cover it.

The CHAIR. You will cover that by striking out

the words "or amendment." But there should be a provision allowing amendments rejected in committee of the Whole to be offered in convention, so that they can call the ayes and nays.

Mr. REID. I understand they can call those up anyway. That is a part of the report which is up for discussion, and under another rule which says we can call for the ayes and nays.

The CHAIR. That is only the amendments reported.

Mr. REID. The report covers all amendments offered, beyond a doubt.

The CHAIR. "The propositions with amendments thereto;" that is, the amendments adopted in committee of the Whole. But there may be amendments offered in committee of the Whole and rejected. And when you get into the convention, under the rules of the house of representatives, which ought to prevail here, you take up the section with the amendments made to it, and you can take up of such amendments only those accepted in committee of the Whole.

Mr. AINSLIE. That is the position I take on the construction of that rule, but in order to make it more certain, you might say, "subject to discussion or amendment as proposed in the committee of the Whole." That would cover it.

Mr. SHOUP. Mr. President, would it be in order then to move to strike out any section in the report?

Mr. MAYHEW. That has been done and voted down in the convention this morning. My friend from Ada, Mr. Gray, moved to strike out certain amendments that were made in committee of the Whole.

Mr. SHOUP. What I mean is this. A section may have been adopted in committee of the Whole, and there might not be any amendments offered at all. Then would it be in order to strike out any such section in the convention?

The CHAIR. Under the rule as it now stands, unquestionably it would be; the whole thing comes up

again; but on the proposition as suggested by the gentleman from Boise, it would not be. All of these sections are supposed to be carefully considered in committee of the Whole, and when reported they stand for approval or rejection; also the amendments which have been offered in committee of the Whole and accepted and passed there, they are not subject to amendment. But the amendments which have been offered in committee of the Whole and rejected may be again offered in convention and the ayes and nays called. The whole object of going into committee of the Whole is to discuss the whole merit of the proposition there, and going back into convention is simply to take the vote on the things which the committee of the Whole agreed upon, and also to take the vote on amendments offered in committee of the Whole and rejected, by wnich you can put the members of the convention on record. If there is no objection, gentlemen, the chair will by unanimous consent direct that this change in the rule be made.

Mr. GRAY. I object.

NOTICE OF MOTION TO AMEND RULE 49.

Mr. AINSLIE. Since there is objection, I will give notice of motion to amend this rule.

SECRETARY reads: I hereby give notice that tomorrow I will move to amend Rule 49, by inserting after the word "amendment" in the next to the last line, "as proposed in committee of the Whole." Ainslie.

The CHAIR. The secretary will proceed.

Mr. TAYLOR. I move the adoption of Section 11 (10), as amended. (Carried).

SECTION 11.

SECRETARY reads Section 12 (11).

Mr. SWEET. While I am in favor of that section as adopted, I am under the impression that it is in direct conflict with the United States law. That provides that we shall not sell more than one-tenth of the land in any one year, and we have already said that we would sell half, and we can't change any law of congress.

Mr. MAYHEW. What was that? I didn't understand it.

Mr. SWEET. If you will permit me I will read the section from the United States statute on university lands, which I think is in direct conflict with the one just adopted. It says: (reading) "That there be, and are hereby, granted to the territories of Dakota, Montana, Arizona, Idaho and Wyoming respectively, seventy-two entire sections of the unappropriated public lands within each of said territories, to be immediately selected and withdrawn from sale." Now I pass on to where it provides for the disposition of the lands: "*Provided, further,* That none of said lands shall be sold at less than the appraised value, and in no case at less than two dollars and fifty cents per acre. *Provided,* That the funds derived from the sale of said lands shall be invested in the bonds of the United States and deposited with the treasurer of the United States; that no more than one-tenth of said lands shall be offered for sale in any one year; that the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund; that no part of said fund shall be expended for university buildings, or the salary of professors or teachers, until the same shall amount to $50,000, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to $100,000, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities."[1]

Mr. REID. I would ask the gentleman if it is not a fact when the enabling act was passed, that in addition to these 72 sections they would give us 50 more, and vest the title absolutely in the state of Idaho? Then we had better have the provision in. These gentlemen were willing to help us while we were in our swaddling clothes, but now when we come in they make further

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1—Act of February 18, 1881; 21 U. S. Stat. at Large, 326.

provision in addition to that, with the right to that that is already fixed as a matter of law.

Mr. SWEET. I understood we had provided for the sale of the lands we have already had.

Mr. REID. I am just asking for information.

Mr. SWEET. If we are undertaking to provide for the sale of the land we already have, and have a provision that is in direct conflict with the provisions in this act here, certainly our provision cannot prevail.

Mr. REID. If congress accepts our constitution which would be proposed to them, and admit us without amendment—if they accept it and pass an enabling act and accept the conditions we put in as to future grants of land, it will be in effect a repeal of that statute, so far as it extends to that.

Mr. SWEET. If it be a fact that their acceptance of our constitution will repeal this act, I have no objections to it.

Mr. HEYBURN. Mr. President, it seems to me that we have been adopting the section under Rule 50, but that we are now considering this on final reading, are we not?

The CHAIR. No sir.

Mr. HEYBURN. Under what provision are we considering this bill, I would ask? We are not in committee of the Whole.

Mr. AINSLIE. Under Rule 52 (reading from rule) After we get through with these amendments to the bill as reported by the committee of the Whole, then the question comes up as to its engrossing and final reading. See Rules 54 and 55.

Mr. HEYBURN. Then I understand that we have to consider these matters three times; once in committee of the Whole, then in convention, and once again in convention.

Mr. AINSLIE. That is the way it is under the rule.

SECRETARY reads Section 12 (11), (which is 17 on the printed copy). "The permanent educational

funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. *Provided,* That no loan shall be made of any amount of money to exceed one-third of the market value of the lands at the time of the loan, exclusive of buildings."

It is moved and seconded that the same be adopted.

Mr. HEYBURN. It seems to me that after the reading of the act of congress which we have just heard that grants these university lands, which provides specifically where these funds shall be invested and just how it shall be cared for, that it is rather absurd for this convention to make a provision that, notwithstanding the act that grants us the lands says the funds must be invested in securities of the United States with the United States treasurer, that we shall provide that it shall be invested with the farmers of Idaho Territory. It seems to me that is something very absurd, to pass such a provision as that, in view of the fact that the provision is a part of the granting act, one of the conditions of the grant of lands, that we shall invest this money in that way. That was the amendment the convention rejected, or the committee of the Whole did, that these bonds of the United States should be included as one of the means of investing the money. We find that congress said it shall be the only place where the money can be invested. It seems to me it is time for the convention to stop and think for a minute.

It is moved and seconded that the section be stricken out.

Mr. McCONNELL. Mr. President, I hope that motion will not prevail. If the gentleman wants to add his amendment, which was offered this morning, again, to include that one class of security upon which this money can be loaned, I don't think the convention has any objections. They had no objections this morning to that particular clause, but there were other objectionable features engrafted in it; hence it was rejected. I

think if the amendment was offered now, to add "or United States bonds," it would cover this section which has been read pretty well, and remedy any defect in the section, but we must certainly provide some security upon which these funds can be loaned, and if you strike it out there is no security in the future for these funds. They might be loaned around to Tom, Dick and Harry all over the country. Any man who wants to start a store who is in favor with the board of land commissioners, or wants to start a saloon or run for the legislature, or wants to be elected governor—he can go to work and get a loan. There will be no restrictions at all if you strike this out.

The CHAIR. One thing, gentlemen, we must not overlook. A motion to strike out the entire section will carry with it also the school funds, that are not obnoxious to the criticism made to the university lands.

Mr. MAYHEW. In order to get at that correctly——

Mr. WILSON. I move to strike out the words "and university" in Section 16 (11).

Mr. HEYBURN. Let's have it read with those words out.

SECRETARY reads: "The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. *Provided,* That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings." The word "university" is not in it at all.

Mr. SWEET. I move that the words "or United States bonds" be added after the word "state."

Mr. HEYBURN. I would ask the gentleman who had in his possession the university bill to read the granting part of it, the granting clause. I want to see the language of the grant.

Mr. SWEET. This act applies to university lands only.

Mr. HEYBURN. I understand it; I would like to hear the granting clause. I understood the act to grant lands to Montana, Dakota, Wyoming and Idaho for university purposes.

Mr. SWEET. (Reading): "Be it enacted by the senate and house of representatives of the United States of America in congress assembled: That there be, and are hereby granted——"

Mr. HEYBURN. That is sufficient. Now Mr. President, that is a grant that has attached. Those lands belong to the territory. The grant has attached, subject to those conditions, and there is no use in saying, in the face of that grant, that this board may at its own discretion invest these monies in state bonds or loans either, because they can't do it without violating the provisions of that act, and no constitution that we can make can override an act of congress that is now in force. That will be admitted, I think, by every gentleman in the convention.

Mr. SWEET. Is it not a fact that the section under consideration now does not apply to university funds? It is provided in the section with regard to the university that the regents shall invest the funds as directed by law.

Mr. HEYBURN. If I understand the bill which has been read, does it not in the first line contain a reference to the university funds?

The CHAIR. All the educational funds; that includes the funds of the university.

Mr. HEYBURN. So I understood it, and if it is open to that construction, then we are doing an absurd thing in providing this way, and we had better take it and separate this matter as it should be, at this time.

The CHAIR. Will the gentleman make a motion to lay this matter on the table?

Mr. HEYBURN. Mr. President, I move that this section, with its amendments and substitutes, be printed and laid upon the desks of members, to be taken up for

consideration at a future time. (Seconded and carried).

Mr. REID. Mr. President, I take it that we can call the yeas and nays on these amendments to this bill, that were proposed in the committee of the Whole.

The CHAIR. You can call them at any time; any two can call them.

Mr. REID. Under the ruling of the chair this was not a final reading.

The CHAIR. No, it was not. I understand the yeas and nays can be called by any two members, supported by one-fifth, on any proposition or any motion or amendment at any time.

Mr. REID. Then I call for the yeas and nays on the amendment submitted by the gentleman from Ada, Mr. Clark, to the 8th (6th) section.

The CHAIR. The gentleman is too late, because the motion has been adopted to postpone the further consideration of it at this time, and that the bill as amended be printed for the information of the convention.

Mr. REID. I withdraw it, in consideration of the understanding that I may have it at some time in the future.

SECTION STRICKEN OUT.

Mr. PINKHAM. I call the attention of the convention and the president to the fact that when Section 3 was read it was not accepted by the convention, or it was not put to final vote. I therefore ask permission at the present time to strike out Section 3 as amended, for the reason that it is merely a repetition of Section No. 1, and has no place in this article.

The CHAIR. Unless the gentleman moves to reconsider the vote by which the further consideration of this bill has been postponed for the present, the motion is out of order.

Mr. PINKHAM. It can be considered when it is called up again.

Mr. AINSLIE. I think there would be unanimous consent to strike it out.

The CHAIR. If there is no objection, the chair will entertain a motion to strike it out.

Mr. PINKHAM. I wish to call attention to Section 1. It reads, in the latter part of it, that the legislature of Idaho shall "establish and maintain a general, uniform and thorough system of public free common schools." Section 3 as amended reads as follows: "The legislature shall as soon as practicable provide for the establishment and maintenance of a thorough and uniform system of free public schools." I move to strike it out. (Carried).

The CHAIR. And the bill as postponed, is postponed with that stricken out. What is your pleasure?

ORDER OF BUSINESS.

Mr. SHOUP. I move that the report of the committee on Bill of Rights be taken up.

Mr. SHOUP. With the consent of the convention I will withdraw the motion.

Mr. REID. I move that the convention resolve itself into committee of the Whole, to take up the next thing on the calendar. I yield by request of the gentleman from Shoshone.

Mr. HEYBURN. Mr. President, I would move that the Bill of Rights, as it has been amended and reported by the committee of the whole, be printed. There are a great many amendments, and it will be impossible for any member intelligently to follow the consideration of that bill with its many amendments unless he has it before him on his desk. (Seconded).

Mr. MORGAN. I would like to inquire when it can be printed. The report of the committee on Legislative Department was ordered printed two or three days ago and is not here yet. I am afraid we are not going to get to the consideration of these things.

Mr. HEYBURN. I understand that that work was delayed by the report of the Judiciary committee and

some other committee, which by the way is now finished, and I think the printing office is relieved of some of its pressure.

Mr. ALLEN. I would state for the information of the gentleman that I think it will be ready tomorrow morning.

Mr. HEYBURN. Yes, I have a proof of it now, and I think there will be no difficulty about it.

The CHAIR. It is moved and seconded that the report on Bill of Rights be ordered printed. (Carried). It is so ordered.

Mr. POE. Mr. President, I move that we now resolve ourselves into committee of the Whole for the purpose of taking further consideration of the matter that was before them this morning, that is, the report of the committee on Public and Private Corporations. (Seconded and carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. POE in the Chair.

SECTION 5, ARTICLE 11.

The CHAIR. Section 5 was under consideration.

Mr. SAVIDGE. I have an amendment.

SECRETARY Reads: Amend Section 5 by striking out the words "regulate and control" in line 3, and insert the word "establish," and also in the same line strike out the word "the" and insert the word "reasonable." Also in line 4 strike out the word "as" and insert the words "or other."

Mr. MAYHEW. What is the object of that?

Mr. SAVIDGE. I don't know as it makes any special or great difference. The striking out of the words "regulate and control" and inserting the word "establish" simply fixes a little more definitely and permanently the law in that regard. And in the fourth line to insert the words "or other" in place of "as;" I think that that regulation should apply to all common carriers as well as railroads or express companies.

Mr. MAYHEW. I have no objection to the last

amendment; but I do not understand that it gives it any greater force or meaning by the word "establish." I think, Mr. Chairman, that the words "regulate and control" have a stronger and more extended meaning than the word "establish." However, I am not tenacious about it; but these words "regulate and control" carry this meaning, that the legislature from time to time may regulate and control the rates of fare, etc., of common carriers. But for the word "establish," I don't think that would be proper. I am rather inclined to think that the language used now in the section is in better terms than the single term, as the gentleman's amendment has it.

Mr. MAXEY. I have an amendment. Amend by inserting "within or" between the words "connect" and "at" in the seventh line of the fifth section, and add at the close of the section "within the state." (Seconded). If the gentlemen will observe, it would read "within" before the word "state," and close the section.

Mr. MAYHEW. I do not understand it now.

The CHAIR. How does the section read with both amendments?

SECRETARY reads: All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers, and subject to legislative control, and the legislature shall have power to establish by law, reasonable rates of charges for the transportation of passengers and freight by such companies or other common carriers from one point to another in the state. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state, and to connect within or at the state line with railroads of other states and territories. And every railroad company shall have the right with its road to intersect, connect with or cross any other railroad within the state.

Mr. SAVIDGE. I have just handed up an amendment to follow the word "railroad" in the ninth line as

follows: Amend section five by inserting after the word "railroad" in line nine the words "under such regulations as may be prescribed by law, and upon making due compensation." (Seconded).

Mr. MAYHEW. I think we had better call a halt on this, and take up these amendments as they are offered.

The CHAIR. The one now is the amendment offered by Mr. Savidge to make amendments in lines four and five.

SECRETARY reads: The amendment is to strike out the words "regulate and control" in line three and insert the word "establish."

Mr. MAYHEW. Now, let us have that.

Mr. POE. Do you desire to vote upon them separately?

Mr. MAYHEW. Yes, I call for the vote upon them.

Mr. AINSLIE. There is no second to that motion. (Seconded).

Mr. AINSLIE. I propose to stand by the action of the committee. The committee has used the term "regulate and control by law." Now, then, I think we would make a mistake by amending the provisions of the act passed; but if you insert the words "establish by law," it appears to me that would make it permanently regulated by the legislature, and would be so looked upon by the transportation and express companies; while the words "regulate and control" leave it in the power of the legislature, through a board of commissioners to supervise these rates of transportation or express companies and all common carriers. If you put the word "establish" in there, it appears to me it would prevent the legislature, after passing one bill, from ever regulating the matter afterwards; and I think we had better keep to the language of the committee.

The chair put the question and the amendment was lost.

SECRETARY reads: Also in the same line three strike out the word "the" and insert the word "reason-

able," which makes it read: "by law reasonable rates of charges."

The chair put the question and the amendment was lost.

SECRETARY reads: Also in line four strike out the word "as" and insert "or other," to make it read "passengers and freight by such companies or other common carriers."

The chair put the question, and was unable to decide and a rising vote was called for.

Mr. CLAGGETT. Mr. Chairman, I believe I can call attention, before the vote is taken, that the convention evidently does not understand the force and character of this amendment. By striking out the word "as" the way it is now, the legislature has the power to establish rates of freights and fares on all railroad and transportation companies and fix them as common carriers. If you strike it out, you leave that all out, "transportation of passengers and freights by such companies or other common carriers." It is as common carriers that the transportation of all companies is done. The language is correct the way it is now. I am speaking of the amendment we are now voting on.

Mr. MAYHEW. The amendment offered was rejected by the committee striking out the word "establish."

The CHAIR. I understand that; that is what I am saying. The question now is upon the amendment which proposes to strike out in line four the word "as" and substitute in its place "or other." (Vote).

A MEMBER. It has been voted on once.

The CHAIR. I understand that, but the gentleman called the matter up and I propose to give the convention another opportunity to vote upon it. All opposed say no. (Vote). The amendment is lost.

A division was called for and a rising vote taken, which resulted 20 for and 20 against.

Mr. MAYHEW. How does the chairman vote?

The CHAIR. I will sustain the amendment. The

next amendment is Mr. Maxey's to amend by inserting "within or" between the words "connect" and "at" in the seventh line of the fifth section, and add at the close of the section "within the state."

Mr. MORGAN. I call for a division of the question.

The CHAIR. The first proposition is to insert "within or" between the words "connect" and "at," so that it reads "any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any designated points within this state, and to connect within or at the state line with railroads of other states."

Mr. MAYHEW. The amendment is acceptable so far as the chairman of the committee is concerned, but I suppose the committee desires to take a vote on it.

Mr. BEATTY. Mr. Chairman, "Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated point within this state, and to connect within or at"—that is, within the state line or at the state line, is the way that reads; to connect within the state line or at the state line. If there is any meaning to that I would like to get at it; but that is the construction of it. I suppose the design is to make it apply to a connection some place within the state; but put in that way it means to connect within the state line or at the state line.

SECRETARY reads: To amend by inserting "within or" between the words "connect" and "at" in the seventh line.

Mr. MAXEY. I will just state, Mr. President, that it is not supposed that railroads will confine themselves by connecting at the state line. If you make railroads connect at the state line in passing through our territory——

Mr. AINSLIE. (Interrupting) I think I can see the force and necessity of that amendment. Here is the Oregon Short Line running through this country, for instance. Suppose they want to build a railroad up

to my county and to Nampa, it would give them the right to connect with this Oregon Short Line at Nampa. If you have got to connect right at the state line, they could not connect with it unless they went down to the state line. It gives them the right to connect with any other lines or branch roads. I think it is a very proper amendment.

The CHAIR put the question and the amendment was carried.

SECRETARY reads: And add at the close of the section "within the state." ("Question").

Mr. SWEET. I just want to inquire the object of adding "within the state." Of course we cannot legislate outside the jurisdiction of the state.

Mr. MORGAN. This does not extend beyond the state line.

Mr. MAXEY. Simply because we have no jurisdiction outside the state.

Mr. SWEET. Well, that doesn't say we do.

Mr. MAXEY. The section reads: To intersect and cross any other railroad. Now, shall we cross some other railroad outside the state?

Mr. MORGAN. Then you see this law has no operation outside the state.

The CHAIR put the question and the amendment was lost.

SECRETARY reads: Amend Section 5 by inserting after the word "point" the word "within," and after the word "another" insert the word "point."

The CHAIR. What line is that in?

Mr. SHOUP. The amendment is offered because the bill reads "from one point." Of course that might be any point outside the state; but since the gentleman from Bingham has explained that we could not be understood as legislating outside the state, I will withdraw the amendment.

The CHAIR. The amendment is withdrawn. It is moved and seconded that the section be adopted.

Mr. CLAGGETT. I offer an amendment, Mr. Chairman.

Mr. BEATTY. There was another amendment of Mr. Savidge, I think to add "under such regulations as may be prescribed by law, and upon making due compensation," at the end of the clause. I had a similar amendment to that, and his was introduced, and I withdrew mine.

The CHAIR. I understood we voted upon that.

The SECRETARY. No, there is another one still.

The CHAIR. What was it?

SECRETARY reads: Amend Section 5 by inserting after the word "railroad" in line nine "under such regulations as may be prescribed by law, and upon making due compensation."

The amendment was adopted.

SECRETARY reads Mr. Claggett's amendment: Amend Section 5 by inserting after the word "line" in line 7 as follows: "or at any point within the state."

Mr. CLAGGETT. The chairman will see that it has limited the right to connect with a foreign railroad right at the state line.

Mr. AINSLIE. That has been corrected by the amendment heretofore made when the words "within or" were inserted.

Mr. CLAGGETT. Well, if that is so it was done when I did not observe the fact. I will withdraw the amendment.

The CHAIR puts the question of adopting the section. Carried.

SECTION STRICKEN OUT.

Section 6 was read, and it is moved and seconded that it be adopted.

Mr. SHOUP. Mr. Chairman, I move to strike out the section.

Mr. AINSLIE. I would like to have the chairman of the committee explain one provision in the last line, "neither shall in any manner" etc. The question is whether that would exclude a railroad company run-

ning from the Oregon Short Line up into these mining counties from uniting its business in such shape as where they are shipping goods from San Francisco or Chicago, whether the charge of a through rate from Chicago or San Francisco to Idaho City or Owyhee, would be considered as uniting their business with the Oregon Short Line, if there is a separate company on the line. If it does, it would interfere to some extent, I think, and I would like to hear the chairman on that.

Mr. MAYHEW. My understanding of that Section 6 is this. You must read the whole section in order to understand the meaning of the entire section. (Reads the section).[1] Now that is where a through railroad may be running parallel with a competing line; that they shall not consolidate their stock. It does not mean, as I understand, that a person shall not, if he so desires, build a railroad from any point on the Oregon Short Line or any other line to some point where there is not a parallel line. That would only be an independent line, although a company could buy that line of them and all become the property of one company. But here you will find the language of this is "parallel or competing line."

Mr. GRAY. I cannot see the object of that section. Railroads can do what they have a mind to do. We can control by legislation the amount they may charge, for that has been decided. But as to how they can control their own property, I do not think it is our business to attempt in this constitution to control their business or their property. When we have a right in the legislature to fix rates, we may do that. Whether they unite their stock or their roads, it does not appear to me as if it is a right that belongs in any way in the constitution, if it is in the statutes.

Mr. MORGAN. If it is in order I move to strike out Section 6 entirely.

1—Not given in the notes, but for the sources from which it was taken, see p. 889,

The SECRETARY. There is a motion on this desk by Mr. Shoup to strike out all of Section 6.

Mr. MORGAN. I second that motion.

Mr. AINSLIE. I would like to hear the gentleman who makes that motion give some reason for it.

Mr. SHOUP. Certainly. Mr. Chairman, the principal reason is, I don't think it is of any account. The interstate commerce bill provides that no railroad shall form a pool, but they do not go anywhere near as far as this goes. This can have no effect on any line outside of this state, but does prevent persons from selling out, one railroad from selling out to another; and not only prevents railroads doing so, but prevents stage companies or corporations engaged in any business as common carriers from doing so. I think we have no right to provide in our constitution that nothing of this kind can ever be done. Suppose there was another road built from the town of Nampa to Boise City, and it is found to be impossible for both of those roads to make a profit—cannot make it pay. The people of this county may be the owners of one of those roads, and they find by consolidating those two roads it requires no more expense to run one than the other, that one can be placed on a paying basis, and yet they are debarred from doing it. A stockholder will have no opportunity of selling his stock for the simple reason it is of no account. But if those roads are consolidated, then the stock may be worth something, while as they are, neither road is worth anything. I don't think we have any right to legislate to whom any man shall be forced to sell his property or to whom he shall not be allowed to sell his property; and I think it is bad policy to have any such section in the constitution of our state.

Mr. SWEET. I would like to ask the chairman of the committee on Corporations one or two questions in relation to the matter. If I understand the fifth section, it provides, as an illustration of the principle, that our state legislature may say what the tariff shall be

upon freight and passenger travel, say between Huntington and Pocatello, does it not?

Mr. MAYHEW. Yes.

Mr. SWEET. Or any other place.

Mr. MAYHEW. Yes.

Mr. SWEET. It gives the legislature power to say what the tariff shall be upon freight or passengers anywhere within the territory?

Mr. MAYHEW. Yes.

Mr. SWEET. Therefore, if the legislature has the power to say what the freight rates shall be, I do not see what difference it makes how many lines of railroad there may be running between two given points. I would like to understand that, and if there be any additional protection in this clause, I am ready to vote for it; but so long as the state has control of the tariff, I do not see that we gain anything by it. Now, the last clause, "neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation;" it seems to me the point raised by Mr. Ainslie is still open to doubt in that respect, for instance, supposing a railroad were to stop at Mullan, and an independent line should build a railroad from Mullan to Missoula, it seems to me this would prohibit uniting the business of those two companies. Or if a railroad was built from Wallace to some other point, I do not see how the two could unite if they were separate companies. I would be obliged if the chairman would enlighten me on the question.

Mr. MAYHEW. If the gentleman will observe the reading of this section where it says that two parallel or competing lines shall not pool their interests or consolidate their stock or franchises with one another, he will be enlightened. In the discussion of this matter before the committee the committee concluded that this was an important and a good section in order to prevent parallel or competing lines from consolidating their interests, where these competing lines may be established or built. That is the object of this section. Now,

so far as I am concerned and understand this railroad business—I was not as familiar with it as I would like to be, and depended solely upon those parties that were, members of the committee that were railroad attorneys and men connected with the railroads. The committee at the time having this under consideration agreed that that section was a necessary section, and it was taken into consideration in relation to railroad matters as to competing lines. So far as my understanding of it goes, the purpose and object of this is to prevent two railroad lines, if they are running parallel or are competing lines, from consolidating their stock in order that they may control the freights over the competing line, or in other words that the two lines may consolidate so that they may have a larger amount from freight and fares. That is the purpose of this section.

Mr. SWEET. I so understand that, Mr. Mayhew; I should so interpret it. But what I do not understand is, what difference it makes if they do consolidate, provided the state says how much they shall receive for carrying the freight.

Mr. MAYHEW. Yes, I understand the gentleman on that. The position assumed by my friend Sweet is that so long as the state legislature has the control of it then this section is not necessary in this article. As long as the legislature has the power to regulate freight rates. That was the object, as I stated, of the committee in adopting it.

'Question, question."

Mr. PINKHAM. I shall take issue with both of my friends on this question. I have had occasion in former years to examine into the workings of this system and study well what the intention and purpose of the legislature was that enacted laws under the sections of the state constitution. The legislature has power to appoint a board of commissioners to carry into effect what laws may be passed by that legislature in regulating freight and passenger charges upon a railroad. It is done expressly for the purpose of preventing unjust

discriminations in favor of one section of the country against another section of the country. It equalizes the charges for freight and passengers within the state. But what this Section 6 is intended to cover is to prohibit railroad companies—for instance, taking this line of railroad that passes within twenty miles of this place—from unjustly discriminating between local points. Suppose you get a through rate on freight from Omaha to this point. I venture to say the railroad will stop that freight at Pocatello where it enters this state, and re-bill it to this point under the local charges as fixed and regulated by the legislature of the territory. That is what this action is intended to cover. To prohibit it from rebilling acts and unjustly discriminating against this point, for instance, in favor of Nampa. Suppose they charge a rate through from Omaha to Nampa or to this point: they bill it to this point. They send it to Nampa for $4.00 a hundred; they can only deliver it at Nampa for $4.00 a hundred. How is this railroad company, which has a hundred pound classification, going to get its tariff or charges for freight out of goods that are delivered for the inhabitants of Boise, at Nampa? They can put on a tariff just to suit themselves, and no person can complain of it, and for that reason this section is intended to cover that one object to prevent pooling, and prevent two parallel lines of railroad from pooling and discriminating in their charges against one local point in favor of another local point.

Mr. MORGAN. I am opposed to this section entirely as it stands or any other similar section. The great need in this country, it seems to me, is railroad lines, and whether they are competing lines or not, I do not care, so we can get the railroads. I would be glad to see a half a dozen parallel lines running across this territory from east to west and north and south, but suppose some of these railroads should not be able to support themselves; suppose there should not be sufficient business to enable them to operate their roads,

shall we then say that they shall not unite with another road that is stronger and thereby enable these railroad companies to give facilities to the different parts of the territory? Suppose a railroad company starts to build through this country from some point in Oregon and runs up the Boise river out on the Camas Prairie and into Wood river, and it should build a portion of the way, say half way, through this territory, and its funds should be exhausted, and the Oregon Short Line company or the Union Pacific company should be willing to consolidate with that company and take its stock, its rolling stock upon it, and run through this territory and furnish facilities for the Boise valley and the Wood river country, and for all this country through here—shall we say they shall not do this? Gentlemen, I am in favor of starting a dozen railroads through this territory, if there is sufficient country to support them hereafter or now. And if any of them are weak and unable to support themselves, I want to leave it within the power of those railroads to connect themselves with stronger lines with the Northwestern company or the Northern Pacific line, and if it is a competing line with the Oregon Short Line and the Union Pacific, let them have the opportunity to connect with either of those companies or consolidate their stock with them, and thereby enable them to furnish facilities to the people of this territory. I am opposed to it. If we had a dozen lines of railroad now running through this territory, and all of them strong and able to support themselves, then we might say that they should not consolidate with one or another; but in my opinion this territory has not got to the position where it should say that railroads should not consolidate, or that competing lines should not unite together, or that they should not pool their earnings.

Mr. AINSLIE. I have an amendment to offer which I think will probably remove some of the objection.

SECRETARY reads: To amend Section 6 by adding after the last word in line 5 the following: "or company

owning or having under its control a parallel or competing line."

The CHAIR. It is moved and seconded that the same be adopted.

Mr. CLAGGETT. I hope this section will be stricken out, and that the motion to that effect will prevail. The question which was so aptly put by the gentleman from Latah (MR. SWEET) has not been answered upon this floor, and it cannot be answered, in my judgment. We are a young country, and what we want of all things is local lines of railway. We do not care whether they are competing lines or not competing lines. I wish to call the attention of the convention to the substantial fact that, excepting the matter of terminal points, there is no such thing as competition between parallel railroads. The amount of money which it costs to build a railroad is so great that whenever one of them is built upon the line no other railroad will be built; if it is a parallel line, it will be so far away that except at terminal points you will never get the benefit of it; and what we want to do is to encourage railroad building in the state. Suppose there should be two parallel lines, competing as you say, and one of them cutting the throat of the other; what objection is there to allowing them to consolidate or pool within the limits of the state? Interstate traffic is regulated by national law. Provided, as contained in the preceding section—whether they are run as two competing lines or consolidated under one management and large expenses saved, and thereby made a profitable investment to the railroad company—I say, providing the state has the power to fix the rates and charges upon both or either. The provision contained in the preceding section is all we want, and it seems to me we do not want to go to work and say that a railroad company shall not, within the limits of this state, regulate its own business, provide for its own stock, pool its own profits, and unite its business with the business of any other railroad, notwithstanding the fact that the legislature has full control over

all these charges in the end. The preceding section does away with the necessity for the one under consideration.

"Question, question."

Mr. AINSLIE. Mr. Chairman, the position taken by the gentleman, who preceded me on the question of Section 5 providing that the legislature may regulate rates, does not meet the point contended for by this section. We all know, and no person who has paid any attention to this subject but what knows, that the legislature generally fixes a maximum rate, and they can charge as much lower than the rate fixed by the legislature as they see proper. As long as we have competing lines, there is a probability that the rates fixed by the legislature will not govern; will not govern them so far as rates and charges to the traveling public or to the shipper of merchandise. If there are competing lines they will both compete for the business, and the public will receive the benefit of the competition. If you allow competing lines to consolidate, then the big fish eat up the little ones, and the rates are crowded up to the maximum allowed by the legislature. As long as you have competition, two companies can so regulate their affairs that they can make dividends or interest upon the amount of money invested in their roads; or express companies the same way; or stage companies the same way. They are not going to run a road and lose money on it any great length of time, and if one road is trying to kill out another and they are losing money, the sooner one of them is killed the better, if they cannot keep both roads running and do justice to the country. I say that where there is enterprise enough to build a road between two given points, there is no second individual going to put up his money in a second enterprise unless he is satisfied there is business enough to pay interest on the investment. We all know that when competition arises there are some hogs that want to get everything. We have Jay Gould, who gobbled up a railroad and telegraph line, and the telegraph line is like a devil fish, gobbling up everything within

its reach, and outraging the people by its charges. Now, Sir, if we have competing lines between two points, both roads can run and earn a fair dividend or interest upon the money invested. If you allow one competing line to buy out the other, the one that has the largest capital may run its road a little while, and then force the other to sell it. I am in favor of the section with the amendment offered by me to the effect that this shall apply only to competing lines: "neither shall in any manner unite its business or earnings with the business or earnings of any other railroad, corporation or company, owning or having under its control a parallel or competing line."

Now, Sir, the time for the people to protect themselves is in the beginning before these wrongs come upon us. Right here we are endeavoring to enter upon the threshold of statehood, and it is the time for us to incorporate in our organic act all those safeguards that will protect the interests of the people hereafter. If we do not insert these articles in the constitution today simply because we have no competing lines of railroad, it will be impossible to insert them in the constitution hereafter when we are overpowered by the influence and money of those corporations that build their lines within our state. I say, the time is *now* to put the safeguards in the organic law. We have not too many railroads now, but by putting this amendment in as proposed by me, you can build a railroad from here to Owyhee, to Rocky Bar, to Idaho City or anywhere, and anybody competing on these lines under this provision of the proposed article will not affect it at all. Now, I say, is the time for the people to stand on guard against the encroachments of these powerful corporations, and not leave themselves at the mercy of them.

Mr. BEATTY. Mr. Chairman, the gentleman from Boise says "Now, is the time to guard against encroachment of the railroad companies upon the people." It seems to me that we are acting upon the theory that now is the time to keep railroads from coming here. It

looks to me that many of these provisions have that tendency. We are undertaking to protect the people against what we haven't got. We are undertaking to make provisions here for that which we never will get, in my opinion, if we adopt such measures as this. I take it there is time enough for us to enact these stringent provisions when we get something to legislate upon, when we get the railroads in the country. As we are now situated we have but one corporation in this territory. Shall we now, by placing in our fundamental law provisions that will be discouraging to the building of railroads, leave our state for all time in the hands of this one corporation? The Union Pacific Railroad company now owns all the railroads substantially in the southern part of this territory. The only other company is the one which runs across the northern part of the territory. Now I say, Sir, if we undertake to adopt into our fundamental law substantially all the provisions that are in this bill, my belief is that we discourage capitalists from building railroads here. Why, they talk about building a railroad from here to Rocky Bar; talk about building railroads from this point to any other point in the territory. Who is going to build them? Are the people of Idaho, or are they going to be built by capital that comes from abroad? Every sensible man sees at once that if we have railroads built here it will not be by our own people; we haven't the money; the money has to come from abroad. We all know how timid capital is; you invite eastern capitalists to come in here and build railroads, and they will commence to look over your laws. The first thing they will find is that we have adopted stringent measures to operate their roads for them. We have adopted stringent provisions to show that we will operate their business; we shall tell them how much they can charge for passengers and freight, and then go further and say they shall not unite competing roads, that they shall not even—as this last clause says here, "neither shall it in any manner unite its business or earnings with the business or

earnings of any other railroad corporation." Now, we tie them up so that one railroad company cannot even connect with another line. Under the provisions of this section I undertake to say that the Union Pacific Railroad company cannot connect with this little line over here from Nampa to this place.

Mr. AINSLIE. My amendment obviates that difficulty.

Mr. BEATTY. Possibly, but my main objection to this legislation is this: We are legislating, in my humble opinion, in a way to keep out of this territory the very thing we need. Is there a man living in the uttermost parts of this territory that does not want a railroad to reach his home? Do my friends of the southwest part of the territory, living sixty or seventy miles from a railroad always want to be cut off, and live in that condition? Don't we want any more roads to come in here to compete with the lines we have now? If we do not, this section in my humble opinion is making the very provision to keep those companies out.

Now, I am in favor, for one, of throwing out every encouragement possible to capital abroad, to get it to come here and build our roads and develop our territory. If it becomes oppressive and the government of the United States cannot control it by the laws it has already passed and which I believe it will pass in the future, we can then take hold of it in the state. My friend from Boise says now is the time to scotch them, now is the time to fix them so they cannot take advantage of the people. Is it possible the people of this future state will not have power enough, wisdom enough and independence enough to control these corporations and railroad companies when they become oppressive? I imagine if the time ever comes when they become so oppressive that we cannot endure it, we will rise up in our might and control and regulate them. I say, let us leave our organic law so our legislature can control these things, and let us not discourage capital from

coming in and investing with us, and developing our resources.

Mr. MAYHEW. I do not desire to impose on the committee by making two or three speeches on this proposition, but I desire to call the committee's attention to this. When there are competing lines there is always competition, and they will carry their freights lower in order to get the traffic, and in fact it creates a greater amount of business in the way of both passengers and freight; it has a tendency to create travel, and it is a matter of convenience to the people throughout the territory to have competing lines. Now, the idea and the purpose of this section is to prevent these competing lines, after they have been built, from pooling their interests and their stock with one another so as to make it a burden upon the people. Where there is competition in all trades, there we find articles cheaper, manufactures cheaper, travel cheaper, as it is in this instance, and everything of that kind goes on at a cheaper rate. What the people want in this section of the country is cheap rates, if they can obtain them, over these railroads, and cheap fares traveling over the roads. It is not worth while talking to me or anyone else that these railroad corporations are going to build competing lines unless they find out that they can obtain a profitable business in that transaction. I say after these roads are built, if they are permitted, after competition has caused competing lines to be established, to allow them to join their stock and sell out to one another, defeats the very enterprise that we are trying to protect. After these competing lines are built they shall not sell out and pool with one another.

I don't think the comparison made by the gentleman from Custer is a parallel case, when he speaks of stage lines and such things as that. There may be some corporations running stage lines throughout this territory that this provision might affect, and if it does affect them I am altogether in favor of having that effect made by this provision. I cannot understand, further, Mr.

Chairman, how the gentleman can argue that we are willing to sacrifice and make any sacrifice to get railroads in here. I have this to say. As the territory will develop its resources and become settled up, these railroads will be built in this territory notwithstanding any invitation or encouragement on the part of the territory. The purpose is to prevent these railroads when they are built or being built from holding a mortgage over the people of this territory. Now, Mr. Chairman, I will ask you to look at the railroads as they are now in operation, and I ask you, have we any statistics or report by which we can say these railroads are not making a large profit by their transactions, by their traffic and by their freight and fares over those roads? If I thought for a single moment it would have a tendency to prevent any capitalists from coming into this territory I should not be in favor of this section; but I look upon it from the other end, as was said by the gentleman from Boise, Mr. Ainslie, that now is the time, at the very infancy of our statehood when we are about to bud into statehood and take our place in the Union as other states—it is now the time that we should have these safeguards thrown around the people, and not leave it to some future legislature or future convention to be called—for what purpose? For the purpose of engrafting into the constitution of this territory or of this state similar provisions to prevent an evil that has grown up, that we should have prevented in its incipiency. If we are going to permit these railroads to come in and bind us hand and foot, if that is what the gentlemen are in favor of making sacrifices for, then I am in favor of this section remaining in this article.

Now, I do not believe, Mr. Chairman, that we are doing any injustice to any foreign capital or any injustice to any railroad company in incorporating this provision. I see this same article is in the other states

and territories that are now framing their constitutions[1] and asking for admission into the Union or are about to be admitted into the Union. The same provision is in Colorado,[2] and it seems there that ever since it became a state, since it was admitted into the Union and they made a constitution for that state, there has been a great number of railroads built throughout that state, in different sections of it, and which are competing lines. And it is a protection to the people. I, for one, Mr. Chairman, think it is necessary to protect ourselves against a railroad corporation. I am not in favor of tearing down railroads, although some gentlemen perhaps on this floor think that is my object and purpose throughout; but it is not so. I am willing to give every encouragement to the railroads to build into this territory and state; but I am not in favor of the railroads having the absolute control of the state in the future.

Mr. Chairman, we can see that not only these large and stupendous corporations have the control of states and great interests of the state, but we can see they have almost got control of the United States; they almost control all the political sentiments in the different states and territories of this Union; and I say it is a dangerous precedent to establish in this territory as we are now budding into statehood, to encourage the railroads in such manner as proposed by the gentleman from Alturas. It seems by the very language he uses and from the manner of his address before this committee and this convention, that he would be in favor of sacrificing everything in this territory for the purpose of building up these corporations. I say, Mr. Chairman, that I think it is a dangerous precedent, and I think if you look at this section carefully that when those roads are built, it prevents them from pooling their stock and from joining together in the manner as provided in this

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1—Art. 15, Sec. 6, Mont. Const. 1889; Art. 16, Sec. 14, S. Dak. Const. 1889; Art. 7, Sec. 141, N Dak. Const 1889; Art. 10, Sec. 8, Wyoming Const. 1889.

2—Art. 15, Sec. 5, Colo. Const. 1876.

section, to prevent them from infecting and destroying the very vitality of the people of this territory or the coming state.

"Question, question."

Mr. GRAY. Oh, aren't you done?

Mr. MAYHEW. No, I am not done, but as my remarks are becoming irksome to my distinguished friend I will discontinue them.

Mr. CLAGGETT. Mr. Chairman, I said "question" under the supposition that the gentleman had taken his seat; my back was to him.

The question was put by the chairman on Mr. Ainslie's amendment.

Mr. MORGAN. Is not the substitute in order first to strike out the whole section?

Mr. CLAGGETT. Under the rules all motions and substitutes are to be put first.

Mr. MAYHEW. Action should be upon the amendment first. It was not a substitute.

The chairman puts the question on Mr. Ainslie's amendment.

The CHAIR. The chair is in doubt. (Rising vote shows fifteen voting for and twenty-four against). The amendment is lost.

The chair puts the question to strike out the section. A division was called for and a rising vote taken, showing twenty-seven for and fifteen against, so the motion was carried and the section stricken out.

Mr. MAYHEW. I now desire to give notice that when this matter goes back to the house I shall call the ayes and nays on the section.

SECTION 6.

The SECRETARY reads Section 7 (6).

Mr. WILSON. Mr. Chairman, I have an amendment.

Mr. KING. I ask to amend——

The CHAIR. It is moved and seconded that the same be adopted as read.

The SECRETARY reads: I move that the words "similarly situated" be inserted after the word "corporation" in line 1 of Section 7 (6).

Mr. WILSON. Mr. Chairman, I will state my reasons for that amendment. Similar words are found in the interstate commerce law to affect that same question. Section 2 of the interstate commerce law reads as follows:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."—[24 Stat. L. 379].

Now, I notice this section does not contain those words "similarly situated," and the reason why I have inserted them is this: That a railroad company could not enter into a contract to transport perishable goods at a given time after the goods are delivered at the station for transportation. For example, in Boise City a great deal of fruit is raised. That fruit has to be shipped at once. Shippers must be able to enter into a contract with the railroad company that that fruit shall be shipped one or two days after it is delivered at the station; otherwise it might perish and be lost. A great deal of produce transported by railroads and other common carriers is not perishable; for instance, ores, wool, hides, lumber and such articles. Unless these words are inserted therein, a common carrier could not contract with a shipper to deliver perishable goods prior to the delivery of goods not perishable in character. In other words, if ore or lumber, or goods not perishable in their nature was delivered at the station first,

and the railroad company did not have cars to transport it, and on the following day fruit, butter, eggs and other articles of a perishable nature are delivered, the shipper might be compelled to leave his goods there until they perished because you cannot compel a transportation company to do that which is impossible. The same rule would apply as to live stock. Under this section no preference in transportation could be given to individuals "similarly situated." For instance, fruit growers are similarly situated. No preference could be given to one over another, but I apprehend that a fruit dealer and a lumber dealer are not similarly situated, and therefore preference might be given to the fruit grower over the lumber dealer. The same rule would apply in shipping live stock. I suppose there are three thousand head of cattle shipped from Nampa, and the railroad company would never have cars to do it unless they entered into a contract to do it at a certain time, and the loss in some cases would be irreparable to the stock shipper. So I think, unless those words are inserted, the railroad company cannot discriminate between persons who are shipping perishable goods and persons not shipping perishable goods. I think they ought to be allowed to discriminate that far.

Mr. MAYHEW. I would like to have the gentleman's opinion on this: "And no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class."

Mr. WILSON. I will answer the gentleman. There can be no discrimination in transportation of freight of the same class. One fruit grower cannot have discrimination in his favor as against another fruit grower; but I would allow discrimination as against shippers shipping perishable articles, and shippers shipping not perishable articles. If any objection can be made to those two words, I would like to hear them.

Mr. CLAGGETT. I don't think the insertion of those two words reaches the question the gentleman has

proposed here; that is, to allow the railroad company to discriminate as between different classes. There is this provision in here, as between passengers and freights of the same class, there shall be no undue or unreasonable discrimination; but what he proposes to get at is to allow discrimination as between freights of different classes and his amendment does not reach the point. I think they would have the power now under this section. All constitutions and statutes have to receive reasonable interpretation. I will offer an amendment if it is in order, that the words "undue or unreasonable" in line 3 be stricken out, so that it would read, "no discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class." I don't think there would be any discrimination. One man presenting one kind of freight, and another man the same kind of freight, I don't think the railroad company would have any discretion in the business.

Mr. WILSON. The objection I made would not be answered by striking out those words. I am in favor of striking those out too; but I am in favor of discrimination between two classes of a different character, where one is perishable and one is not perishable. If you put in the clause suggested by my friend Ainslie, rejecting or reserving the right in case of perishable articles, it will not exactly meet this difficulty, because as I stated in the case of live stock, which is not a perishable article, yet the loss would be in some measure irreparable, because there would be nothing to eat out in this sagebrush waste. If the words there suggested will not do any harm——

Mr. AINSLIE. I will offer an amendment which I think covers it.

The CHAIR. Well, have the amendment read; there is an amendment offered to Section 7 (6).

Mr. AINSLIE. My amendment is a substitute for that of the gentleman from Ada.

The CHAIR. I do not understand that a substitute for an amendment is proper.

SECRETARY reads Mr. Ainslie's amendment: After "state" in line 3 add "except that preference may be given to perishable goods."

Mr. WILSON. The objection to that is, it would not meet the case I cited of live stock.

The question on Mr. Wilson's amendment was put to a vote and the chair being in doubt a rising vote was taken and the amendment was adopted.

SECRETARY reads Mr. Ainslie's amendment: After "state" in line 3 add "except that preference may be given to perishable goods."

Mr. AINSLIE. I will ask the secretary to change the word "goods" to "property."

Mr. MORGAN. The amendment offered by Mr. Wilson has been adopted. Do you want this to go in?

Mr. AINSLIE. I don't think it would do any harm.

The question is put and Mr. Ainslie's amendment adopted.

Mr. CLAGGETT. I have an amendment.

SECRETARY reads: Strike out in the third line the words "undue or unreasonable." (Seconded).

Mr. SAVIDGE. Mr. Chairman, I believe that those two words should not be stricken out, for the reason I think corporations the same as any and all other individuals should be allowed to use ordinary and reasonable discrimination with their patrons; and I believe it is done with every class of persons. I think professional men all discriminate; merchants discriminate; for instance, a lawyer sometimes performs services for a customer that always comes to him for a less amount than he would a stranger. I believe that a railroad or any other corporation should be allowed to carry freight for a less rate, or at least discriminate reasonably, not unduly, but reasonably in such an instance as that. I am not especially tenacious about it, but I believe the words are proper there and should be retained.

Mr. ANDERSON. Mr. Chairman, I have an amendment.

"Question, question."

Mr. CLAGGETT. Mr. Chairman, it seems to me those words ought to go out. It will then read: "no discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class." It does not seem to me that a railroad company should have the power of saying that "I will discriminate, I will furnish A with better facilities than I will B." I say it is reasonable; it is not undue or unreasonable, because that lies in the whole proposition with regard to building up one man or one firm in business and giving him superior rights which another is denied; building up one locality at the expense of another locality. It is really under that power of discrimination that nearly all the antagonism has grown up in the United States, which exists today, more than any other one thing against the business of corporations.

The question was put and on the vote a division was called. On the rising vote there were 15 for and 19 against and the amendment was lost.

Mr. BEATTY. Mr. Chairman, I understood we were voting to strike that clause out.

The CHAIR. We were, but only 15 supported it.

Mr. BEATTY. I thought you were putting the motion over again. I voted to strike it out. I don't wish to be understood as voting to leave the railroad company the right to make any discrimination.

Mr. CLAGGETT. Mr. Chairman, I call for the ayes and nays. (Seconded).

Mr. CLAGGETT. On second thought I will withdraw the motion and renew it in convention.

SECRETARY reads Mr. Anderson's amendment: After the word "persons" in line 7 Section 7 (6) insert "no railroad or transportation company shall issue free passes to the members of the legislature to come and go from a session of that body." (Seconded).

Mr. CLAGGETT. I move to amend that amendment by striking out the word "no" and inserting the word "all," and I want to speak to that. That means that *all* transportation companies shall furnish them and fur-

nish them as a matter of law, and take away the whole abuse of giving or withholding them. They settled that question in the state of Vermont years ago, making it a legal obligation on the part of all transportation companies, railroads or otherwise, holding charters under the laws of the state, to furnish state officers and members of the legislature, when going upon their official business, free passes; for the simple reason that they always do it anyhow as a matter of influencing the freedom of their opinions; and if they could afford to do it for that reason, they could afford to do it independent of that reason. Therefore I move to strike out the word "no" and put in the word "all." (Laughter).

Mr. MORGAN. The section will not read right if that is all the amendment the gentleman makes. I call his attention to the fact that inserting the word "all" makes it read as follows: "all railroad companies shall be."

Mr. CLAGGETT. I was speaking of the amendment.

Mr. MAYHEW. I think it is right, because they could be sent as express matter.

Mr. CLAGGETT. I offered this as an amendment to the last amendment proposed to the effect that no railroad company shall furnish passes to members of the legislature, and striking out the word "no" and putting in the word "all" changes the whole business and presents the opposite theory, and I believe the opposite theory is the correct one.

The CHAIR. The amendment offered by Mr. Anderson is this: After the word "persons" in line 7 insert "no railroad or transportation company shall issue free passes to members of the legislature going to or coming from any session of that body." Mr. Claggett proposes to strike out the word "no" and insert "all." The amendment then as proposed by him would read: "All railroad companies or transportation companies shall issue free passes," etc

Mr. MAYHEW. I am opposed to the amendment of

Mr. Claggett, and I am also opposed to the amendment offered by Mr. Anderson. I think if any member of the legislature elected will desire and wish to obtain a railroad pass from any railroad company going to and from his place of residence to the capital or wherever the legislature may be held, they will tender him a pass, and if he desires to accept it, I don't think it should interfere with their offering it or his accepting it. I think it would be the best not to have either of the amendments proposed in this constitution. If it should be necessary in the future, or if the legislature should think it was necessary to make such a law as that, well and good; but to have it in the organic law that a railroad company shall not issue passes, I would not approve of it, although I see in some constitutions such a provision has been incorporated to the effect that no judges nor other officers of the state, including members of the legislature, shall accept passes. And in these constitutions it provides two penalties, one for offering and the other for accepting. I believe that you could not prevent by law very well these railroad companies from tendering passes to members of the legislature, nor could you prevent men from accepting them, even if you affixed a penalty. I don't think members of the legislature are any better than any other of the ordinary people of the community where they are elected, and I think that if a member of the legislature thinks he can in honor to himself accept a pass from a railroad company he should have the right to do so, and if the company desires to issue passes to him, I have no objections. This is a matter that lies altogether with the accepter of the pass. My opinion has always been that the railroad companies in issuing their passes generally do not do it because they like the individual member of the legislature, they do not do it because they are acquainted with the member of the legislature, but if they do it at all, it is for one or two reasons: One is that in their courtesy towards the member of the legislature, and thinking that the man

who is a legislator does not get per diem sufficient to support him while at the seat of government, and that his mileage is not sufficient to pay his fare, they tender free transportation. That is one reason I suppose the railroad companies offer these passes. At least, that is the reason they have always given me a pass as a member of the legislature, because they are satisfied that the members do not receive enough per diem, and in their courtesy and generosity they have offered these passes, and in the eagerness of the members of the legislature to keep their cash in their own pockets they have always accepted them. I think therefore it would be improper to put either one of these amendments in the constitution. If the legislature in the future desires to control this matter by law, well and good. They would be the best judges of that matter; but I will say that there is no doubt but what the members of the legislature will accept these passes, or the majority of them. However that may be, I believe in allowing a man the right to exercise his own discretion and judgment upon these matters. I have been in some legislatures where I have seen very strange actions so far as railroads are concerned. I have been in the legislature where the members have voted as high as $3,000,000 and $4,000,000 of their bonds to the building and construction of railroads. And that matter has been submitted to the people of the territory where the law was passed, and the people generally voted it down.

And I will say in addition to that, Mr. Chairman, that I don't know why the railroads offer these passes, other than that they may have the good will of the members of the legislature. I say further in addition to what other states have done, I have seen measures introduced in the legislature before now—for instance, commissions and boards of commissioners, whose duties it should be, when a law had passed to regulate freights and traffic and the rates upon freight—I have seen the entire members of the legislature all in favor of that law, but it did not happen to come up suddenly or

within a few days, and when it did come up every member of the legislature, with the exception of one or two, was opposed to that law. I could never understand what this influence is, how it was brought about, nor how it is these railroad corporations have such a wonderful influence upon members of the legislature. I have seen these things in the legislature; I have unfortunately been a member of the legislature heretofore, and I can say faithfully and truthfully that that is the case, and I am satisfied that other men have made the same observations and know that that is the case. Now I am in favor of keeping the legislature, so far as possible, free from any influence of any kind, and while I am in favor of doing that, I think the only manner of doing it is to let it be with the conscience and honor of the members themselves. I am opposed to any provision in the constitution preventing railroads from granting passes; and I am opposed to a railroad being compelled by law to grant them. If these amendments go in there, there is no penalty fixed by them. Suppose the railroad company does not grant them. If this amendment of Mr. Anderson's should be adopted, is there anything in the provision of that section, or in the body of this article, or in the amendment offered by the gentleman that makes any penalty upon a railroad company issuing these passes? Suppose on the other hand that the law requires railroad companies to give to all members passes; is there any penalty to their refusing to do so? They can do as they please under the amendments proposed by the gentleman from Shoshone, and the gentleman from Bingham. Individually, Mr. Chairman, I am opposed to either one of these amendments.

Mr. ANDERSON. Mr. Chairman, the object in offering this amendment is so clear that I will say very little about it. It is in the interest of pure legislation. This body is acting as an independent body. It is in a position now to enact provisions by which future legislatures shall not be permitted to accept passes from railroads. Future legislative bodies when assembled,

when they get together, and each one of those men has a pass in his pocket from a railroad company, will not feel like voting against any measure that railroad company may have before that assembly. I am simply proposing to forestall any arrangement by which a bribe in the way of a ticket can be given to future legislators.

Mr. CLAGGETT. The only way it can be done, Mr. Chairman, is by adopting the amendment which I suggest. The only objection that can be urged to this amendment is, and it is a legitimate objection and I shall vote against it myself and also the amendment that it is amending, on the ground that no such matter should be put in any constitution, but should be left to the legislature. When you come to inquire into the matter of the proper manner of getting at the very abuse that the gentleman who made the original amendment seeks to cure, there is but one way of correcting it, and that is to make it obligatory by law upon these companies to furnish the officers of the state and the members of the legislature these passes as a condition with regard to their franchise. If you leave it and simply say you prohibit it, they will give them to their friends and refuse them to their adversaries, and the men, upon whom the people rely to look after their interest as against the corporations will be discriminated against by the corporations. The only way you can get at it is to adopt the same rule as was adopted in Vermont, which is to make it obligatory upon all of them, and make it the rule. In withdrawing my amendment, I wish to say I simply offered it for the purpose of eliciting a little discussion; but I shall vote against the other amendment for the reason it ought not be put in the constitution.

The CHAIR. The question is now upon the amendment offered by the gentleman from Bingham; after the word "person" in line 7, Section 7 (6), insert "no railroad or transportation company shall issue free

passes to the members of the legislature going to or coming from a session of that body."

"Question, question."

The question is put by the chair.

Mr. ANDERSON. Aye. (All other members: No).

The CHAIR. The amendment is lost.

Mr. MAYHEW. Mr. Chairman, it is six o'clock, and I move that the committee rise, report progress, and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. POE. Mr. President, your committee of the Whole, having under consideration the question of Public and Private Corporations, beg leave to report progress and ask leave to sit again.

The CHAIR. If there is no objection the report will be received and it is so ordered.

On motion duly seconded the convention adjourned until 9:00 o'clock tomorrow morning, Thursday, July 25, 1889.

EIGHTEENTH DAY.

THURSDAY, *July 25, 1889, 10: 00 o'Clock A. M.*

Convention called to order by the president.

Prayer by chaplain.

Roll-call: 32 present.

The CHAIR. There not being a quorum present, it is impossible for the convention at this time to transact business.

Mr. McCONNELL. I suggest that the sergeant-at-arms be instructed to notify the democratic members who are in caucus that we are now in convention and ready to proceed to business.

Mr. HEYBURN. I second the motion.

The CHAIR. If there are no objection it will be so ordered. (After a few minutes). The sergeant-at-arms informs the chair that the democratic members desire a few minutes more time.

Mr. HEYBURN. I move that we take an informal recess of ten minutes. (Seconded and carried).

The journal is read.

Mr. POE. Mr. President, there were a good many of us absent at the time of roll-call, and I do not presume it would be possible for the clerk to make up a correct list of the absentees who were in the building. They were unavoidably detained from being present, and in order that the clerk may be able to correct the statement of those who were present and absent, I think it would be well to have the roll called again, and I would ask that that be ordered.

The CHAIR. The clerk will call the roll.

The roll was called. Present:

Ainslie, Allen, Anderson, Armstrong, Ballentine, Batten, Beane, Beatty, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, King Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Robbins, Salisbury, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Hendryx, Lemp, McMahon.

Excused: Andrews, Cavanah, Crook, Hagan, Hammell, Stull, Woods.

SECRETARY reads journal of yesterday's proceedings.

Mr. POE. Mr. President, I do not see the necessity of the secretary reading and recapitulating all the sections and provisions and amendments that are made in committee of the Whole. I think it is sufficient for that record to show that the committee of the Whole had a certain matter under consideration and that they reported.

The SECRETARY. The secretary is now reading the report of the committee of the Whole.

Mr. POE. I move then that the further reading of it be dispensed with.

The CHAIR. It will be so ordered. Gentlemen of the convention, the hour has arrived, fixed upon day before yesterday for the consideration in the committee

of the Whole of the report of the committee on Suffrage and Elections. No motion is necessary to go into committee of the Whole for this purpose. The chair will call Mr. McConnell into the chair.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. McCONNELL in the Chair.

The CHAIR. Gentlemen, the subject under consideration is the special order of the day, which is to consider the majority and minority reports of the committee on Elections and Suffrage.

Mr. BEATTY. Mr. Chairman, I presume the minority report would be first in order, unless there is a motion made to the contrary, and therefore I move that we take up the majority report instead of the minority report, and consider it section by section.

Mr. MAYHEW. Mr. Chairman, before that is done, I would like to ask the gentleman if this is in accordance with the rules. I understand that the rules are that the minority report shall be taken up first; now, if that is the rule, it requires a suspension of the rule to take up the majority report, and in order to do that it would take a majority to suspend the rule.

Mr. BEATTY. I will amend the motion and put it in this form, that the rule be suspended and that the majority report be taken up.

Mr. AINSLIE. Mr. Chairman, before that motion is put, I will state that after full and repeated conferences between the majority and minority we have found that our differences have not been so serious as we thought they were. On behalf of the minority of the committee I ask unanimous consent that the report of the minority be laid aside, and the report of the majority be taken up for consideration and amendment.

The CHAIR. If there are no objections it will be so ordered.

ARTICLE VI., SECTION 1[1].

SECRETARY reads Section 1 and it is moved and seconded that the same be adopted. (Carried).

SECTION 2.

SECRETARY reads Section 2 and it is moved that the same be adopted.

Mr. BALLENTINE. I have an amendment to offer.

SECRETARY reads: After the word "law" in the fourth line insert the following: "and who shall have paid a state or county tax within two years preceding such election."

It is moved and seconded that the amendment be adopted.

Mr. SHOUP. Mr. Chairman, I think our Bill of Rights provides that there shall be no property qualification required.

Mr. BALLENTINE. I will state for the benefit of the gentlemen that this requires no property qualification. It merely requires that those exercising the right of suffrage shall pay state or county tax before they shall exercise that right. It does not require a property qualification at all.

Mr. GRAY. Suppose the elector has got nothing to pay on.

Mr. BALLENTINE. There is always a road or school tax assessed against every individual in the territory. Any of those taxes will give him the right to vote.

Mr. GRAY. After he is over sixty years old he does not have to pay a poll tax, and then there is nothing but a property tax outside of that.

Mr. BALLENTINE. Road tax.

Mr. GRAY. Not over fifty years.

Mr. AINSLIE. Mr. Chairman, I don't think that amendment is proper. I know a great many advocate

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1—As originally reported and adopted at that time, this section read: "All elections by the people must be by ballot."

the idea that a man shall not vote unless he pays taxes; but I am not in favor of debarring a man of the right to vote because he is poor and cannot pay taxes. I believe in allowing every man to vote that is a law-abiding citizen of the United States.

Mr. PARKER. In Idaho county we have five hundred Chinamen. I should like to know whether under the provisions of this amendment these Chinamen will have a right to vote, since they are all tax-payers.

Mr. BALLENTINE. Not unless they are citizens.

Mr. SWEET. I have an amendment.

SECRETARY reads: Amend line 5 Section 2 by striking out the words "other than sex" after the word "qualifications."

The CHAIR. The other amendment is in order first.

Mr. REID. I would like to offer this amendment following the amendment of the gentleman from Ada.

SECRETARY reads: Strike out of line 4 "until otherwise provided by the legislature."

Mr. REID. It allows, if gentlemen will notice, the right of suffrage to females to vote for school offices, depending upon the will of the legislature. I want to fix it in the constitution so that they will be allowed to vote, whether the legislature desires it or not, for school officers.

The CHAIR. The question is upon the adoption of the amendment first offered.

The vote is taken and the amendment lost.

The CHAIR. The question is now upon the amendment offered by Mr. Sweet.

Mr. SWEET. I just wish to read this as it will read after that is adopted: "Women who have the qualifications prescribed in this article, may continue to hold such offices and vote at such elections as prescribed by the laws of Idaho territory." I do not see that the words "women, who have the qualifications other than sex" cut any figure in the matter.

The CHAIR. Please read that again.

SECRETARY reads: Amend line 5 of Section 2 by striking out the words "other than sex" after the word "qualifications."

Mr. CLAGGETT. Mr. Chairman, if those words are stricken out, it will operate to enfranchise every woman in this territory on all subjects, and Mrs. Duniway has her day, if you strike those matters out, "qualifications other than sex."

Mr. SWEET. I don't strike out "qualifications" but "other than sex."

Mr. CLAGGETT. That is just exactly what I mean. If you strike out the words "other than sex," it will read "women who have the qualifications herein provided," namely, who are citizens of the United States and twenty-one years of age, will have the right to vote.

Mr. MORGAN. For school officers.

Mr. CLAGGETT. Of course; it says male citizens may vote, and also women, who have the qualifications may vote. You will have to consider the two things together. It would operate exactly as an enfranchisement of the two sexes. It may be an awkward section, but that is the legal effect of it.

Mr. BEATTY. The language is not exactly as I would like to have it in all respects; it is very awkward to express just what you want without making a long sentence. As the member from Shoshone has said, you leave that out and see the result: "Until otherwise provided by the legislature, women, who have the qualifications prescribed in this article."

Mr. HEYBURN. May do what?

Mr. BEATTY. "May continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory." Well, perhaps it conveys the idea.

Mr. CLAGGETT. If you are going to put it on the question of English, no woman can have the qualification of being a male citizen of the United States (laughter) unless you put in the words "other than sex."

Mr. SHOUP. I think the minority report has this

provision in a great deal better form than it is here. (The provision is read).

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Latah. (Vote). The noes seem to have it. (Cries of "Division." On a rising vote there were twenty-eight for and twenty-seven against).

The CHAIR. The amendment is adopted.

Mr. PIERCE. I desire to amend by inserting in line 2 after the words "United States," the words "of or over."

The CHAIR. The first amendment now in order is that offered by Mr. Reid.

SECRETARY reads: Strike out of line 4 "and until otherwise provided by the legislature."

Mr. REID. I will state that the object of that amendment is to fix it in the constitution, and not leave it to the will of the legislature; if you leave those words in there "until otherwise provided by the legislature," the first legislature that meets may by the majority vote, disfranchise women so far as voting for school offices may be concerned. We have a statute, it is true, now, that allows them to vote at school elections,[1] and also to hold the office of superintendent of public instruction. I think we had as well fix that in the constitution and have it understood, as to have it the creature and subject of the legislature, and therefore I move to strike out those words.

Mr. GRAY. I am afraid that when those words are stricken out, they are restricted and can go no further than school elections. If the legislature at any time sees fit to allow women to vote upon all elections, I am

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[1]—Act of Feb. 21, 1879, allowed unmarried women who were taxpayers to vote at school tax elections.—Sess. Laws 1879, p. 21. Sec. 44, Act of Feb. 5, 1885, abolished the sex qualification in school elections and officers. Sess. Laws 1885, p. 194. Said Sec. 44, however, was omitted from the revised school laws of 1887.

willing they should do so; but I wish to leave that an open question.

Mr. REID. If that is the case I will withdraw my amendment, because I am in favor of their voting on any election they want to; but if you will read the first line which says "male citizens," the legislature will be restricted, and this limit is that they may go on and vote until the legislature provides otherwise. What otherwise? That is, disfranchise them.

Mr. GRAY. Just as provided by law.

Mr. REID. But the law provides that he must be a male citizen, except they may vote for school offices, and then says, vote for school offices until the legislature provides otherwise. That is the reason I want it; I don't want the legislature to strike it down. If they will strike out the word "male," I will vote for the amendment more heartily than I do now.

Mr. GRAY. I am afraid if that be stricken out, it is taking it away from the legislature in the future.

Mr. REID. It takes it away as I understand—if the gentleman will permit me to interrupt him—it takes it out of the power of the legislature to provide it.

Mr. MAYHEW. Do you say, Mr. Reid, that you are in favor of woman suffrage?

Mr. REID. I am. (Laughter).

Mr. GRAY. Mr. Chairman, it restricts the legislature to go any farther than that.

Mr. BEATTY. Mr. Chairman, I will have to object to the amendment proposed by my friend from Nez Perce. It will defeat the very object he has in view, in my opinion. Let me read it as it will read without that amendment. "Women, who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided now by law." Her right now to vote is limited under the law, and if you strike out the provision Mr. Reid proposes, we come then within that decision in Nevada[1]

1—Whitney v. Findley, 20 Nev. 198.

where you prescribe a qualification and leave no limit, and the legislature can never go beyond that. The idea of the draftsman of that section is to allow the legislature in the future to extend her right of suffrage farther than it is allowed now as to school elections; but of course no provision is made for general elections or for anything but in school elections. I do not remember exactly what the law now allows her in the way of suffrage in school elections, but it is limited. And for one, I would like to leave this section so that the legislature may extend the power to vote at other school elections than those now allowed.

Mr. REID. Allow me to interrupt. The very language there is that you have the qualifications limited. The legislature cannot extend it. They have got to have the qualifications in this article, and they cannot exceed that, because this article does not extend the right of suffrage to other persons than those named in the article, and therefore the legislature cannot extend it. But if you leave that language in there they can abridge it.

Mr. BEATTY. They can extend it as to school elections. As I say, now, she is allowed to vote, I think, merely for trustees, but admit for argument's sake that she is allowed to vote simply for trustees. If you strike out that clause and leave it to the legislature to extend to them the power to vote at other school elections than that, it would be restricted simply to what the law now is. In other words, it would amount to this: That you say that women may vote only at such school elections as the law now provides she may vote at. That is what the clause would amount to if you make the amendment. Now, whenever you do that, you restrict her power to vote simply to what the law now provides, and that comes exactly within the Nevada decision, as well as one in Wisconsin,[1] which holds that unless you make

1—See State v. Williams, 5 Wis. 308.
State v. Baker, 38 Wis. 86.

some limit the legislature never can extend it. And I want this section to so read that the legislature in the future may give her full authority to vote at all school elections. It is now limited; I am quite sure she has not the right to vote at all school elections, but I think only for trustees. I am sure if you take out this clause you then limit her to vote simply as the law now prescribes and the legislature can never extend it, nor could the legislature restrict it; but there is no danger in my opinion of the legislature ever restricting it, unless legislatures change very much from what they have been in Idaho Territory a long time. Of course I admit, with my friend from Nez Perce, that with this clause in, the legislature may repeal all the rights she now has to vote.

Mr. REID. That is what I am getting at.

Mr. BEATTY. But with that clause in, it leaves the legislature not only to sustain the rights she has, but to extend them; and if you strike it out you limit the power of the legislature to extend them, and that is what I do not want to do.

"Question, question."

Mr. HEYBURN. Mr. Chairman, this section provides not only that women may vote, but that they may hold office; and we have in some other measures adopted in this convention, provided that a superintendent of public instruction, both in the state and in the various counties, shall perform certain duties as land commissioner. If I am not mistaken, in the provisions of an act of the last legislature,[1] they allow this office to be filled by a woman. I am in favor of women voting for school trustees and holding strictly school offices; but I do not think it is appropriate or proper that a woman should be allowed to or should hold the office of land commissioner under such terms and conditions as have been prescribed by the sections we have already adopted. Therefore, I think that probably if we strike out that

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1—Act of Jan. 25, 1889: Sess. Laws 1889, p. 11, (validating the election of female county school superintendents).

provision which will enable the legislature to limit her duties, if she does hold the position of school trustee or superintendent of public instruction, simply to those things that pertain to public instruction, and to provide for a separate conduct of the affairs of the land commission, we will have made a mistake.

Mr. REID. Will the gentleman allow me to interrupt him? That provision in the bill providing for land commissioner, or that the superintendent of public instruction shall be land commissioner, was stricken out; so it leaves that entirely to be appointed by the state.

Mr. HEYBURN. That the gentleman will find pertains to the superintendent of counties, it does not pertain to the superintendent of public instruction generally. I want to see the provisions of this bill before I vote upon it, so that I may vote upon it intelligently. I have just got the act of the last legislature upon the subject. I think we ought not to deprive the legislature of the power to regulate this, if there is any possibility of finding ourselves with a lady commissioner of lands on hand.

Mr. REID. If the gentleman will look at the laws of Idaho Territory he will find that very point is provided for.

Mr. HEYBURN. That means, as provided now by the laws of Idaho Territory, is provided in this act, which I am going to examine. But it does not allow the laws of Idaho Territory in fact to provide for it, as that sentence is sought to be stricken out.

"Question, question." (Vote).

The CHAIR. The motion to adopt the amendment offered by the gentleman from Nez Perce is lost.

Mr. HARRIS. I have an amendment.

The CHAIR. There is an amendment preceding that.

SECRETARY reads: Amendment offered by Mr. Pierce. To amend by inserting in line 2 after the words "United States" the words "of or over."

The CHAIR. The amendment offered by Mr. Pierce has not been seconded. (Seconded).

The CHAIR. It is moved and seconded that the amendment be adopted.

Mr. REID. The gentleman from Shoshone just passed up an amendment, and I rise to a point of order that all the amendments be put in before any votes are taken.

The CHAIR. Have them all read.

SECRETARY reads: I move to strike out the word "male" in line 1, and strike out all the section after the word "election" in line 4. Harris.

Move to strike out the word "male" in the first line. King.

Move to strike out the word "male" in the first line and insert the words "or she" in the third line, and strike out all in the section after the word "elector" in the fourth line. Sinnott.

Mr. HARRIS. That should have been "elector" instead of "election."

The CHAIR. The question is upon the adoption of the amendment offered by Mr. Pierce.

Mr. BEATTY. I hope that amendment will not be adopted. It is explicit and clear enough. "Every male citizen of the United States twenty-one years old." No court will ever have any hesitation in construing that language, and I hope these amendments that are not important will not be adopted; it only encumbers the record.

The CHAIR. All those in favor of the amendment say aye.

Mr. PIERCE. Aye!

The CHAIR. All those opposed vote no.

Every member: No.

The CHAIR. It *seems* to be lost. It *is* lost. (Laughter). The question is now upon the amendment offered by Mr. Harris.

Mr. REID. Read it.

SECRETARY reads: Move to strike out the word

"male" in the line 1 and strike out all of the section after the word "elector" in line 4.

The vote is taken and the amendment lost.

SECRETARY reads: Move to strike out the word "male" in the first line of Section 2. King.

It is moved and seconded that the amendment be adopted.

Mr. KING. I am in favor of allowing the largest liberty to every citizen of the United States; and I firmly believe that a majority of the women of this territory, or in any state of the Union, are just as well qualified for the right of suffrage as the average man. And there are thousands, tens of thousands and hundreds of thousands of women, ten thousand times better qualified than one-half of the men that vote in these United States. (Great applause).

The vote is taken and division called for. Upon a rising vote twenty were counted for and thirty-six against the amendment.

The CHAIR. The amendment is lost.

SECRETARY reads: Strike out the word "male" in the first line and insert the words "or she" in the third line; and strike out all in line four after the word "elector." Sinnott.

Mr. BEATTY. I rise to a point of order, and that is this: That amendment has now been voted down twice. It is not in order.

"Question, question."

Mr. GRAY. That was the amendment offered by the gentleman from Washington to strike out from line 4 and it was the amendment offered by the gentleman from Kootenai or Shoshone to strike out the word "male."

Mr. REID. The gentleman inserts another word. which does not make it identical.

The CHAIR. The chair is inclined to deal very liberally in allowing amendments.

Mr. CLAGGETT. I call for a division of the amendment and let us vote on each one of them.

Mr. AINSLIE. I would like to have that amendment read.

Mr. SINNOTT. I want to make a correction there that I neglected. The words "or she" to be inserted after the word "he" in the third line.

The CHAIR. Will the secretary read it as it will read if the amendment is adopted?

SECRETARY reads: Except as in this article otherwise provided, every citizen of the United States, twenty-one years old, who has actually resided in the state or territory for six months and in the county where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector. That is the way it will read if amended.

The CHAIR. The question is on the adoption of the amendment. (Vote). The noes have it.

"Division."

The CHAIR. Too late.

Mr. BEATTY. I now move the adoption of the section as amended.

The vote is taken and Section 2 adopted.

SECTION 3.

SECRETARY reads Section 3. It is moved and seconded that the same be adopted.

Mr. AINSLIE. I have an amendment.

Mr. BEATTY. I now move the adoption of the sec- of the section. (Seconded).

Mr. AINSLIE. I have an amendment which I think will be substantially agreed upon by the majority and minority both.

Mr. SHOUP. I wish to offer an amendment.

Amend Section 3 by striking out all after the word "state" in line 14 and insert the following:

"Nor shall Chinese, or persons of Mongolian descent, not born in the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors or hold any civil office."

Mr. BEATTY. Mr. Chairman, that amendment embodies what, for one, I am willing should go in there, and I see no objections to it whatever. I desire to have the section so amended as to include Chinese, which was an omission in the report as made, and likewise Indians. I believe that amendment will make the correction I desire in this section and I will therefore accept the amendment.

The CHAIR. If there are no objections to the amendment as read, it will be accepted by the convention. I did not hear it read but once. I did not get it all in my mind. The greatest desire is to exclude Indians and Chinese and Mongolians from any participation in the elective franchise until they become properly qualified under the law. I believe that reaches it.

SECRETARY reads: "Amend Section 3 by striking out all after the word "state" in line 14 and insert the following:

"Nor shall Chinese, or persons of Mongolian descent, not born in the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors or hold any civil office." ("Question").

It is moved and seconded that the amendment be adopted. Carried.

SECRETARY reads: "Amend Section 3, after the word 'legislature' in line 15 by inserting: 'provided that persons *non compos mentis,* under guardianship, idiotic or insane, who are disqualified from voting or holding office, under the provisions of this section, shall be exempt from taxation during the existence of such disfranchisement.'" Parker.

Amend Section 3 by inserting after the word "crime" in line 4, the words "who have not been restored to the rights of citizenship." Shoup.

Mr. Claggett offers an amendment to strike out the words "*non compos mentis*" in the second line.

The CHAIR. The question is first upon the amend-

ment offered by Mr. Parker of Idaho. Let us have the amendment read.

SECRETARY reads Parker's amendment.

Mr. PARKER. I have offered the amendment for the purpose of pinning this convention down to a consideration of the fundamental principles of human rights, and under a democratic form of government; principles which seem to have been so much overlooked and ignored, I am sorry to say, in the deliberations of this convention. Mr. President, it is a surprising thing that men will give their assent to doctrines and principles and maintain them until they are hoarse, but when they are called upon to make a practical application of them, they will sacrifice those rights and those principles and repudiate them for the sake of the political exigency of a partisan necessity. Mr. President, I have always been taught to believe that it was a principle of our government, one of its fundamental principles, and the cornerstone of American institutions, that there should be no taxation without representation. And now, by the majority report, as introduced, a large portion of our fellow citizens are to be disfranchised and at the same time they are to be taxed, and their money taken away from them without their consent. There are a good many questions involved in this, Mr. President. It is ordained by the Constitution of the United States, Amendments, Article 1, that congress shall make no law respecting any establishment of religion or prohibiting the free exercise thereof, and you will find the same prohibition announced in the constitutions of the several states, and without any kind of qualifications or limit upon the free exercise of religious worship whatsoever. Mr. President, I believe the men who formulated that Constitution of the United States, and who formulated the constitutions of the several states, were men who loved liberty more than they loved party association, and they recognized fundamental principles. They announced in the federal constitution and in the subordinate constitutions principles which govern all the states

of the Union. Mr. President, I read the Declaration of Independence this morning, and I found there among the indictments against King George, the first was that he had taxed the colonists without giving them any representation in the government of Great Britain, or in the government of the colonies. I hold to the belief that the exercise of the franchise, the right to vote, is the foundation of the democratic form of government, that it is the democratic principle of our government, and that in a democratic form of government, there can be no exercise of the right of citizenship without the exercise of the right of suffrage, and I maintain that it is of the very first importance that there shall be no restrictions whatsoever placed upon the exercise of that right of ours. Why, Mr. President, the power of the people is but a name, it is but a shadow of title, insufficient for the needs and maintenance of a democratic form of government, if you take away the rights of the people and vest them in the legislature and allow the legislative power to prescribe qualifications and limits as to who shall vote or who shall not vote. Enforcing such a principle as this reduces the people from the state of liberty and independence, which they enjoy in theory, to a state of legislative despotism, a despotism which is none the less odious to me and to you when we think of it, because these legislators are our representatives. And you will find that the outcome of such legislation is the ultimate subversion of all free government and the introduction of anarchy. Shall I tell you what has been the object of such legislative usurpation? The only safe practice in such a government as this is to lay down the hard and fast lines that no party and no body, legislative or otherwise, is allowed to suspend the liberty or to restrict the privileges of any law-abiding citizen. That principle once surrendered, Mr. President, free government becomes only a form and trembles under every attack. I have watched this legislation which has been enacted in this territorial community, and I say that we are drifting further and fur-

ther from the old safeguards and encroaching more and more dangerously on constitutional rights, and I, for one, raise my voice in protest against it. I am opposed to putting into the organic law of our state, such stuff—such stuff, I call it, as this majority report would incorporate into that organic law. Now, Mr. President, this report is designed for no other purpose than to disfranchise a class of religious enthusiasts, who do not believe as you do, and who do not believe as I do, and who do not believe as the gentlemen on the floor believe. In the good old days, the religious bigot used the rack, and the state was an engine of religious persecution, but in these more enlightened days, in the last decade of the nineteenth century, we are much more tolerant. But now, in the making of constitutional law, we hasten to impose political disabilities upon those of our fellow citizens who do not believe as we do, and we seek to convince those people that they are wrong, by depriving them of their political rights.

There is another phase of this question which is worthy of consideration——

Gavel falls. "Question, question."

Mr. PARKER. Is not that a short ten minutes, Mr. President?

"Question, question."

SECRETARY reads: After the word "Legislature" in line 15 insert "Provided that persons, *non compos mentis,* under guardianship, idiotic or insane, so disqualified from voting or holding office under the provisions of this section, shall be exempt from taxation during the period of such disfranchisement."

"Question, question." (Vote).

The CHAIR. The motion is lost.

SECRETARY reads: Amend Section 3 by inserting after the word "crime" in line 4, the words "and who has not been restored to the rights of citizenship."

Mr. GRAY. Mr. Chairman, I hope that amendment will prevail. It is for this reason, principally, that any man who had been convicted of crime is forever de-

prived of the right of franchise and of holding office. This amendment goes thus far and no further, that is, provides on his being by proper authority restored to his civil rights. If he has been so restored, I say it is our duty to recognize him and lend a helping hand to help this poor man. Perhaps he may have been wrongfully convicted, but let us not regard that after he has been restored to his civil rights, let us take him as a man and try him again, not crush him and keep him down all his life. But we will trust that wherever the pardoning power exercises the right to restore the civil rights, and that wherever it may be in this state or anywhere else, we will hope and trust that it has been properly guarded, and that without good reasons for it, he would not have been so restored. And now I hope this amendment may prevail, for I see no reason why it should not. It is a mistake to mark a man when he has been convicted as a criminal and always regard him as a criminal. Don't let us keep our hands upon him his entire life; raise him, help him, be charitable to him, and let us trust the pardoning power to exercise it properly.

Mr. MAYHEW. What is the amendment?

The CHAIR. Amend Section 3 by inserting after the word "crime" in line 4, the words "who has not been restored to the rights of citizenship."

Mr. BEATTY. Mr. Chairman, that is another amendment, I, as chairman of the committee, am not willing to accept.

Mr. MAYHEW. I did not suppose there was any opposition to that amendment at all.

Mr. BEATTY. I beg to differ with the honorable gentleman. There is some opposition, and I beg to state my reasons. The gentleman from Ada said, if he had been convicted of any crime, that it would forever brand him. You will notice the read section confines it to cases of treason, felony, embezzlement of public funds, bartering and selling his vote, or other infamous crime. Now, there are a great many men who have

been convicted of these crimes, and some have been convicted of polygamy; a great many more may be. I do not believe those men, even if they should be pardoned out, would be worthy of the franchise, nor do I believe that a man who has been convicted of deliberate crime of high grade ever becomes so purified that he is entitled to the franchise. It is a very common custom in some sections of the country, that they pardon a man out a day before his term of imprisonment expires, for the very purpose of giving him the right of franchise, and that is often done for a political reason. I have known cases where men were pardoned simply to add a few more votes upon the side of the political party which may have pardoned them, but these pardons often occur only a day or so before the term expires, and without any regard to the reformation of the prisoner. And I think that this section had better stand as it is. It is a common experience, that after a man has committed an infamous crime, he is not likely to be a fit subject for citizenship or the right of suffrage, and I think we will not do as much damage by leaving it as it is, as by amending it.

Mr. MAYHEW. If a man has been convicted of polygamy or bigamy or the crimes enumerated in this section, and has been pardoned by the governor, that does not restore him to citizenship, if he continues in violation of the law; if he commits the crime over again after serving time and is convicted again. If those parties belonging to this church are determined to continue in unlawful acts after they have once been released, they do not and cannot assume their right of suffrage, even under the provisions of this constitution; nor can they assume their rights under the laws now existing in this territory, if they are required to take oath that they do not adhere to, advise or counsel, or advocate, or aid, or abet, or assist those institutions. I think probably the purpose of the amendment as offered by the gentleman from Custer, Mr. Shoup, is

the purpose of restoring those parties to the right of citizenship, who have been convicted of crimes other than polygamy or bigamy. While that is a matter to remain under the statute as in this article, as the gentleman from Alturas suggests, just those parties who have been convicted of other crimes, not polygamy or bigamy, can be restored, and in my opinion they should be restored, but I am not in favor of restoring a person because he has been convicted once of bigamy or polygamy, and served his time in the penitentiary and then goes out and repeats that offense; I do not think he is entitled to citizenship, and I do not think we can confer it even under the laws as they exist, but I believe in letting the other parties vote. As the gentleman says, it may be in some manner the man has been convicted wrongfully, but whether he had been convicted wrongfully or not, through the clemency of the executive of this territory, proper representations being made to him, he should be restored to citizenship, and that pardon should restore also the right to vote. He has been purged of the crime committed, suffered the penalty, and should be entitled to vote. But if it remains as it is, I fear those parties will not be allowed to vote.

Mr. AINSLIE. I think that the amendment offered by the gentleman from Custer is very proper. Under the article adopted the governor, secretary of state, and attorney general, are made the board of pardons, and unless the legislature provides or recommends that the judiciary can restore citizenship, I think when you have a board of pardons, you can safely place at their discretion the power to restore citizenship. I think it is a provision that should be incorporated.

Mr. BEATTY. I would like to ask the gentleman a question. Under the provision as incorporated, will it not also extend to those pardoned, in other words, to even a felony case?

Mr. GRAY. That is my understanding; should he secure a pardon from them it would be sufficient for use under any and all circumstances, and he would need to

look no further. We must have that charitableness and that confidence in their status and in the execution of the pardoning power, we must allow it, that is the idea, and just because a man is convicted of a crime and suffered the penalty, is not conclusive; he may be innocent. But in any case, I say, we must abide by the clemency which the pardoning power has seen fit to allow and extend the courtesy to them of assuming that they have acted properly. But keep your hand on a man once convicted, all the days of his life, and what will he amount to. Put that blemish on him and keep him there and give him no opportunity? Punishment is not alone for the purpose of torture, but for reformation.

Mr. CLAGGETT. Mr. Chairman, I offered an amendment to the pending amendment.

SECRETARY reads: Strike out after the words in the third and fourth lines as follows: "felony, embezzlement of public funds," also the words "or other infamous crimes," so that as amended, the lines will read as follows: "been convicted of treason, or bartering or selling his vote."

Mr. CLAGGETT. I sympathize heartily with what has been said by the gentleman from Ada, Mr. Chairman, with regard to giving those parties who have been convicted of certain offenses no chance for reformation but my principal reason for thinking that the reiteration of these words in the section is unnecessary, is because the number of these persons is so small; but I do say this, that when a person has been convicted of treason against the state, which may be called treason as it is known at common law, or convicted of bartering or selling his vote, which is a species of petty treason, inasmuch as it attacks directly the foundations of the state itself and the purity of elections—that any person who is guilty of perpetrating these offenses should not be permitted to vote or hold office or to serve or sit as a juror. The most infamous offense which we have in these days to deal with is the matter of selling and bartering votes; therefore, I move to strike those other

matters out, and leave the matter entirely to the discre tion of the legislature hereafter, because they may not make those disqualifications, but I think in the constitution we should limit this matter of disqualification to those who have been convicted of treason and selling their vote.

Mr. MAYHEW. If the gentleman would just add to his amendment, to make it a serious grade of offense that a person should offer to buy or buy a person's vote.

Mr. CLAGGETT. I will accept that amendment with the greatest approbation in the world.

Mr. MAYHEW. I will then support it.

Mr. GRAY. I think the amendment is out of order.

The CHAIR. The chair will consider the amendment.

SECRETARY reads: Strike out the words in the third and fourth lines as follows: "Felony, embezzlement of public funds;" also the words "or other infamous crimes," so that as amended it will read as foldows: "Been convicted of treason or bartering or selling his vote, or purchasing or offering to purchase the vote of another."

Mr. GRAY. I shall oppose the amendment, and I hope the convention will. If it be such an infamous crime that it would not be proper for him to be pardoned, I will trust the board not to pardon him, but if they do it, I don't want it to go any further than that, that if the board in its action on the matter should say it was their duty, I am willing to submit it to their judgment, and if they say that he is worthy of being pardoned and shall reprieve him, I ask that he may be received as a citizen. I believe it is but just to put these discriminations in there so that if for certain things he may be pardoned, although the pardoning board should do what they ought not to do, I trust they will do what is right, and I trust they can come as near doing what is right, perhaps, as this convention may do. I should hate to have it engrafted in this constitution that it may be less. Let these opinions be

ever so unjust, let your man be ever so innocent, or assume that he is guilty of the offense, whether he has been convicted of perjury or otherwise, I know not and I care not, but I say I will entrust it to that pardoning board, for I believe they will do what is right, and we must concede that we are not the only honest men in the world in this convention.

Mr. BEATTY. I am compelled again to object. It seems to me that the amendment proposed by my friend from Shoshone is worse than the other; this section is broadly drafted after the law as it now exists.[1] That law provides that no person under guardianship, *non compos mentis*, insane, or convicted of bribery in this territory, shall vote unless restored to his civil rights. This amendment proposes to strike out felony, embezzlement or other infamous crimes. In other words, this amendment proposes that anyone who has been convicted of felony or embezzlement of public funds, or any infamous crime, who shall have served out his term without receiving a pardon would be entitled to vote. Now this convention certainly does not want to authorize or enable those who have been convicted of felonies and other infamous crimes, and who shall have served out their full term, to then exercise the right of elective franchise. That cannot be the desire of this convention. That is not the law in any place. It has not been the law in Idaho. We have had this law upon the statute books——

Mr. SHOUP. It is the law in some states.

Mr. BEATTY. Well, it is not the law in Idaho at any rate, and it is not the general law; so far as I have observed constitutions, parties guilty of infamous crimes, unless pardoned, are deprived of their right of suffrage. I hope this amendment will not prevail. I would much prefer to see the amendment of the member from Custer prevail to this, because this does not exclude or prevent

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1—Act of Jan. 29, 1889, amending Sec. 501 Rev. Stat. 1887; Sess. Laws 1889, p. 14.

from voting, those who have served out their term and who have not been pardoned.

"Question, question."

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Shoshone to the amendment offered by the gentleman from Custer.

Mr. CLAGGETT. I would like to say one word by leave of the convention. I have offered this amendment in good faith, and I hope it will not be passed over hastily, and that it will not be voted down and not given a full and general consideration. The reason why I am willing to leave cases of parties convicted of felonies such as mentioned in the section as it is now, to be restored to civil rights by the board of pardons, is because I believe this class will be very small. Directly putting it in the constitution is like adding 5 and 0 together, it does not amount to anything one way or the other. But when it comes down to a man assailing the purity of the ballot, then we are reaching a question which does call for some action on the part of this convention, so far as the consideration of this proposition is concerned. If there is any one danger from which republican institutions have good cause to fear today, it is the danger which this amendment I have offered is intended to guard us against; I mean, the danger that government will fall to pieces through the corruption of the ballot, for that is the foundation of everything which we have developed; I do say this, that any man, I do not care who he is, who has bartered or sold his vote, has proved recreant to the trust which has been committed to his charge by the laws of his country; or he, who is even worse than the man who has bartered or sold it, who has yielded to the temptation—the briber who offers it—I do say that this man should never be allowed to exercise the right of suffrage and should not be allowed to hold office anywhere; that is in case of being charged with and of being convicted of it.

Mr. BEATTY. Let me ask you, so far as that latter clause is concerned—to exclude those that offer to

buy, I am perfectly willing as to that, but as I understand your amendment, Judge Claggett, it will allow those who have been convicted of a felony or any infamous crime to vote as soon as their term expires.

Mr. CLAGGETT. Other than those named there; those convicted of bartering or selling, or offering to barter or offering to purchase the vote of another.

Mr. BEATTY. If you put your last clause in and vote upon it separate, I would be glad to have it there, because I should be glad to vote for disfranchising those.

Mr. CLAGGETT. Well, I am not particular about it; I would like to have it put in that shape and add it as an amendment. I want that incorporated whether this is stricken out or not.

Mr. REID. I would like to ask the gentleman if the pardon of the executive does not restore a man anyway, to full civil rights, without the aid of this legislation. Suppose you disqualify him by constitutional provision, does not a pardon carry with it restoration of civil rights?

Mr. CLAGGETT. No sir, independent of the statute it does not. The reason why——

Mr. REID. I mean if it is in the constitution. Of course we can prohibit it by statute, but if he is just disqualified by the constitution, would not a pardon restore him to his rights?

Mr. CLAGGETT. No sir. Unless the constitution or statute so provided. A pardon is nothing more or less than a remission of the sentence of the law, so far as it remains unexecuted. That is the legal effect of a pardon, but in nearly all the constitutions, it is provided as it is proposed to be provided in this constitution, and not less provided in the state constitutions than provided in their state laws, that a party convicted of treason shall forfeit the right of suffrage, and in addition to that, they have the provision covered by the amendment offered by the gentleman from Ada, that the restoration of civil rights may restore political rights also. But in the absence of something to the contrary,

a pardon is nothing more or less than the interposition of the sovereign arm to stop the running of the sentence under the judgment of the court.

Mr. REID. Suppose the governor has been impeached and the sentence is removal from office. If after that time, the legislature restored him to citizenship with the usual enacting clause, would not that restore him to the right of suffrage under the amendment you propose?

Mr. CLAGGETT. No, it will not, because the amendment, I trust, absolutely forbids restoration to any civil right by constitutional inhibition. The amendment I propose is to this effect; that any person convicted of treason, or bartering or selling his vote, or purchasing or offering to purchase the vote of another, shall never hold office nor be permitted to vote, nor serve as a juror in the state of Idaho. Now the question comes in, whether you want to make it embrace the others which are already in, or whether you want to strike the others out, but confine it to those which are material.

Mr. REID. I don't see why your amendment, or as I understand your amendment, should exclude murder, arson, burglary, rape and larceny.

Mr. CLAGGETT. I do not care anything about them; I want these in, I don't care particularly whether you keep the others in. I would like to have the question divided.

Mr. BEATTY. I will ask for a division of the question; to vote first upon striking out these words "Felony, embezzlement of public funds, or other infamous crime."

Mr. POE. I am opposed to the amendment offered by the gentleman from Shoshone. I am heartily in favor of the amendment offered by the gentleman from Custer. I think it is proper, that it is right.

Mr. CLAGGETT. To bring the matter up in an orderly form, Mr. Chairman, I ask leave temporarily, to withdraw my amendment so that I can change its form after the pending amendment is disposed of.

The CHAIR. The question is now on the original amendment.

Mr. HEYBURN. Please read it.

SECRETARY reads: Insert after the word "crime" in line four, the words "and who has not been restored to the rights of citizenship."

"Question, question."

The chair puts the question. The amendment is adopted.

SECRETARY reads: Amend by striking out the words "*non compos mentis*" in the second line.

Mr. BEATTY. Do you want to offer that as including the words following?

Mr. CLAGGETT. That means a man of unsound mind and is covered by the words "idiotic or insane."

The CHAIR. The question is upon the amendment just read. (Vote). The chair is in doubt. (Rising vote —ayes 24; opposed 11). The amendment is adopted.

SECRETARY reads: Strike out all after the word "crimes" in the tenth line of Section 3 to the word "Indians" in the fourteenth line and insert: "the legislature shall provide that in any oath administered to the electors or by way of challenge at the polls, the following words shall be engrafted: 'I do not hold any kind of obligation or supposed duty, or revelation to justify the violation of the laws as interpreted by the courts.'" (Anderson).

Mr. ANDERSON. Mr. Chairman, the object of that is to avoid certain words "not a member of any body or organization." We discriminate against the members of an organization. I do not propose to argue the point, but just submit it. If we could get rid of these obnoxious words that all agree to affect the same body.

The CHAIR. The question is upon the adoption of the amendment which was read. (Vote). The amendment is lost.

SECRETARY reads: Insert the following after the word "marriage" in the thirteenth line: "or who

claims to have direct revelation from God to commit those crimes."

Mr. CLAGGETT. Mr. Chairman, I sent up an amendment which I think comes in prior to this.

SECRETARY reads: Insert after the word "vote" in the fourth line, the words "or purchasing or offering to purchase the vote of another."

The CHAIR. The question is upon the adoption of the amendment. (Vote). Carried.

Mr. BEATTY. That was put so hastily that I did not know what that amendment was.

The CHAIR. The vote has been announced.

Mr. BEATTY. I would like——

SECRETARY reads: Insert after the word "vote" in the fourth line the words "or purchasing or offering to purchase the vote of another."

Mr. CLAGGETT. As I understand the matter the amendment offered by the gentleman from Ada was debated no more than that there should not be in the constitution an absolute disqualification by reason of conviction, but that civil rights might be restored by the proper legal authority. This amendment, I offer now, is to increase the number of parties who in case their legal disabilities are restored, shall, by proper authority, be authorized to exercise the elective franchise.

Mr. GRAY. What effect does this have upon the section?

Mr. CLAGGETT. It has none whatever upon the amendment you offer. It simply goes on and says that in addition to those parties who are disqualified in the section as it now stands, any person who is convicted of purchasing or offering to purchase the vote of another, shall also be disqualified unless his civil disabilities have been restored.

Mr. HEYBURN. Now I suggest to the member from Shoshone that he should also include those offering to sell their vote. You will find by inspection that they are not included. You simply mention the selling.

Mr. CLAGGETT. I do not like to put those things

in so frequently, because they are divisible, but I will put it in and ask a division on the question at the vote, and I will put it in as selling, bartering or purchasing or offering to purchase the vote of another.

The CHAIR. The question recurs again upon the adoption of the amendment. (Vote). The amendment is adopted.

SECRETARY reads: Insert the following after the word "marriage" in the thirteenth line: "or who claims to have direct revelation from God to commit those crimes."

The CHAIR. The question is upon the adoption. (Vote). The amendment is lost.

Mr. BEATTY. I now move the adoption of the section as amended. (Seconded and carried).

SECTION 4.

Section 4 read and it is moved and seconded that the same be adopted.

Br. BEATTY. Mr. Chairman, I have prepared there a substitute for this section which should be reported, and I think will satisfy the entire convention.

Mr. AINSLIE. The substitute is accepted by the minority of the committee also, and with this understanding we will lay aside the minority report.

SECRETARY reads: Amend Section 4 to read as follows: "Section 4. The legislature may prescribe qualifications, limitations and conditions for the right of suffrage concerning the classes and persons referred to in the immediately preceding section, additional to those prescribed therein, but shall never annul any provision in this article contained."

Mr. BEATTY. I move the adoption of the section.

Mr. MAYHEW. How can the legislature annul any organic act? If you will answer me this question.

Mr. BEATTY. Certainly, I am of the opinion that they cannot annul any organic act, but it was desired by many that that provision be put in there; it was put in after considerable discussion, and while I agree with the gentleman that no organic act can be

annulled by the legislature, many preferred it in. I saw no objection to be made to it and therefore have inserted it. Now, as to this amendment, it can readily be seen that the only advantage of this is that the legislature shall have power in the future to pass additional qualifications only as to those described and referred to in Section 3. That is the only change made in the provision, and I am happy to say is was made by agreement of both sides of this house, and I as chairman of this committee most readily assented to it, and after consulting the other members for the very purpose of avoiding any discussion, and that we might thus all come to a unanimous conclusion upon this important question, and therefore we have arrived at it.

"Question, question."

Mr. AINSLIE. Before that is put I will state the position of the minority of the committee, the reason for their receding from the original minority report; that there was no violent difference of opinion between the minority and majority as to the restrictions to be placed in this constitution upon these bigamists and polygamists, or Mormons, if we are going to use the word for all of them, as to disfranchising them thoroughly. The only difference of opinion in the original reports was that we feared it might be extended by the legislature further than the majority had contemplated; that it might be applied to some of the secret societies, Masons and Odd Fellows, and some were of the opinion that it might reach as far as Catholics, and upon consultation with the majority of the committee, the minority thought it best to agree upon the substitute and confine it particularly to that class of people which it was intended for originally.

"Question, question."

Mr. CLAGGETT. Mr. Chairman, I don't think we want to be rushed on this proposition; we have got rid of the nub of this whole Mormon business and I hope the chairman of the committee will draw his endorsement of this amendment. I want to speak with regard to this. This

is the first time I have heard the substitute read. The object of Section 3 after reaching the words "or who is a bigamist," in line 5 is to disfranchise the Mormons. Suppose we inquire how this matter will go in case the substitute is adopted. "The legislature may prescribe qualifications, limitations and conditions for the right of suffrage with regard to the classes heretofore enumerated additional to those prescribed in this article." Let's see. One class heretofore enumerated is this: Those who practice bigamy or polygamy or those who belong or who are members of an organization which teaches or advises it. Suppose the Mormon priesthood should have a revelation and should abandon polygamy bigamy, and after having done the latter, say the day came around when they took this test oath and you are unable to prove the question of their insincerity; by that professed change of front, then that class is stricken out and still the Mormons remain a power in the new state believing as they did before. And so when we come down to the second clause "or who is a member of an organization which teaches or advises that the laws of this state prescribing rules of civil conduct are not the supreme law of the state," you may pass additional limitations to that, but if that same church turns around and has a revelation and under its oath should come up and so far as the public is concerned, go on and claim they are good, law-abiding citizens and recognize the supremacy of the civil law in all matters of civil conduct, then they are swept out of these restrictions; and if you put this substitute in here your Mormons will be in power in this territory inside a year. I hope the convention will go slow on this proposition and let us consider what we are doing before we sacrifice the whole substance of the question that is before the convention. If you put it in another form, if you want to put it in in this form, that the legislature may prescribe qualifications, limitations and conditions for the right of suffrage in the case of all persons belonging to the church theocracy of Latter

Day Saints, additional to those prescribed in this article, that is all right enough, because it leaves you free to deal with this church. Let them change front on that proposition, and you adopt this substitute, and the Mormons are intrenched in power in this state; that is the inevitable conclusion to arrive at, and the only thing for all members of this convention to do, who are in favor of this disfranchisement in good faith, is to stand squarely by the provision as reported by the majority of this committee; "The legislature may prescribe qualifications, limitations," etc., "but shall never annul any provision in this article contained." In other words, inasmuch as the state is dealing with an adversary which does assume as many shapes as Proteus ever assumed of old, and can assume any shape it sees fit; can profess anything, and by virtue of its pretense that it receives revelations from on high, may relieve its members from the obligation of civil conduct, and even of religious duty, you must leave the power of the state as broad as the capacity of this sect, to change the front and manner of its attack and its defense.

Mr. REID. I dislike to differ with the distinguished gentleman who has preceded me, seeing that he is the only spokesman for it on the other side of the chamber. The only difference of agreement betwen the minority and majority of this committee has been on the fourth section of this article. That is, the minority took the position that a right so dear to us as suffrage, and so delicate, should not be left to the unlimited and unrestrained control of the legislature. After considering and having brooded on this matter for a week; after having postponed it the other day in the interest of the Mormons, and after a few got together, and after the democratic caucus had accepted the very identical substitute proposed by the chairman of the committee here, as covering the question in controversy, and we stand here ready to vote as a unit upon it, the gentleman comes in now and says, the bars must be let down, this controversy must be re-opened; and when the

question we are all agreed upon should be the downing of Mormonism, shoving the proposition into the convention for disagreement. I regret to differ with so distinguished a gentleman as he is, but I will take the matter up on its merits, and I take it that the chairman of the committee who drafted this substitute, his associates upon that committee, as well as the gentlemen of the minority of the committee, distinguished lawyers and learned lawyers, all striving to reach the same point, that is, to disfranchise the Mormons and control party interest, are now united; that both parties, democrats and republicans, are united in the one purpose, to put them down. And so now the question recurs—does this do it? Take the section and read it; "Who is a bigamist or a polygamist, or is living in what is known as," etc.—does that cover every known form of violation? Still further, "that teaches, encourages or aids"—then what? "Any man who is a member of" a word by the by, a word which the gentleman knows in the case of the Chicago anarchists,[1] it was there held that that would make the fact of their being a member an overt act—then what do you do? "Any organization, association, corporation, or society, prescribing rules of civil conduct," prescribing any rule of conduct, for example, those two evils that exist now. But suppose hereafter this prodigious monster, this hydra-headed monster, rears its head and prescribes a lower rule of civil conduct, in conflict with the laws of the state and of the United States—then what? The legislature may come in then under this section and prescribe laws, which it does now, that shall scotch that monster and deprive him of the rights of citizenship. It says that any association that teaches that the constitution of this state when it is admitted into the Union, or the constitution of the United States standing above this, is not the supreme law of the land, that then the legislature shall have power to do it. I was not in favor

1—Spies v. People, 122 Ill. 1.

of clothing the legislature with the power to prescribe any additional qualifications for citizenship or suffrage. They might, as they are doing in Dakota, prescribe that the foreigner cannot vote for two years, although clothed by the United States with citizenship. They may prescribe as they are trying to do in some places, that the Catholics or Freemasons, or somebody else, should be deprived of it, and they may come in and strike down the suffrage in different ways; but having agreed upon the one thing, that is, that Mormonism should be put down, we have in this section put it down and given the legislature the supreme power not only to strike at its members, but at the class. Now, Mr. Chairman, I say, having agreed upon this, the chairman of the committee of the majority, and also the gentlemen representing the minority, and the two caucuses having got together and agreed upon this plan, which will take us out of the difficulty, upon which we can all agree, let us go forward with our labors to the next section in harmony, this great question that we all feared would produce shipwreck and throw us upon the quicksands, having been settled in this amicable way.

Therefore, let us stand by the agreement of our committees and our caucuses, and adopt this substitute, and then afterwards, speaking for the people of the north, as I believe I do, by their unanimous consent, we vote no Mormonism, and speaking unto the democrats and republicans of the south, if it should turn out that in our ignorance of the problem we have not provided for the very purpose of putting down this monster, we will put a constitutional amendment through the first legislature, rise up, the Gentiles of this territory and all this new state, and put it down again. I hope, Mr. Chairman, that the substitute offered by the gentleman from Ada will prevail and that our agreement and understanding will be carried out.

Mr. BEATTY. Mr. Chairman, I confess that I am surprised at the position taken by my friend, Judge Claggett, from Shoshone. Mr. Chairman, I have not

assumed the responsibility of acting alone in this matter. It was of importance, it was hardly a secret, that this matter should be most carefully discussed, not only by the members of this convention, but by influential gentlemen outside of the convention, and this very conclusion was arrived at even without my presence or knowledge. When I found what the difficulty was with our friends upon the other side of the house, I consulted with the members of the committee, and I consulted with the other members of this convention, and while a few of the people consulted with thought there should be no change whatever, the majority, I think, and a large majority, assented to this change. I will not mention who on the outside of this convention have taken an interest in this matter, and have been consulted particularly, to arrive at this conclusion; but if I should mention, or had the authority to mention, the names of the gentlemen who have aided in this matter, and who have lent their advice thereon, backed by their long experience, I think you would be convinced that the chairman of this committee has not assumed any authority, and I wish to add that I have not taken this up upon my own motion, and that I wished to do that which would meet with the approval of my party as well as of my democratic friends, and make the future franchise—an important question, one of the fundamental questions—an honor to this convention, and that we may go forward to the people of Idaho without any division in our ranks, arm in arm and shoulder to shoulder, for statehood.

Let us see what there is in the proposition of my friend from Shoshone. If for one moment I thought this opened the doors to the enfranchisement of the Mormons and that hateful church, I would go as far as any man, back upon my word, if it was best to go back upon my word. My word as a matter of course, was given with the understanding and with the belief that this amendment does not change the relations at all of this church, does not give any opportunity or any

possible chance for them to come in and obtain enfranchisement under this provision. Let us see. Section 3 describes the class of persons who are to be disfranchised. Section 3 includes among those to be disfranchised, those who have committed certain offenses, and then comes the important part of this section which includes all polygamists, bigamists and members of the Mormon church, without naming the church, but that is what it means. Now what do we provide by Section 4? What is this amendment in which the gentleman sees so much danger and so much harm? It simply provides this in substance; that as to all persons included in Section 3, as to all members of the Mormon church, as to all polygamists and bigamists, the legislature in the future may legislate just as it pleases. Now I ask any lawyer here, if this section, and particularly that amendment, if that amendment will still allow the legislature, as to Mormons, as to those who are declared disfranchised, persons guilty of crime—if it will not allow the legislature still to legislate upon them just as if that section was not there at all? What does it prevent the legislature from legislating upon? It prevents them from legislating upon any other class outside of those named in this Section 3. It prevents the legislature, for instance, from disfranchising people because they belong to the Masonic fraternity, or because they belong to the Methodist society, or because they belong to any other organization; but it does not prevent the legislature from passing any law not in conflict with this, as to disenfranchising the Mormons. The section further carefully provides that none of the provisions of this section shall be repealed. Now that is safe beyond any question. Section 3 provides that the Mormons as a church, the members thereof, shall be disfranchised. Section 4 says no part of that provision shall be repealed, but it goes further and says that the legislature may add additional qualifications as to members of the Mormon church, and that is what we have been contending for all the time. I have the

utmost respect for the opinions of my friend, but at the same time I cannot agree with the suggestions he has made, that this in any way threatens to open the door to the enfranchisement of the Mormons in the future, and if I should be convinced of that, I would have to say to my democratic friends, that I have been lame in my judgment, that I had not been quite right in the matter of this amendment, and I would have to ask them to relieve me from any provision that would throw open the doors to the Mormon church, but I am not convinced of it; I feel and believe that the amendment leaves it just as we really designed to have it, that the legislature shall in the future enact any laws they desire upon that question, to disenfranchise the Mormons, so that they do not repeal any of the provisions of Section 3; that they are prevented from repealing those by this positive provision.

A MEMBER. I move we adjourn.

Mr. HEYBURN. I move the committee rise, report progress, and ask leave to sit again.

Mr. MORGAN. I wish to make the announcement that the republicans meet in the council chamber immediately after adjournment.

The CHAIR. The question is whether the committee shall rise, report progress, and ask leave to sit again.

Mr. BATTEN. I call for the ayes and nays.

Rising vote shows 35 ayes, 16 nays.

The CHAIR. The motion prevails.

CONVENTION IN SESSION.

Mr. MORGAN. The committee of the Whole having under consideration the majority report of the committee on Suffrage and Elections, ask leave to rise, report progress, and ask leave to sit again.

The CHAIR. If there is no objection, the report of the committee of the Whole will be received.

Mr. GRAY. I move that we take a recess until two o'clock. (Seconded and carried).

Recess.

AFTERNOON SESSION.

The convention was called to order by the president at two o'clock p. m.

LEAVES OF ABSENCE.

Mr. BATTEN. I ask leave of absence after today until next Monday.

The CHAIR. Is there any objection? If not, it will be so ordered.

Mr. SINNOTT. I ask for leave of absence after this afternoon until Monday on account of sickness in my family.

The CHAIR. If there are no objections it will be so ordered.

Mr. KINPORT. Mr. President, I ask leave of absence for one day, Saturday, for the same reason given by Mr. Batten.

The CHAIR. If there is no objection it will be granted. The regular order of business is the consideration of the article on suffrage and elections, which was being considered this forenoon.

Mr. MORGAN. I would like very much to have Mr. Ainslie's amendment to the rules adopted at this time.

Mr. REID. I rise to a point of order. Today was specially set apart under the resolution, and that the business was to be proceeded with until finished.

Mr. MORGAN. I thought there would be no objection.

The CHAIR. Does the gentleman from Nez Perce object?

Mr. REID. I object.

The CHAIR. The chair rules that point of order is well taken, and it is out of order.

Mr. REID. When we get through with this, the understanding is we are to go into convention and consider this proposition we now have up, and complete it.

The CHAIR. The unfinished business is to go into

the committee of the Whole and consider the matter we had up for discussion this morning. Will the gentleman from Bingham take the chair, Mr. McConnell not being present?

COMMITTEE OF THE WHOLE IN SESSION.

Mr. MORGAN in the Chair.

The CHAIR. The committee had under consideration at the time it rose this forenoon the substitute offered by the gentleman from Alturas, Mr. Beatty. What is the pleasure of the convention?

A MEMBER. I would like to hear the substitute read.

MOTION FOR CALL OF THE HOUSE.

Mr. CLAGGETT. Mr. Chairman, the convention is not full and I think this subject should be considered in full convention, and I therefore move a call of the house. The chairman of the committee himself is absent at this time.

Mr. MAYHEW. A call of the house in the committee of the Whole? I think you better go back into the convention.

Mr. CLAGGETT. Then I will move that the committee now rise for the purpose of moving a call of the house. (Seconded).

The question was put to a vote and a division called for. On rising vote there were 27 for and 9 against the motion and the motion was carried.

THE CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. MORGAN. Mr. President, the committee of the Whole has risen for the purpose of considering a call of the house.

The CHAIR. I do not know that a motion to that effect is necessary, the committee having so risen. Is there any objection?

Mr. MORGAN. I move, Mr. President, that we have a call of the house.

Mr. HEYBURN. I second the motion.

Mr. REID. I would like to ask the gentleman what is the object of this.

Mr. MAYHEW. I move that it be dispensed with.

Mr. MORGAN. I rise to a point of order.

Mr. REID. I move to lay that motion on the table.

Mr. MAYHEW. I second the motion.

The CHAIR. It is moved and seconded that a call of the house be now made. To that an amendment or a substitute is made that that motion be laid on the table. Those in favor of laying the motion on the table will say aye.

The vote was taken and a division called for. On a rising vote there were 22 for and 24 opposed.

Mr. REID. I demand the ayes and nays.

Mr. MAYHEW. I second the motion.

The CHAIR. There seems to be some misunderstanding about this. The convention is not full and in making the motion that the committee rise to get out of it is simply to obtain a full convention.

Mr. REID. I do not understand what the chair means by a full convention.

The CHAIR. I mean to say that the chairman of the committee who reported this and other members of the committee are not here present.

Mr. REID. I will state then, that I am willing for one, and I think the agreement can be had by conference, that we can proceed with something else until the chairman of the commitee gets here. It was understood, and we will carry out our agreement in good faith, that we will put no obstacle in the way of the consideration of this matter. And representing the persons we speak for we will not, and I say now, I think I will be backed by every democrat here, that we will wait until the gentleman comes in. Any agreement we make will be adhered to.

The CHAIR. So will any agreement made by the republicans.

Mr. REID. I hope it will be. We will wait and see that.

The CHAIR. The ayes and nays are demanded on the question to lay on the table.

Mr. MAYHEW. I move the convention now adjourn.

The motion was seconded.

The CHAIR. Out of order. Call the roll.

SECRETARY. (Calling the roll): Ainslie——

Mr. AINSLIE. I want to know what we are voting on, whether a motion to adjourn or a call of the house.

The CHAIR. The ayes and nays are demanded on the question to lay the motion for a call of the house upon the table.

Mr. AINSLIE. I vote aye.

The roll-call continued.

Mr. GRAY. Mr. President, may I ask what the vote is upon?

The CHAIR. The vote is upon the proposition to bring the gentleman from Ada into the convention. It is a yea and nay vote upon the proposition to lay upon the table a motion for a call of the convention to bring the absentees in town into the convention.

Mr. GRAY. I am here. (Laughter). Let me understand how I voted.

The SECRETARY. You did not vote at all.

Mr. GRAY. It is just a roll call?

The CHAIR. No sir. The gentleman from Ada did not vote at all upon the pending motion.

Mr. MELDER. Mr. President, I do not believe the convention understands the question.

Roll-call:

Ayes—Ainslie, Anderson, Batten, Beane, Bevan, Blake, Brigham, Chaney, Clark, Coston, Crutcher, Harris, Hogan, Jewell, King, Kinport, Mayhew, Parker, Pefley, Pierce, Poe, Reid, Steunenberg, Taylor, Vineyard, Whitton, Mr. President—27.

Nays—Allen, Armstrong, Ballentine, Campbell, Gliddon, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Lewis, Maxey, Melder, Myer, Morgan, Pinkham, Robbins, Salisbury, Savidge, Sinnott, Shoup, Standrod, Underwood, Wilson—24.

The SECRETARY. There are 27 ayes and 24 nays.

The CHAIR. The motion to lay on the table is carried.

Mr. REID. I move that the convention resolve itself into the committee of the Whole for the purpose of considering the order of the day. (Carried).

COMMITTEE OF THE WHOLE IN SESSION.

ARTICLE VI., SECTION 4.

Mr. McCONNELL in the Chair.

Mr. BEATTY. I believe when the committee adjourned this morning the question before it was the consideration of the substitute for Section 4 of the article which we are considering. I desire to say, Mr. Chairman, upon this matter, that that substitute was presented by me, not as my individual action, but in accordance with the directions of the committee, and if I may be indulged a few words here, I desire to say further that there had been some action taken upon this matter by parties outside of the convention with some who are in the convention. I was not present at the meeting, but I understood that the substitute was substantially recommended with the view of meeting the objections which our democratic friends had to Section 4. My understanding has been that they objected to Section 4 entirely, and that this was intended to meet their objections. I will state that I offered this substitute, as I before stated, I believe, after consultation; I did not offer it as my own; in fact my belief has been from the start that the report of the committee as made should have been acquiesced in without any change whatever. That was my own judgment, but I am not by myself, where one man's judgment can always prevail, but have had to consult with others and be guided somewhat by the counsel and advice of others. I will state further that I acquiesced in what I supposed was the desire of the committee as well as others outside—I mean the majority of the committee as well as others outside of that committee. That was one motive. The other motive I had was this, I supposed it

met with the approval of this whole convention, and that this difficult question might be settled without controversy and without any feeling, and I, for one, had the most urgent desire that some agreement upon this question should go forth to the people of the territory, with the information and statement that we have agreed, and that no dissension should ever be raised among the citizens of Idaho on this question. The committee's action, however, has been condemned, and while I acted in the capacity I did this morning, simply as a member of the majority of that committee, I will state now that I have instructions to withdraw that substitute, and in obedience to the instructions I now ask to withdraw the substitute which I offered this morning for Section 4.

Mr. AINSLIE. I believe I accepted the substitute, and I cannot give my consent to the withdrawal of it. It was so fairly made and the committee for three weeks prolonged the consideration of this important question of suffrage in order to arrive at some conclusion upon which we could all agree, by way of taking out the Mormon vote and disfranchising these people without arguing and counseling together for another three weeks. The committee came to this conclusion, that the substitute offered by the gentleman this morning was satisfactory, or should be satisfactory to all parties. It was presented, as we supposed, by the representative of the majority of that committee in good faith, and we accepted it in good faith and approved of it. Now, if they are going back upon the proposition, and are going to turn tail upon the very proposition we accepted as a finality on this important question, it is due to this convention to know what party has acted in good faith, whether the democratic or republican. We insisted upon the minority report and could hardly have gone as far as the majority report; we were anxious that it should be adopted in order that no questions should be raised by the lawyers of the senate or house of representatives that might attract debate

in those two houses and delay the final action of congress upon our admission. But being willing to compromise and come to a conclusion that we believed satisfactory to all of us, we allowed them to draft their own substitute, without our being invited to take part, without our knowing what it was until it was presented to us this morning, and we accepted it in good faith, and propose to stand by it. That is the position of the minority of the committee and the democratic party on the floor.

The CHAIR. The position of the chair is, that if there is objection to the withdrawal of the substitute, it cannot be withdrawn; it is now the province of the committee of the Whole to reject it, and then act upon the original. The question is upon the adoption of the substitute for Section 4.

Mr. MAYHEW. I move the adoption of it.

A MEMBER. What is the substitute?

The CHAIR. It was the substitute offered by the gentleman from Alturas, which he now asks to withdraw.

Mr. MAYHEW. That is objected to, and I move the adoption of the substitute that was offered this morning.

The CHAIR. It has been already moved and seconded, and that is the question before the committee.

Mr. MAYHEW. I move as an amendment, that we adopt the substitute offered this morning.

The CHAIR. That already is before the committee. It was discussed at some length before we arose.

Mr. GRAY. Mr. Chairman, I don't think it is debatable, but it does not seem to meet with the ideas of some of the members of the committee.

Mr. AINSLIE. Say the republican members of the committee.

Mr. GRAY. Well, the republican members of the committee. But I say that Mr. Beatty has done nothing that he did not think would be approved of. I only want to say this, I do not want blame to be attached to

Judge Beatty for what he has done, for I think he has done in that matter the same perhaps as others would have done, placed in the same position, but it seems to me that the convention has a right to consider, and if he sees fit to withdraw it, he may do so. So far as I am concerned I want this convention to do what it thinks right in the matter. (Vote).

The CHAIR. The chair is in doubt.

Mr. POE. Wait a moment, it was my impression that we were to have an opportunity to discuss this.

The CHAIR. All in favor of the adoption of the substitute, will rise, stand and be counted. (Ayes 24, nays 31).

The CHAIR. Twenty-four vote in the affirmative and thirty-one in the negative. The substitute is lost. The question recurs on the adoption of the original.

Mr. AINSLIE. I move the committee arise, report progress to the convention, and ask leave to sit again. (Seconded).

The CHAIR. It is moved and seconded that the committee now rise, report progress to the convention, and ask leave to sit again. (Rising vote, ayes 21, nays 31). The motion is lost. The question now recurs upon the original motion to adopt Section 4. (Question, question). It is moved and seconded that the same be adopted.

Mr. AINSLIE. I move to strike out Section 4. (Seconded).

The CHAIR. It is moved and seconded that Section 4 be stricken out. (Rising vote). The motion is lost. The question now recurs upon the original motion.

Mr. REID. Mr. Chairman, I do not suppose that debate is cut off entirely, and I desire to submit some remarks to the convention. I desire to have the same courtesy extended to me as was extended to the gentleman from Shoshone and Alturas, that if I do not finish them in ten minutes, I may be allowed a few minutes more.

Mr. CLAGGETT. I have no doubt about that.

Mr. REID. I shall address myself not so much to the matter which is now before the convention, as I shall to reviewing the course——

The CHAIR. Does the gentleman ask the committee of the Whole to allow him to discuss another question not before the committee?

Mr. REID. I do not sir. I shall not address my remarks so much to the merits of the proposition, as I shall to some incidental questions growing out of the one now before the committee. The gentleman from Ada has remarked that he attaches no blame to the gentleman from Alturas for the course he has taken. Neither do I, Mr. Chairman. But there is involved in this question another one, whether or not under the rules and precedents that have become a part of the unwritten law commonly regulating deliberative assemblies—whether or not there should not be some blame attached to the power behind the gentleman that dictates action in this matter. I admire him for his loyalty to his party. I admire him as a partisan. But a man who considers that this should not be a public question has the contempt of all intelligent people. Sir, the minority have some rights here, and I propose at this time to show where the minority has been treated with injustice. And in doing this, I do not desire to be classed as a partisan, because some of us, although younger in years, have belonged to that conservative portion of the profession we have the honor to represent, for such a length of time that our reporters have classed us as mossbacks, that we are too conservative. I am glad to be classed with them, Mr. Chairman, and it is in that spirit today, that I rise, notwithstanding that my friend already had to throw a fire-brand to break up the arrangement that would have brought about a happy solution of the question that in my mind, endangers a peaceable conclusion of this assembly. I propose to leave the action of the majority for a moment or two in this convention on this difficulty. Way back

last winter we had an enabling act.[1] It was announced that it was not passed for us to come into the Union at that time, and it went so far as to state that we were on that condition to come into the Union. I had the honor, Mr. President, to draw the first resolutions to advocate that in a public meeting that was held in this territory asking admission into the Union and statehood, and that, too, in a portion of this territory where annexation had been promised in the form of a bill introduced by our honorable delegate in congress. After that, when I saw, in addition to others who visited the national capital, that there was a chance that we might attain statehood at once, by setting in motion the machinery which, when that machinery had attained its end, would admit us into the Union, I joined in readily and made sacrifice of my business and other sacrifices, to come here with these other honorable gentlemen, to try to formulate a constitution; and I came under that proclamation which declared to this whole state that this was to be done by us as patriots, that we were to come here as men loving Idaho. I came here, and among all the native sons or adopted sons of Idaho, I do not believe there was any man that would outvie me in giving the utmost of my powers to try to further the good of this territory, because I hold no political aspirations, but what I do here and have done, has been wholly for the benefit of this, my adopted home, in which I propose to live and die. I met the gentlemen in that spirit. I met the gentlemen of the republican party in that spirit, and I do today. Governor Stevenson proclaimed that these delegates should be elected independent of party affiliations. We all met in that spirit. When the distinguished and honorable gentleman who at that time had the reins of government—ever since he stood upon the steps of the capitol and proclaimed to the assembled multitude on his inaugural that it should be carried out,

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1—Referring to the Mitchell Bill, introduced in the senate Dec. 13, 1888, and reported by Platt with amendments Feb. 27, 1889. See Appendix.

I have met that pledge in the same spirit. When this convention met it turned out that the majority claimed the Ada county membership, although it was to be divided. But we cared nothing for that. Partisan politics was to be forgotten; we were to remember Idaho and our country; and when we met in this preliminary caucus and the distinguished gentleman who presides over us now, arose and claimed the pledge of the majority to be president of this convention, we thought there was to be no partisan politics; we did not care, we had not thought about that, it was Idaho and our country. We were willing to concede that; why, you may have it. And then the parties had their caucuses; we asked for the poor pitiful boon that the offices be divided amongst us. We were told, you may have the vice-president—but in all the history of all the conventions anywhere in the whole civilized world, who ever heard of a constitutional convention having a vice-president? Give us the secretary. No; every office was taken, and that, too, by the majority. And so when you came to state your committees. We have 25 committees; in that number we just have two chairmanships of important committees; the one on the legislative department, and the committee on salaries.

Mr. GRAY. Mr. Ainslie has the executive; he is the chairman.

Mr. REID. I made a mistake, I meant the executive. The legislative department is Morgan. So it is two out of the twenty-five.

Mr. GRAY. You have the chairmanship of the committee on Corporations.

Mr. REID. Well, that is another in which they gave us a chairmanship; say three, with the committee on Corporations.

The CHAIR. I call the gentleman to order. We have met to discuss this article, not to make political speeches.

Mr. REID. I am not making a political speech, but the gentleman who started to withdraw the substitute

and has now moved that the substitute be not adopted, is not to blame, and I am reviewing the treatment that we have received, if the gentlemen want to hear me.

A VOICE. That is all right; go on.

Mr. REID. Oh, I propose being not quite so long as the gentleman the other day who addressed us for seventy minutes, and I never moved to interrupt the honorable gentleman, for he represented, as I do, however humbly, one portion of the minority. I propose that we shall be heard, by the pleasure of this convention. I say then, that when you come to this committee on Apportionment, out of eighteen men on that committee, we get seven. When you come to the Mormon question, the convention would have been successful in its labors, according to statements made, if the democratic party had not espoused the Mormon cause so effectively that they thought it would not do—no, I will not make that charge, because the gentleman beggars generosity when it was held that we had adopted all their cause—but all that had to be taken back, and it was found that on this great question, the only one that threatened the great future of our noble state, the question of Mormonism, that we rise up as one man and put our foot upon it; and these men differed about this, whether or not it was a question of putting down Mormonism, but the question was whether or not we could go beyond that and leave it possible to disfranchise other classes of citizens, and those of us who claimed to be moss-backs, some of those who represent perhaps a different order of political principles, believed that it would not be wise to clothe the legislature with the right at will to kick about like a football this great right of suffrage. But we finally compromised on it. I appeal to any gentleman here—you are all better parliamentarians than I am—some of you have served in the councils of the nation, and thus served at the time I did. During the years we were in the national house of representatives, when a committee's majority agreement went through, and by the generosity of the house they made an

agreement with the other side, I challenge the president to say that that agreement has ever been broken. The chairman of this committee submitted it to us; we held a caucus on it; there were a great many things we objected to; the conservative element in that caucus, although they thought there were things in it we did not think were exactly right, wanted to show to this territory, to show to the good people that we would go far beyond even our conscientious scruples to put down Mormonism, to show to this territory that we stood side by side with the republicans. Now when you ask us to make an agreement again, with whom shall we make it? The chairman of your committee, who had the right to do it? No doubt the chairman of this committee had the right to do it. Say what you will and do what you will, the fact is that I brought it before the caucus. I waited this morning until our caucus could act upon it, and we came in here in good faith ready to accept it. Then the gentleman from Shoshone, the president of this convention, gets up and after we had settled this matter and buried it, then this question is called forth again, and a call of the house is ordered to get in members, and it might even be said that it would have answered a further purpose to say that the lack of any quorum should be added upon our minutes. Now we are here outwardly for Idaho. On behalf of the minority of this committee, I am calling attention to this injustice. I want you gentlemen to know that we see it and know it. We have talked it over before we came here, in good faith. We accepted the proclamation of Governor Stevenson. We accepted the proclamation of Governor Shoup. We accepted this agreement made by the executive, that it should be adhered to, and we came here, although it was in the minority, expecting to be treated with fairness and justice. I do not charge my friend that he has an undoubted control of his party and his caucus, but I do say that this agreement was broken. I know it will be voted down. I know the sentiment that prevails here,

but I want it to go forth to the territory of Idaho and to the people of Idaho, who are invited to control its destinies, that the democratic party here went farther—went as far as the republican party and beyond them, and agreed to the very thing they offered; and then they come in under party dictation and the compulsion of the party caucus, which has prevailed through the influence, the pressure——

Mr. BEATTY. Mr. President——

Mr. REID. Mr. Chairman, that puts our case before the people. I am not a partisan in this matter; I am willing to go on——

Mr. BEATTY. Mr. Chairman——

Mr. REID. I cannot yield; you may have the floor afterwards.

Mr. BEATTY. I do not wish it; I simply wish to make a suggestion that the committee in conceding the point they did this morning did not hold any caucus of the republican members, but that the other members afterwards held a caucus. Our members did not have the matter placed before them. If you think the committee is to be censured, I, as chairman, was in charge.

Mr. REID. Mr. President, it would at least have been courteous for the gentleman to have told us that this morning, and not come in here under the farce of a gag and majority dictation to put it through in that way.

I have stated the cause of the minority side of this house, but, Sir, as I have suggested before, we do not come here to legislate for the democratic party. If we had done that perhaps the obligation of this body would have been different; but we came here to render our assistance in good faith upon the proclamation of our two governors, democratic and republican, and the agreement of our two committees to that amendment, and yet you have forced us to submit to this injustice and unfairness. But from you we will appeal to the people, and on that platform we will stand or fall. (Applause from the democrats).

Mr. STANDROD. Mr. Chairman, I cannot see any reason why there should be so much feeling manifested over this question. We all seem agreed upon the one proposition, both democrats and republicans. It was very well understood in both caucuses of this convention that we should adopt something in this constitution, if possible, that would effectually preclude the Mormons from exercising the right of franchise in this state, and all were agreed upon it. It is true there have been attempts made for two or three weeks to compromise, so that it should go forth before the country, or to the country, that both parties alike, democrats and republicans, had agreed that no member of this Mormon organization should ever exercise the right of franchise or be permitted to vote in this state. Now, in these reports coming from the different caucuses, there was nothing of a contest even reported in either of them. An agreement has been attempted to be made time and time again. This morning it was understood that an agreement had been entered into; that there would be a substitute offered for Section 4, and that by consent of all. Mr. Chairman, as I understand it, that agreement was had only among a few members of these caucuses, or perhaps among the different members of the committee. In looking over Section 4, there were a great number of us who came here to this convention, Mr. Chairman, with this one question in view, which we place above all other questions that have or will come before this convention. We believed and we believe yet that the substitute offered will not cover the ground—it is not sufficient. I do not believe that in either caucus the feeling has been unanimous, either of the majority upon the majority report or of the minority upon the minority report. The substitute which has been offered here, while it provides that the legislature may enact or prescribe additional qualifications, and may prescribe laws and rules for the enforcement of the provisions of this section, it is well known by lawyers who have scrutinized it, that it has

been passed upon by the courts of this country, and whenever we put in that clause it limits us absolutely to this organization that practices or teaches bigamy or polygamy, and to the members thereof.

The great trouble in this convention, Mr. Chairman, is that there are too many members who have never lived in the community where this church predominates. They do not understand the question. Last fall in the courts of Bingham county, all the leading and highest men in charge of the Mormon church were brought to that court as witnesses, and stood and swore upon oath that there did not any longer exist in the church the doctrine or practice of living in polygamy or bigamy. They said that. The men who know the workings, the machinery, the inconsistencies, the incongruities of this despotic organization, actually trembled in their boots last fall, because they believed the conference that was then assembled would have a revelation doing away with polygamy and bigamy, and yet we would have the same despotic theocracy that we all understand who have lived among it, notwithstanding they did not practice polygamy and bigamy. Mr. Chairman, the least evil existing in that church today is this practice. It is a theocracy that is used for the purpose of securing political influence in the country where it exists, and no one knows it better than the members of this convention that come here from the southern portion of the territory; we have seen it. Now then, I believe there are many members here that have not been governed by any caucus action. I know for one I have not. I propose to vote for something that will leave this question absolutely in the hands of the legislature. I would have had, if I had had my choice—I would have had it prescribed in a section of this article that the privilege of voting or holding office in this state shall be a franchise granted or withheld at the will of the legislature, giving them absolute power to meet all of these questions that may arise, to meet all of the emergencies or exigencies which may arise among this theocracy we talk

of. I have been in favor of that; we have lived under an organic act that provides very nearly the same thing for the last twenty-five years,[1] and there has never been any attempt to disfranchise any one else except the people of this class that we all say are a body of citizens who should be restricted from exercising the right to vote and hold office. In addition to the clause as it stands in the majority report, we will insert at the latter end that the legislature may prescribe qualifications, limitations, and conditions for the right of suffrage additional to those prescribed in this article, but shall never annul any of the provisions in this article contained. If it should happen that the church—and their being a party to the schemes that are known to have been used last fall in the southern portion of this territory, proves that fact—if they should by revelation renounce polygamy and bigamy and seem to abandon these practices that now exist in the church, then delegate to the legislature the power to provide against anything of that character. As I understand it, the body of this convention has about settled this question for the present, and determined to leave it open for the legislatures of the territory to settle it in the future.

I desire to say in reference to the substitute that was offered this morning, that under the decision in Nevada in the case of Whitney vs. Findley,[2] and I have not heard any gentleman here deny the soundness of the law laid down in that decision—that under that decision we would be prohibited from enacting any law destructive of or as directed against any order or organization that aided, practiced, or advocated these crimes. There is no question about that in my opinion. The constitution of Nevada, after prescribing the qualifications of electors and after providing for the registration thereof, went on and had the additional clause, in language similar to this submitted by this substitute,

1—Sec. 5, Act of March, 1863 (organic act of the territory).
2—20 Nevada, 198.

which is as follows: "And the legislature shall have power to prescribe by law any other or further rules or oaths as may be deemed necessary as a test of electoral qualifications."[1] Counsel contended that even under that section they had a right to adopt—the legislature had a right to adopt the statute that they had done, prohibiting members of the Mormon church from voting, but the supreme court says, you have gone on and prescribed qualifications for electors, although you have a clause in your constitution which says therein: "And the legislature shall have power to prescribe by law any other or further rules or oaths as may be deemed necessary as a test of electoral qualifications." Those rules and those oaths must be confined to that section, to the qualifications prescribed by the constitution.

The great trouble has been all the way along, we feared that we would place something in this constitution that would restrict the legislature from meeting this question when it might come up in the future. I claim it is not a party question, but as to what the gentleman said in regard to offices in this convention, I believe myself and have said to the republicans, that the democrats have not been treated fairly in a good many respects. At the same time this is a question that transcends all political feeling, or at least it should do so, and it is not a matter of politics merely. I am not a candidate for office, and I don't know that I ever shall be, but this is a question that comes directly to the fireside and to the home of every man in my section of the country. When I was home a while ago, an acquaintance of mine asked me: "What are you going to do in your constitution with regard to the Mormon question? For God's sake put something in that will settle it, or leave it open as it has been. I would rather live in a territory all the rest of my days than live to see those people vote and obtain political power again."

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[1]—Art. 2, Sec. 6, Const. Nev. 1864.

These men are in good faith, they are patriots. It is not politics that influences them, as the vote of the last election will show. That is the only question that actuates those people in voting for their political sides in that section of the country. I do not suppose they are to be allowed to take credit for any resolution or any section that may be adopted in this constitution. The democrats here have time and time again declared themselves unanimously opposed to the Mormons holding office or voting in this territory. The only difference among us is the question of detail; it is a question to be handled wisely; we are all agreed upon it. I, for one, fear that the substitute offered this morning would restrict the legislative power in the future to legislate upon this question. I have deemed it my duty to vote against the minority report and against the substitute. The bill now does not meet my views. I wanted it to start off with the declaration that this privilege of franchise and holding office shall be granted or withheld at the will of the legislature, and then go on and say that it shall never be conferred upon certain individuals. I think that is the practical way. That leaves no doubt about it. And the majority report wisely adopts the same features, except they wait until they have prescribed qualifications for electors, and then go on to say that the legislature shall not annul, but that it may do so and so. It seems to me but right and much preferable that we should start out with that clause, and all this talk about constitutional restrictions, Mr. Chairman, —I want to ask the gentlemen who have preached on this evil, day in and day out, about the great rights and the great safeguards we have had under the constitution of the United States—I ask them what aid has the constitution of the United States ever given in regard to the franchise? What restriction did it ever place upon the states? I ask the gentleman to show it to me. They have left this question absolutely to the states until it came down to the Fifteenth Amendment. They had already adopted the Thirteenth Amendment

and the Fourteenth Amendment, but it was not until the Fifteenth Amendment was adopted that they ever conferred the privilege of the franchise upon the negro race. If the framers of the constitution of the United States could grant or could leave this question to the states and to the people, why cannot we as a convention leave this question to the legislatures of this state? Furthermore, when you talk—when you say it is necessary for us to adopt in strong terms some section against the Mormon church, or against the Mormon people, if you do not do it when you come to congress they will say, we are afraid to leave this question to you; we won't accept your constitution, we can go back to them and say, we have had control of this matter; you gave it to us under the organic act; we have had control of it a number of years, and we have absolutely ousted these people from this privilege, and we can do it in the future. We have got confidence in ourselves; we can control the matter. You leave the franchise to us and we will see that it is properly exercised and in a spirit of justice and right and against Mormonism. I think that really the best thing we can do would be to have a clause as short as possible, just giving this right to the legislature, this power to the legislature to enact such laws regarding the franchise as they may deem proper, and then leave it. I do not fear any danger, and all this talk about Odd Fellows, Masons and Catholics being disfranchised—all that is absurd. I do not think anything of the kind would ever be attempted, and if it should be, it would meet with unanimous opposition from the people of the country, But while there are a great many of my democratic friends who say that I am a democrat, I want to say that so far as these matters are concerned, I do not care for the support of any political party in this territory. I do not care for any office, and I do not know that I shall ever be a candidate for any office. But when a question of this kind comes directly home to me and to every man and to every fireside, and is a question which predominates in the

section of the country from which I come, I deem it my duty, regardless of any political power or political prestige I may gain by any action of mine—that it is my duty to vote on this question in the way that I think will meet it, and in the way that is best adapted to take care of this matter in the future, and I shall do so. All this talk about caucuses and about political relations, I don't think it applies to this question at all. We are all agreed upon it and I don't see any necessity of charging it against any one political party or another. The only question among us is the detail, and as I deem and regard the majority report here better designed to meet this question than the one submitted in the substitute this morning, and in the absence of anything else, I shall vote for it, whether I vote for it as a democrat or as a republican; I shall vote for it only because I believe it is necessary, as a citizen and as a representative of the community from which I come. (Applause).

Mr. POE. Mr. Chairman, all I desire in this matter is that whatever proceeding we have taken upon this question as a party, I desire that we stand fair and square before the world. I do not desire any false impression to go abroad as to our position. If I understand the English language, and I think I do to a certain extent, or at least to a reasonable extent, the democratic party in the matter of the substitute that was offered here has gone as far as the republicans have to suppress absolutely and forever this opprobrious practice of the Mormons. We have adopted every word that the republicans have engrafted in what is known as the majority report. We have acquiesced in every word contained therein. We stand by their side, shoulder to shoulder, to do all that we can to blot that damnable institution from the fair face of our commonwealth. And we are ready as a party today to go to the full extent that the law will permit us to do, and without any change to adopt in the exact language of the republicans or of the majority report as to what shall be engrafted in this constitution, and to join the other gentlemen who drew

the bill. I have never kicked football, and I cannot use the expressions and terms the gentleman employed to make his point, but I am positive as to the mistake of conceding the right of suffrage to those people who have adopted these practices. Now the trouble is not as between the democratic party and the republican party as to whether they shall crush that institution or not; they stand as a unit upon that proposition. They are ready to go as far as any of the minority will permit them to accomplish that end. But a difficulty has arisen in the power which is proposed to be delegated to the legislature. In the original article, and the one which the republican party here now support, it reads as follows: The only difference now, I say, that distinctly exists between the republican party and the democratic party, is as to the power which is to be delegated to the legislature. The majority report reads as follows: "The legislature may prescribe qualifications, limitations and conditions for the right of suffrage, additional to those prescribed in this article, but shall never annul any of the provisions in this article." The minority report and the substitute introduced by the chairman of the committee on Suffrage and one of the leading republicans of his party, by the consent and acquiescence of the majority of his party, who came in here in good faith and offered that which he believed to be sufficient, amply sufficient to do all that we had any right to do to crush the institution of Mormonism, reads as follows: "The legislature may prescribe qualifications and conditions for the right of suffrage concerning the classes of persons heretofore mentioned in the immediately preceding section." Now, in this immediately preceding section, Mr. Chairman, we both, republicans and democrats, have agreed upon the language that is contained in that section. Now they say that the legislature may have power to prescribe such additional conditions to those prescribed in this article. This substitute says that they may prescribe any additional conditions as to the class we are attempting to reach, to-wit., this theocracy

that is called Mormonism. That is what we are here to legislate against. The democrats have acquiesced in this provision here which gives the legislature the power to engraft in the law any additional conditions which will go to reach the class that we are legislating against, but what does this majority report and the section which they propose to adopt now? It not only gives authority to prescribe such additional conditions as to that class, but, Mr. Chairman, it gives the legislature power to disfranchise you or me, or any citizen within the limits of the territory of Idaho. If we are going to give that power to the legislature, then I think that we are going beyond the right that we should concede to any legislature. We give them the right and it cannot be denied—that any member of a secret organization, any member of the Methodist, Baptist or Catholic church, or any other similar organization that may be created under the laws of Idaho—that if the legislature sees fit, they can disfranchise any of these classes. I will never by a word of mine, either aid or render support to a measure which gives this inherent authority and power to any legislative body. Why, the gentlemen may say, that there is no danger of the legislature doing such a thing as that. What do we find now in the United States? What do we find in the constitution of California? We find a large and growing popular doubt all over the Pacific slope in regard to the position of the American party, which takes the position that none but Americans should be allowed to vote in this country. American born citizens should be allowed the right to vote in this country. Suppose that doctrine should prevail in the territory of Idaho. Then I appeal to every foreign born man within the hearing of my voice, if this legislature would not have the power and right under the conditions of that article, that section, to disfranchise them. Shall we give them that right? They have, further, the right to say that any man or set of men who unite themselves for the purpose of protecting themselves against capital, all

these unions—any man belonging to a union, a carpenter's union, or a laborers' union, or a mechanics' union, or bakers' union, or any other kind of a union—they have a right to say that any man who belongs to a union of this kind shall not exercise the right of franchise. We are not here, Mr. Chairman, for the purpose of defending Mormonism, but we are here to stand hand in hand and shoulder to shoulder upon that question, and we are here for the purpose of defending every American citizen of every creed and nation, it matters not from whence he comes so long as he lives up to the laws of our country and is a law-abiding citizen. It is this kind of men that we are here to protect. We are here to protect the laboring man against the capitalist. It is well considered that they are the bone and sinew of this country; they are, indeed, the inheritors of the earth and merit a nobler consideration than they have yet been given, and it is for the protection of these men and every other man in the free exercise of his liberty and his conscience, and we here as the democratic party, being the party which passes as having been the friend of the poor man against the capitalist, against wealth, we are here to defend that class of men, and not for the purpose of defending Mormonism or anything of that kind. We say this, that it would be a shame, and in my opinion the congress of the United States never would admit a constitution which would authorize the legislature to thus enact without any cause or any reason, laws which would sweep away the rights of American citizens, whether they are foreign-born or native-born. (Applause).

Mr. LEWIS. Mr. Chairman, I am not in the habit of speaking before a convention of this kind, but inasmuch as the matter of Mormonism has come up, I beg to say that I have lived amongst that people for thirty-three years and I know a little about them. And the talk has been here about disfranchising the different sects and parties that exist. I have no fear of

that, and yet, mark you, I abhor the name of Mormon as it is called. Some call me a Josephite Mormon, yet I am not afraid that I shall be disfranchised; I am willing to trust my cause in the hands of good and honest men. Now I have lived in the territory so many years that I know also the trickery that is practiced by the Brighamite church, and as a sample of that, you will find that last fall when they tapped at the door of congress for admission as a state, they went further than the laws of congress. For adultery they are willing to punish them for six years; for polygamy they are willing to punish them for three years. Now let me ask this convention, is there a word of truth in that? Their actions since that has proved there is no truth in it. Therefore, if they can twist and turn, I think that this clause of the 4th section, is highly necessary to meet it and close up every avenue and every twist that the Mormon church can make to it. Now, I want to state here, so that the convention can understand, I am neither a democrat nor a republican. I have lived, as I said, for 33 years among that peopde, and if you recollect the time—James Buchanan was in the chair at that time—he sent an army here into the Wasatch mountains—Johnson's army; I was then in the territory. A prophet got up, and he prophesied there that the bride—which was equal then to Utah—had been yoked up to Old Buck—that was Buchanan—and that Old Buck had slept and the bride was free and the yoke remained upon Old Buck, and it would remain there. (Laughter and applause). And not only that, but he prophesied in the name of the Lord that Buchanan would die in the chair, and that his flesh would fall from his bones, and when Buchanan came out fresh and good and alive from the chair, then Mr. Kimball, Brigham Young's prophet, got up and made the excuse. Says he, if a man stands up and prophesies, and hits it as near as I have, every time, he is a good prophet. (Laughter and applause). And so the matter passed.

Now I say that every avenue must be closed against

these tricky Mormons. If they should profess to put off polygamy and acknowledge the laws of the country as the supreme laws of their church, and the state—I do not believe, mark you, that they are so ready to become Josephites all at once, because if they leave all these practices, that is, the blot denominated polygamy and other things that are connected with the laws of their church, and give support to the laws of the state, then they become natural Josephites, and without being admitted into the church, and when they become honest Josephites I hope that you will never legislate against them, for I give you my word that they will be true then to their duty, even until they be admitted into the church. For we want law-abiding citizens, and if I transgress the laws of my country, I am willing to be punished by that law, and so every Mormon ought to do the same. Now I hope and trust to live so long amongst the Mormon people, trying to advocate these doctrines, mark you, but now this convention is fighting it—I have fought it for three and twenty years, and I tell you they are just as far from conversion today as the day that he began to teach it. The Mormon people seem to me something like an Irishman—a red-headed Irishman, who landed once at Castle Garden; it happened to be on the day of election, and the republicans surrounded him the moment Pat got off, and the democrats came around too; look here, says they, come now, let's vote; no, says Pat, I won't vote for either of you. Well, they were all urging him; bejabbers, says he, I won't vote at all, but at last they urged him so hard, says he, is there any government in this country? Why, yes; well then, I vote against the government. (Laughter). So with the Mormon people, whether a democrat is in the chair through the demand of the people or not, they are against the government, and will remain so until they have the supreme power, if they vote at all, of the country in the end. Every time that we don't see fit to fight upon this matter we give way to them, because it has come that the constitution of the

United States has too long been so corrupted by the democrats and republicans, that the Mormon church will step forth and save that constitution. Then, gentlemen, you and us will be kicked out together and the Mormons will have control of the country. (Applause).

Mr. PARKER. This constitution, Mr. President, is to go before the people, and when this constitution goes before the people, the gentlemen of the majority will be the first to appeal to the great minority of democratic voters in this territory wherever this constitution is proposed. Mr. President, the minority on this floor have made great concessions. I am not alone in the democratic party represented on this floor, in supposing that we have already gone further than circumstances would justify in sacrificing those principles of justice and civil liberty which should underlie our constitution. And I will remind the gentleman again that we are not through with the people on this issue, that unless concessions are made to us the majority are liable to put themselves into the predicament that we who represent the democratic party of the territory on this floor can appeal to our citizens and tell them that we cannot get justice done on the floor of this convention, and all the political improvements, Mr. President which are involved in this constitution are liable to be overthrown in the ordeal which they must pass with the voters at the ballot box.

Mr. BEATTY. Mr. Chairman, I will not delay the committee but a very few minutes. I desire to say that from the start there have been but two questions between the minority and majority of this committee. One important question was as to including in this report the disfranchisement of those who are members of the church. There is that difference in the reports now. But this morning our democratic friends have conceded that by voting for the majority report. The other important difference was as to leaving any power whatever to the legislature. Their report provided that the legislature may make provisions only to carry out the provision of this section, but the majority have extended the

principle. We have constantly insisted that the legislature should have absolute power to control this matter in the future, but not to annul anything we incorporate in this organic law. Now, Mr. Chairman, that has been my position constantly from the start, and I will say here very frankly that I regret that an older man who I thought knew more than I did, should influence me to change from that position. I was influenced in this by the fact that one of the most distinguished men in the United States drafted this very clause which I inserted in that substitute this morning.

Mr. REID. Mr. Burrows?

Mr. BEATTY. I have it here in his own hand.

Mr. REID. Who was it?

Mr. BEATTY. I cannot name him; I have no right to, but I have here upon this majority report in the hand of one of the most distinguished men in these United States, the very amendment which I substituted. I, for one, yielded to his superior judgment, as I claim it, as well as the judgment of many other members of this convention.

Mr. REID. Was it Mr. Burrows?

Mr. BEATTY. I will not answer that question.

Mr. MAYHEW. Was it a republican?

Mr. BEATTY. I will not answer that question. It would not be right, Mr. Chairman, to publish either what the honorable gentleman has done or what the honorable gentleman has advised, who is not a member of this convention, but I will say that I was guided in my action by what I admit to be the superior wisdom and judgment of my superiors. At the same time, I, for one, regret that I yielded for a moment; in fact, I regret that I ever yielded from the original report which has been prepared by the majority of this committee. The report has been changed considerably from the time it was first prepared, but it was in deference to the opinions of others, and I wanted to get something on this important question that would meet the wishes of all. As is often the case when a man yields to

another opinion, to that of others, he may make a mistake. I do not, however, concede here, that even if this amendment had been adopted, it would have made a particle of difference so far as the Mormon church is concerned. I still believe that the gentleman who drafted that amendment was right in his judgment, and it never would have made any difference. But in advocating the bill to my democratic friends, I want to know why it is, what has been the reason they can give to insist upon the amendment they want engrafted in this. Now I believe you all agree with us and want every Mormon disfranchised. I want the power left for the future so the legislature can control this matter. We know they change their brand from time to time. It makes no difference what law we enact, they will change their brand; they will make some change in their organization so as to meet the laws we may enact and hence I was anxious, for one, to leave this power absolutely in the control of the legislature. Now, my friends upon the democratic side, I appeal to you here. You say we leave this to the legislature absolutely, to-wit: By Section 4 as reported by the majority report. What possible objection can you make to that, save the single objection you have urged that the legislature will then have the power to disfranchise good citizens? I admit that—I admit it. It leaves it absolutely in their power to undertake to disfranchise the members of the Methodist church by name, if they wish, or the members of the Catholic church, or the members of any organization; I admit they have that power if we leave that section there, but I ask, have you any fear that any legislature ever elected by the people of the state of Idaho will undertake to commit such an outrage as that? This is where the question comes to me, and I send it home to you and ask you to answer it.

Mr. REID. Did not the last legislature pass an *ex post facto* law?

Mr. BEATTY. My honorable friend from Shoshone

was in the legislature and can answer it better than I. I will turn it over to him.

Mr. REID. The honorable gentleman answered it the other day; he said he thought he did.

Mr. BEATTY. Well, if he were able to legislate that, and he said such a thing as that, I hope then my friend did not vote for such a law. I think my friend will answer that, and I submit the whole matter to my friend from Shoshone; I have known him to be wrong; he is generally right; he gets off once in a while, but he is generally right.

Mr. MAYHEW. Will you be kind enough to tell me when I was ever off? (Laughter).

Mr. BEATTY. I will tell him sometime in private. I dislike to expose him here in public. (Laughter). Now my friends on the democratic side, I ask you to come down to solid facts. What real danger is there if we adopt this section as proposed by the majority of the committee? You cannot really suspect nor fear that any legislature we will ever elect in Idaho, will pass a law so outrageous as to disfranchise honest and honorable citizens. Then if there is no danger of that, why not leave it as it stands? Why not all come in by unanimous vote and adopt this section as you have adopted the other? I give you great credit for joining us in that. I hope now and ask that you will all come in and join with us in this, for it certainly can impose no danger, it can do no harm even though the substitute you have insisted upon, and which you introduced—even though that were proved safe. Still this can do no honest citizen any harm; there is no danger that we will ever elect a legislature that will be so recreant to its duty as to disfranchise honest and honorable citizens. Then let us unite as one man and vote for this fourth provision here, just as it is. It will certainly make us safe. It will leave the power where it should be, and it will leave us in such a position that we can control that element which ought to be controlled, and which we

are so anxious to keep out of the suffrage. ("Question, question").

Mr. GRAY. Mr. Chairman, I am somewhat amused —considerably, I might say, by the argument of the gentleman from Nez Perce, who seems to me to make but one point, and that is that the chairman of the committee had not done as agreed. That is not an answer to anything that is before the committee. Is this section before us now objectionable, if so, why? These democrats claim to be as much interested in putting this matter of Mormonism down as the republicans, but then they throw it at us that we are republicans and our republican committee did not seem to extend out their hands in greeting and offer to affiliate in this forenoon session. But it seems that the general opinion is not that of republicans alone; my distinguished friend from Oneida here, tells us why. They know more about it than those other gentlemen, down there in Oneida. There was no argument in the first gentleman's talk, —that is, the one from Nez Perce, at all, only that we do not keep our word as a party. But why don't they want to keep out this Mormon vote and Mormon element? Why all this contention? What is the matter with this section? Is there anything wrong with it? We give the power to the legislature; is there anything wrong in that? Then why does he say that we must turn around, and say that because the republicans have not kept their word, this section will not do, when we stand here not as republicans, but we stand here as members of this convention, to do what we think is right? And supposing even that we had done as he says, I will not be bound by that committee or any other committee. And the other gentleman that says that, from Nez Perce too—which it seems to come from Nez Perce largely, this objection; probably if they understood the constitution as does my friend Standrod from Oneida, they would know differently and would act differently. Now in the name of God, I would ask what we are here for but to do what is best for the territory;

that is, if that section is opposed, if there are any reasons, I ask, that these Mormons shall not have power, why is that section opposed by this minority? I ask it, and I would like to have it answered—why do they oppose it? Is there any reason for it? If it is to get an advantage, if it is to do something that we cannot understand, that they may slide it around and get something into the constitution that will give them the advantage in the future, then they are not as honest as we are. I say that some of the strongest men probably in this house that are opposed to the Mormon practices, are democrats. I am with them. I have had some experience myself in relation to them. I tell you, Mr. Chairman, we cannot get our foot on them too solid, we have got to press it down and keep it there, and when this people undertakes in any manner to excuse any act of theirs, when they are doing what they ought not to do—and that is the very thing I want put in the constitution—I shall not vote for a constitution without there is something in relation to the Mormon question put in it. It has been thrown in our face day after day and week after week, that if we did put anything in, congress would not adopt it. What did we see here the other day and on this rostrum? These men that take that position saying that we must put it in in the suavest language. Now don't let us be deceived by anything of this kind, and don't let us be led astray because a member of the committee has made a mistake, and I will excuse him for all of it, because he was not the party to blame, because he was induced to do it and thought that it met with the approbation perhaps of his party—but it does not seem to do so. But that is not the question; the question is, is there anything objectionable about that section? Mr. Reid never said one single word against that, but the idea was that Beatty had lied, or somebody else had lied about it, or something of that kind, or somebody decided to do something they did not carry out. (Laughter). That was all there was about it. I came pretty near putting

on my hat. Now another thing he says—that they will shut out the Methodists and Baptists, etc. I say, if they get obnoxious, shut them out; if they get as bad as the Mormons, shut them out. (Laughter and applause).

The CHAIR. The chair will state that we have allowed this debate to take rather a wide range.

Mr. VINEYARD. Mr. Chairman, I believe it is Section 4 that is under discussion?

The CHAIR. Yes.

Mr. VINEYARD. That is what I desired answered.

The CHAIR. I desire to state to the committee of the Whole that the chair will hereafter confine the debate to the question at issue.

Mr. VINEYARD. That is what I propose to address myself to.

Mr. TAYLOR. I move that the gentleman have as wide a range as the rest.

Mr. REID. I second the motion.

Mr. VINEYARD. I don't want any more time. Mr. Chairman, we have under consideration Section 4. My friend from Ada appeals to us and asks his democratic friends what there is objectionable about this section, which he says the gentleman from Nez Perce has failed to answer. I answer that, Mr. Chairman, and the gentlemen of the committee, by saying that we have the answer to that out of the mouth of the chairman of the committee that reported this article. He has admitted it, and it needed no admission from his lips to confirm it. That Section 4 absolutely puts in the control of the legislature, not only to disfranchise the Mormon church, but every other religion which any legislature which may hereafter convene in this state, should take it into their heads to do. Read the section. "The legislature may prescribe qualifications, limitations and conditions for the right of suffrage additional to those prescribed in this article." It is not the question of the right of suffrage being withheld from the Mormons, that is opposed in the adoption of that section; if that was the extent and the full extent to which it went, it would

meet my hearty approval and approbation, as well as that of every other member of this convention, I apprehend. But it is for us to say, is it wise, is it prudent, is it within the province of a constitutional convention that is forming the whole foundation upon which all these legislative enactments must be based, to provide that these legislators may have the door thrown open, and that every religion which may happen to fall under the ban of any future legislature may be ostracized and disfranchised, although they may be American citizens, the same as we are, either naturalized or native-born.

There is, gentlemen, I venture to say, no constitution in the United States that has any similar provision. We know that legislatures are liable to act upon bias. We know too well—at least, I who hail from Alturas county know too well—(Laughter) the whims and caprices of the average legislature of Idaho. I for one, am opposed to putting it within the power of any legislature of this state to have the right to limit the suffrage to any others than those that are described within the foregoing section. The foregoing section is directed, it is claimed by every member of this convention, at the Mormon church. They have it in there for the Mormons. That, in this day of progress, so-called, in this day of democracy, I will say, so-called, when we think of all the "isms" that can be spawned in these large cities and in the corrupt sink-holes of politics—would make it possible to disfranchise a large class of persons if such a wholesale section as that is retained in the organic law of this territory.

Mr. GRAY. Let me ask the gentleman a question. Do you claim that the legislature should not control anarchists?

Mr. VINEYARD. I would say——

Mr. GRAY. Would you be willing that it should control their actions when they went beyond their rights?

Mr. VINEYARD. I will answer the gentleman.

Mr. GRAY. Well, that is what we are leaving in the section.

Mr. VINEYARD. But it goes further than that. That is exactly what I am objecting to. For this Section 3 attempts to deny and withhold the right of suffrage from any organization, society or sect, if you please, which practices or encourages, aids or abets any acts that are inimical to the constitution of this state and the laws and constitution of the United States. I will go as far as any member in this convention to suppress it. But Section 4, which we now have under consideration, does not go to that extent, nor is it open to any such interpretation as the one we have got from the gentleman from Ada. It goes further. Now is it wise in our new state to enact in a wholesale way a clause like this? Ought not we to pause and consider the latitude which is thrown open to the legislature, that is always governed by the caprice that happens to pervade the community at that particular time and the "isms" and the "schisms" that are prevalent throughout the commonwealth at the time the legislature is in session? Ought we to allow them all this latitude and to cut off the right of suffrage from a class of people who are probably as much entitled to it as every man who desires to withhold it from them?

Now we had hoped, Mr. Chairman, that this question had been put at rest. It was hoped by every member of this convention that this vexed question of Mormonism had been buried, but like Banquo's ghost, it will not down. The several agreements that have been made by that committee have been scouted and swept aside, and we stand today where we stood at the close of our work in framing the minority report. And we have gone and are still willing to go as far as the other side in order that it shall no longer go out to the people of this territory, as it has gone heretofore for the last four years—that the democratic party of this territory was a pro-Mormon party. I have had the conviction all the time, and I have always maintained that the democratic party

of this territory was willing to go as far as any party in suppressing this twin relic of barbarism, so-called. I am willing to go as far as my friends on the other side, as far as they possibly can go, but for God's sake don't go further than a peacable man should be required to go, in adopting a provision that may disfranchise others beside the Mormon church. That is my position and that is the reason I am opposed to Section 4.

Mr. BATTEN. Mr. Chairman, I shall just trespass upon the committee a moment; we do not so much object to the matter of this section as to the manner in which it has been forced upon us. It is the method and the mode by which they seek to impose this matter upon us that we are opposed to, and not so much the matter of that section. Now the substitute offered is different from this Section 4 only in this particular; it injects into this section after the phrase 'right of suffrage,' the phrase 'so far as it affects the classes mentioned in the preceding section.' Now the only material difference between us and the only thing that has provoked this difference and the flood of eloquence with which our ears have been greeted, is simply the retention or non-retention of that clause. Now if we will stop and pause a moment, carefully and coolly, and rid ourselves of any little petty anger or feeling that we seem to have wrought ourselves up to, we can certainly come to this honest conclusion, that there is really no great difference of opinion between us as to that section, except simply to this extent: The democrats believe it is wise and expedient, that it is in keeping with good statecraft and good statesmanship, that we restrict, in terms and language unmistakable, the operation of this whole matter of suffrage to the classes mentioned and prescribed in the preceding section. We believe that there should be some terms expressly embodying that restriction. Our friends on the other side seem to have swept away that restriction entirely, leaving that section as it now reads.

Now I do not know how I can cordially accept this

section as it now reads. I am only speaking for myself; I am not speaking for my brother democrats in this body. I am very sorry indeed that we have ever used the terms republican and democrat in this body. We were invited here as to an unpartisan feast, but we discovered, I am sorry to say it—I hate to use such a harsh term—that we have been entrapped and decoyed into a regular partisan camp. Now that is harsh language to use in such an august body, but it seemed that I had to say something of the sort, in order to direct attention to the manner in which we have been flouted and outreached in this matter without having in any manner violated our faith. I do charge it upon the opposition that they have broken faith in withdrawing the substitute that meets our objection. It was nothing more than fair to grant it to us when we asked it. We were only asking what any fair-minded man would readily grant; we simply asked that this matter be limited and restricted in the constitution in such a way that but one interpretation could be put upon this matter. We all stand to a man upon the one proposition and doctrine of cinching the Mormons; that is a slang phrase, but it expresses the idea, we are all united upon that, and I hoped that we should guard these expressions, that we should not allow our passions and prejudices to run away entirely with our conclusions and our ideas of constitutional right and propriety. It has seemed that it has been a serious tension, but the controversies between us and the different conferences showed what it was; it was to get at something upon which we could all harmonize, and we did come to that in this compromise, which in this substitute is now not a compromise but an enactment—and I challenge any gentleman to contradict it, and which on this question harmonized a dozen different views, until finally at the very eleventh hour, when the curtain was about to drop upon the loosening of this serious tension between us, and leave us all a band of good fellows heartily in accord upon the main proposition,

there was interjected into our midst a firebrand—an apple of discord. And the agreement, which we had a right to expect would be honestly enforced, and carried out in the spirit in which it was framed; it was an agreement which emanated from the other side; they made the overtures, and we accepted them and clasped hands upon it. That agreement has been wantonly violated—wantonly violated, and we simply bow to the manner in which we have been treated here; not to the matter and substance of this—we do not bow to that. I for myself will vote for that section, and I ask my democratic friends to scrutinize it and see if they cannot vote for it also. It is not the substance of it, but it is the mode with which we have been treated; after having been invited here on such a grand and high moral plane of non-partisanship, having come here in that spirit and being treated in that rank bare-faced spirit of partisanship. (Applause from the democrats).

Mr. MAYHEW. Mr. Chairman.

Mr. CLAGGETT. Mr. Chairman.

The CHAIR. Mr. Claggett.

Mr. MAYHEW. I would like to offer an amendment to that section.

Mr. CLAGGETT. I will yield for that purpose.

The CHAIR. Very well; Mr. Claggett has the floor.

SECRETARY reads: Amend by inserting after the word "article" and before the word "but" in line 2 of Section 4, the following words: "to enforce the provisions of Section 3 of this Article." (Seconded).

Mr. REID. I would like to hear it read.

Mr. MAYHEW. I move the adoption of that section as amended.

Mr. REID. I second it and ask how it will read when amended.

SECRETARY reads: "The legislature may prescribe qualifications, limitations and conditions for the right of suffrage additional to those prescribed in this article, to enforce the provisions of Section 3 of this

article, but shall never annul any of the provisions of this article contained."

The CHAIR. It is moved and seconded that the amendment be adopted.

Mr. CLAGGETT. Mr. Chairman, I have listened to this discussion with considerable interest, but am sorry it has taken the turn it has, nevertheless as it has taken this turn, I deem that it is perfectly proper, on behalf of the gentlemen of the republican faith upon the floor of this convention, that there should be a clear, full and explicit statement of their position on this and other questions which have been animadverted against by the gentleman from Nez Perce. Ever since this convention was convened intimations have been thrown out here from several gentlemen from time to time, charging the republican members of this convention with having forgotten the theory of a non-partisan convention; I deny that charge *in toto* and in detail. It cannot under the facts of the record be sustained. We must first inquire as to what is or is not a partisan convention. Does a non-partisan convention require that both political parties shall be equally represented? Certainly not, and yet that is the proposition upon which my friend from Nez Perce has been continually harping. A non-partisan convention consists of a convention in which all parties shall be represented according to their voting strength, and we are so represented upon the floor of this house. In Shoshone county, which is republican, and notwithstanding the fact that the county central committee declared for the nomination of eight delegates to this convention, and notwithstanding the fact that the two county journals had gone so far as actually to call an election when the republican convention met—and it was when they first met—they antagonized the action of the central committee and antagonized the action of the county journals, I myself leading in the proposition in that convention there at that time, so that they resolved that they would not nominate the entire delegation for this convention, and therefore

nominated four members of this convention, and recommended to the democratic convention to do the same thing, which was done. And I say here to this convention that having considered this proposition at home and both before and after reaching here, that so far as I am concerned I have attempted in good faith to carry it out all the way through. As I said before, a non-partisan convention does not imply that the minority shall have as many representatives as the majority; it implies that they shall be represented according to their strength. There is not a republican county in this entire territory that it not here represented by democrats, and which would not be represented here by democrats if they had acted in a partisan manner and had used the power which they possessed to send none but republicans here. So let us say no more about this proposition.

Now my friend from Nez Perce has done some preaching on the question of privileges; he has gone so far as to say that our democratic friends have been wrongfully treated. So far as I am concerned, I thought the same share should have been conceded to them, and you will bear in mind, Mr. Chairman, and the convention will bear in mind, that in the action which was finally taken with regard to the organization of this convention, that after the election of president and the election of vice-president, the proposition which the republicans made was that they should alternate thereafter, each one taking his choice, and the democrats refused.

Mr. REID. That was after the secretary was chosen.

Mr. CLAGGETT. I understand that after the vice-president and president were elected that there should be an alternate choice.

Mr. POE. No sir. It was after the secretary was elected.

Mr. REID. I was present when the caucus received the proposition. The proposition was to give you

the presidency, you take the secretary, then alternate down, and we took nothing. That was the proposition submitted to our caucus.

Mr. CLAGGETT. If any such proposition was submitted, it was not submitted to the entire republican caucus.

Mr. SWEET. I was a member of the committee from the republican caucus that met for the purpose of consulting with a like committee from the democratic caucus of this convention, and we understood it and it was understood by all, that the republicans being in the majority should have the presidency of the convention, and I say here, that the committee from the republican caucus then and there offered the other caucus this choice.

Mr. BEVAN. That is correct.

Mr. REID. I will ask the gentleman if he didn't offer us the vice-president?

Mr. SWEET. No sir.

Mr. REID. If the gentleman is present who made the report of our committee—they will confirm it—if our sub-committee did not ask you for the secretary, and you declined to let us have it?

Mr. SWEET. No sir. We offered you the second choice.

Mr. REID. The sub-committee offered that and we declined.

Mr. SWEET. I was not a member of the democratic caucus, and I do not know what was reported, but I know what took place in that committee room.

Mr. CLAGGETT. Mr. Chairman, so far as these matters are concerned, I do not care one way or the other. I have referred to these matters for the purpose of refuting the statement which has been made by the gentleman from Nez Perce, that the republicans saw fit to monopolize the entire organization of this convention and give them nothing. I say that cannot be sustained by the record; because they could not get what they wanted, according to their own theory, they

refused to take anything and therefore they cannot complain now.

Mr. POE. Let me ask you a question. Did you not nominate a secretary—your party?

Mr. CLAGGETT. I understand that.

Mr. POE. And we nominated a secretary.

Mr. CLAGGETT. Yes.

Mr. POE. You elected him, didn't you?

Mr. CLAGGETT. I don't know whether he was elected by a party vote or not.

Mr. POE. Well, I know.

Mr. REID. The record shows it.

Mr. SWEET. Inasmuch as you were not in that committee room, Mr. Claggett, I will say that the republican caucus did not nominate a secretary until after the democrats refused to select for that office.

Mr. CLAGGETT. That is my understanding of that. Now, Mr. Chairman, let's go a little further.

My friend from Nez Perce goes so far as to say that the committees of the convention were unfairly organized. Now then let us see whether there was any attempt on the part of ourselves or the presiding officer of this convention so to do. I find here among the important committees of this convention, that they have received one-half. It was the intention of the chairman —of the president of the convention—to give them one-half, and I stated here in addition to that, in addition to the important committees—I stated to the gentleman from Nez Perce himself, that there were four or five unimportant committees such as the committee on Assessment or on Boundaries, and that in any addition to the nine important committees I should consider the democrats on this floor, and if they desired those other committees they might have them also, and they declined to receive them. Now let us have an end to this matter, I say, and then we can come down to this other question with regard to the points raised here this morning and this afternoon, and from republicans on this floor; I will not say the republican majority, be-

cause I still adhere to the proposition that this is and has been a non-partisan convention in its organization and in its proceedings also up to date. The gentlemen do not understand the meaning of the term "non-partisan," if they undertake seriously to deny it. When it comes down to the facts, what do we find? I simply state to the democratic members upon the floor that there has been no gag-law applied in any republican caucus that has been held. I simply state that after we had caucused together and after full consultation, Section 4 as it stands today in the majority report, was agreed upon by the unanimous consent of every republican upon this floor; not agreed to by a majority and the views of that majority offered—there was no minority—but agreed to upon full consultation. And it was supposed that it was to stand so far as the republican committees were concerned, and so this morning unexpectedly to ourselves, the chairman of the committee arose and accepted at the hands of the democrats upon the floor, another proposition which was a substitute for it. That represented certain men but not representatives of the caucus. I do not question their good faith; possibly I might have done the same under similar circumstances. Nevertheless we are not bound by any such action, and will go so far as to say that if every member in the republican party upon this floor were to stand up and say this substitute should be adopted, I would no more respect their decree and authority than I would respect the decree of the Shah of Persia. I do not propose in a matter of grave public concern of this nature to be bound or to bind others by the order of any man or any party or any organization. It is a matter—as was so eloquently stated by Mr. Standrod—that goes to the very foundation of republican institutions, that goes to the very foundation of that which we are seeking to regulate, the right of the people to exercise the right of suffrage, only on condition that they shall exercise it in such manner as shall be conformable to the principles of republican gov-

ernment and not in obedience to the behests of a theocracy such as exists in the territory of Idaho, and which like the devil-fish, is spreading its arms abroad to clutch and twine around and trouble and destroy the surrounding territories and states. In considering a question of this kind, we must approach it in the spirit in which it should be approached, namely, in the spirit of passing upon the merits of the proposition itself. But to undertake to make excuses, to say there has been some little mistake in consequence of the action of one republican or two republicans or three republicans upon this floor, would seem to indicate to my mind, without a denial to the contrary, that our democratic friends had succeeded in entrapping our chairman into a well-considered scheme; but fortunately we have got out of the trap. That is what would indicate there was an inside committee upon this subject, if I did not know it was not so, and I do know it was not so.

Now let us go a little further. We have come to the proposition here, and taking up the amendment offered by my friend from Shoshone (MAYHEW) I again call the attention of the convention to the character of these Sections 3 and 4. We have here described two classes of people as they exist today; one class consisting of those who teach, advise, or practice polygamy or bigamy; another class who teach or advise that the laws of the state, passed in pursuance of the constitution of the state, are not the supreme law of the land. We intend by mentioning those classes to apply it to the Mormon church, or, as my friend from Oneida says, the Brighamite branch of the Mormon church. But we will suppose that tomorrow, under some—I do not want to say actual—under some pretended revelation from the powers on high, this church should pretend to receive a revelation to abandon bigamy and polygamy and the practice and teaching thereof, and their leaders have already gone through the barren and empty form of pretending to abandon it; just as soon as they can cover their tracks to such an extent that you cannot

prove that they had not actually abandoned it in the courts, just at that moment they cease to be one of the classes which are here disfranchised. And so it would be in the other case, that whenever they should receive a revelation to the effect that they should go out and preach in their pulpits and in the columns of their journals and in their temples that every Mormon was under obligation to obey the laws of the United States, although they might be contrary to the laws and behests of the priesthood, notwithstanding the fact that the whole thing would be nothing but a fraudulent pretense, you would not be able to prove it was nothing but a fraudulent pretense, and therefore they could no longer be included as one of the classes mentioned in Section 3. Now if you adopt Section 4 and limit the power of the legislature hereafter to pass such additional rules and regulations as apply to these classes, and those classes shall have disappeared, leaving the whole Mormon theocracy, by secret agreement and understanding among that closely-knit priesthood, with all their former powers and intentions, to carry out by fraud what they had failed to carry out in this state by open argument or open force, then I say again as I said this morning, that inside of a year you would have the Mormon priesthood intrenched so strongly in the strong places in this state that nothing but an avalanche or a revolution would ever be able to dislodge them.

Now Mr. Chairman, let me say this; it is not because we would in any way expect to ever obtain any party advantage out of this matter, but it is because the republicans have been freely, each one for himself, acting upon this question, and have come to the conclusion that this Section 4 as reported originally by the majority of the committee, should be sustained. And it is because of that that we vote and will vote as a unit and not because of any caucus action or caucus dictation. We have held our caucus as for the purpose of consultation only.

Now let me say in reply to my friend from Alturas

county, Mr. Batten, a gentleman for whom I have the greatest esteem and personal regard—I remember the time when we used to sleep together in the little cabin in the Coeur d'Alenes some four or five years ago—and let me say to him that the democrats have not been treated unfairly upon this floor, but I will say that some of the democratic members have gone continuously upon the theory, apparently, of creating suspicion between us. which was not justified by the facts. We do not propose to obtain any party advantage in this matter; but let me say to my democratic friends that if they insist upon planting themselves as a party upon the proposition as contained in this substitute, even with the amendment of the distinguished gentleman from Shoshone, so that we shall not have this in the constitution the power from time to time to change and amend this whole right of suffrage, so as to meet every contingency which might in the future present itself, they will find that the republican party will have the advantage, although we are not seeking it. I know what the people of this territory demand and what they want. I know primarily that they want the robes of statehood to wear. I know also that 99 out of every 100 of the Gentile population of this territory will say that they prefer to remain as a territory forever, rather than go into the Union as a state and leave this question, this Mormon question unsettled, so far as the organic law of this state is concerned; or to come in as a state with the hands of the legislature tied by restrictions contained in this organic law, so that they will not be able to adapt their political action in the future to meet every shift and emergency which the venality or duplicity of the theocracy of the Mormon church may bring up from time to time. That is the reason, Mr. Chairman, why we stand here as a unit, and I beg all our friends not to consider this a matter of taking sides between parties, and I hope that my friend from Alturas will vote, on his assurance today, for this report. I

know a good many of his democratic fellow members will, for they have so stated.

Mr. REID. Mr. Chairman, I do not like to measure lances with the Nestor of the northern bar, nor even with the Ajax of the bar in the south. But my friend has so often taken the part of that fish called the cuttle-fish, in this convention, by muddying the water and slipping out of the proposition without letting you see which way he went, that I think I will at least attempt to make a reply to some of his propositions. He says this has been a non-partisan convention, and yet the democratic party has been called here from the whole territory to dance to the step of this republican camp meeting that has been going on—been non-partisan! Why, the gentleman says that is a non-partisan convention in which the members are represented according to voting strength, and yet you take the popular vote cast in this territory last year, the delegate to congress was elected by a plurality of 289, and the republican majority I think was only about 11 or 13—about that. But when the apportionment committee, the one that strikes really at the vital issue, by which this state may be gerrymandered, is appointed, we have seven members out of eighteen.

Mr. CLAGGETT. You are mistaken. There was just a majority of the body, of the whole 18.

Mr. REID. Take the list published in the rules and count them. There are seven democrats and the rest republicans.

Mr. GRAY. I rise to the question of order. This is not on the question at all.

Mr. REID. I have no doubt the gentleman wants to cut us off from replying.

Mr. GRAY. I do not want to cut you off.

Mr. REID. Then keep still sir. I will get through pretty soon. If these matters are beside the question I will be glad to consider that general proposition discussed by the eloquent gentleman of putting them down, if he wishes, and he has demanded—he got up here and

demanded on this question; why do you oppose it, and he would like to have an answer; and when I intimated that I would answer it, he says we are digressing from the subject. I didn't come here to represent democrats simply, but the state of Idaho, and to work for the purpose for which we came. The matter of the secretary was gone over. I do not know what took place out of the committee room, but it was reported in there that we might have the secretary and they might have the balance, and I got up and asked to resign the vice-presidency of the matter and throw it up in contempt of the way we had been treated in the other offices, and when we came here and you made the nominations of those to be elected, I finally said: I am willing to let you take the entire convention. We will be in a situation now when we set up our constitutional convention of having been voted down because we are in the minority. What further? You said we may have the committees. The honorable gentleman knows I handed him a list of the committees; there were twenty-five. Now the printed list shows 16 republican chairmen and 9 democrats. Now has there been no partisanship? Controlling the organization—controlling the committees—controlling the committee on Apportionment! Give us that committee on Apportionment and let us gerrymander this state, and just strike out your report. Sunday when the committee met it was said we may have one senator, and they have one, to each county, and we had finally made no amendment, so that the little counties as well as the larger counties should have a voice. Give us that committee and we will apportion and gerrymander this state as the state of New York, so that the republicans shall have the legislature eternally. All this looks mighty nice on the face, but you must go back to the men who are now scheming for the future control of this state. We don't sit idly by and not notice these things. I am here as a democrat, because I believe it is to the best interest of my country to carry out democratic principles; but when in the territory of

Idaho a great principle like Mormonism arises, I am not a democrat, but *a citizen of Idaho.*

Now before I take up the merits of the question, I come to my friend from Ada (MR. GRAY). The gentleman referred to Nez Perce county, and having relieved himself of his bile, I hope he feels better. But I have this to say, that when the question comes up to vote again whether the capital shall stay at Boise City ten years or twenty-five, I want the pleasure of moving to put the capital at Ada county forever, that it may stay here and build it up. And I hope the gentleman now feels that notwithstanding all his flings at Nez Perce that she at least has kindly feelings for the county of Ada and the city of Boise. (Applause). "What is the matter with us?" the gentleman says. The gentlemen have pointed out what is the matter. The gentleman says we have gone so far as to say the committee was not honest, or told a falsehood—I will not use the language in this presence which the cultured gentleman used; but I will say that we did not accuse them of dishonesty. My good friend, (MR. BEATTY) whom the distinguished gentleman (MR. CLAGGETT) says we trapped——

Mr. BEATTY. I will answer that myself. I intend to.

Mr. REID. Very well, I beg the gentleman's pardon for intruding on that part of the subject; I know he will answer it. But the gentleman says we intimated that they acted dishonestly in the matter; not at all; but we said we ought to have been treated with courtesy. I have stood upon the floor of this convention contending many times, when you wanted me off the floor I know, fighting for constitutional questions. We have had innovation after innovation put upon this constitution and the gentlemen know it, my friend from Shoshone (MR. CLAGGETT) has led in these innovations. He is a good and learned man, but he is the wildest and most radical man in his notions about these questions with whom I ever had the honor to consider questions of

this kind, I have stood here and fought for them; but we shall not only have innovations in our constitution, but we must have an innovation that has never yet been put upon the proceedings of any parliamentary body, namely, that where two sides were contending together, and the chairman of the committee that was appointed by the majority agreed with the minority, that faith was broken. The gentleman has stood, as I have, in the house of representatives, and seen the passions of men contending there in that body, he has seen the house in an uproar; but when an agreement was raised and reached, not only would the chairman, but even the member who had the bill in charge, have stood by it to the death. And that is not what has been done here. My distinguished and honorable friend (MR. BEATTY) is not responsible for it, however; but his party is responsible for it, because the gentleman from Bingham (MR. MORGAN) requested when we adjourned, that the republicans would meet for a conference; and they came back this afternoon and withdrew the substitute and returned to the original section. Therefore I say they are responsible for it; they have not treated us courteously, but as my friend (MR. BATTEN) says, they wantonly violated their agreement, and that without notice.

Now we come to the merits of this bill. What do we object to? What's the difference, the gentleman asks, and wants an answer. You know the reason. The first bill provided that the legislature might prescribe any qualifications for voting. We said no, let us tie it up so tight, so strong, draw it so closely, that no Mormon now or hereafter who belongs to this theocracy, or practices it, or aids or abets it, can vote; as my friend Standrod suggests, five lines would have accomplished it all, but build these safeguards, and we will meet you, we will help you build a wall around this question, and we will go as far as you will go. But when you say the legislature may pass an act that Catholics, or that any man—and my distinguished friend, the chairman of the

committee admitted that that might be done—may be disfranchised, I am opposed to it. I lived in a state where the legislature had that power, and we had but three ballot boxes given us, and 4,200 voters, who drove 25 miles, men of the Caucasian race with as blue and gentle blood as my friend from Shoshone, and then our votes were taken by that law and counted in another state. The legislature was clothed with that power; and your statute books today contain an *ex post facto* law passed by the legislature, and any lawyer will confirm my statement. That is the reason I do not want them to have this power; they will assert it. Here you have on the south of you, gentlemen, you who represent the laboring men, this great Union Pacific railroad; on the north you have the Northern Pacific, which is reaching out like an octopus with its arms, taking in your country. It has already got the farmers by the throat. How long will it take to control the legislatures? and hasn't it been intimated that it even has made its power felt in this convention? Can't it easily control the legislature? What then? If they want to bring in Chinese labor to compete with you, sir, they can get the legislature to pass a little qualification by which they can do it. If you belong to labor unions that are opposed to Chinese, or any great question, they can do it; and when you vote for this provision, you tell the laboring men that you have clothed them with that power when you had the right to prevent it. No, sir, these are powers inherent in the people. I have been taught to part with no power the people ought to have and keep, and give it to the legislature that has to be elected in this way. And I will tell the gentlemen my authority—these distinguished gentlemen who addressed you yesterday,I served with them in the 48th and 49th congress, and had the pleasure of supporting the Edmunds-Tucker bill which today keeps down the Mormons. Governor Stewart who addressed you, with Mr. Tucker, drew that bill. Mr. Tucker explained that to me personally, and told me it was not the old force bill,

and I voted for it. Yesterday I took this bill to Mr. Stewart and asked him about that word "member" you have in this section, in view of that case lately decided in Chicago.[1] He said he thought it ought to be left out, because it made the membership an overt act; but, says I, Governor, if we leave it in will it pass muster? Our republican friends are so stuck on this thing. I want to get by congress; I don't care what you put in on the Mormon question if it will pass congress. He said: "It will endanger it some, but I think it will get by." This morning when the gentlemen said they objected to that word "membership" and called attention to its unconstitutionality declared by the courts, we yielded that point in order to have harmony and pass this section. What further? I then submitted to Mr. Burrows the question about this very one we are engaged on. He said: "I would prefer the language (and I think Mr. Burrows drew that very substitute you offered) that we had in the 13th, 14th and 15th amendments that the United States congress used: 'Congress shall have power to enforce this measure by appropriate legislation.'" That confines it; but I don't care anything about that; I want to limit this right of suffrage to crush out the Mormons, bind them down as close as you please; but when you do that, don't arm this legislature that may be elected by corporations, by wealth, or any ism that springs up and sweeps the country, with a power to crush the liberties of the people, so that at the same time you crush the Mormons you crush the people. Under this provision you can prescribe educational qualifications. My friend says the legislature may proscribe Methodists, Baptists, red-headed men, black-headed men, in fact, anybody, under that provision—anybody in fact. The Constitution of the United States does not inhibit. You are going to arm the legislature with this to do what? To down the Mormons. Why, gentlemen will admit this

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1—Spies v. People, 122 Ill. 1.

covers it, and if the distinguished gentleman who drafted your substitute, and who has to pass upon it in congress, said that was right, and presented it to us, and we thought it was right, and we accepted it, why not stand by it? It is a great constitutional principle we stand here for, not to arm this legislature with this power, and the gentlemen by their sneers and allusions cannot drive us from the great fact we ought always to have in view, the great principle of suffrage, when we are building and laying the foundations of a great government. That is what actuates me. I care nothing about the party advantage. There is the power you are going to appeal to, and when you go to the Catholics of this territory, when you go to the union men and the Masons and others, and tell them you have armed the legislature with the power to strike them down, then you will find objections raised to your constitution; and when we go there next winter—as I intend to go, and lobby with those seventy-five men from the south that I served with there—and ask them to let us into this Union, I want to go so that I can say to them, "Here is our constitution, according to the Constitution of the United States." We haven't any right to go off on a tangent of that sort in our constitution; but as Mr. Cox told Mr. Heyburn, "Make your constitution a good old-fashioned, sensible constitution, according to the regulations and rules prescribed in the constitution of the United States, knock for admission, and you may come in." But when you load it down with these things you cannot please the people, but if you do pass it, no cry of Mormonism, or anything else, will make those men sworn to support that constitution pass you into the Union under such restrictions as that. That is my reason. I have done as much to suppress Mormonism as any other man on this floor; I voted for the law which protects you now; I voted for the law that gave you the right to pass that test oath. But when we stand up here and down Mormons, I don't propose to down Americans. (Tremendous applause).

Mr. BEATTY. Mr. Chairman, as a member of this convention, as at all other times, I have tried to be careful not to reflect upon the opinions, or to cast any reflections upon any individual, nor do I attempt to insinuate by any means that any other gentleman may be weak in mind, so weak as to be entrapped into any folly. I regret that my friend from Shoshone, whom I most highly esteem, whom I deem to be my superior in eloquence, in ability, in everything that goes to make up a distinguished man, should so far have forgotten himself as to at least leave the impression upon this convention—I cannot exactly state his words—that I had been entrapped by these wily democrats into a submission of that substitute this morning.

Mr. REID. The language was "entrapped our chairman into a scheme."

Mr. CLAGGETT. I do not propose to be misrepresented in this matter.

Mr. REID. Was not that your language?

Mr. CLAGGETT. I said if I did not know better, as I do know, that the conduct of the gentlemen on the other side would indicate that they had entrapped us into a scheme, and we had got out of it; and I mean to correct any such insinuation.

Mr. BEATTY. I was going to ask for the words, but Mr. Chairman, I do not suppose my friend intended to reflect upon me, though the words as I heard them left upon me the impression, and I think they would leave upon the minds of this convention the impression that I had been entrapped. Now, Mr. Chairman, I am not here to boast of my legal acumen or wisdom. I admit my weakness in all things, but sir, I was not entrapped, nor was it a scheme of the democrats to entrap anybody that I know of. Allow me now to state how this thing occurred. A number of gentlemen met at a room in the Overland hotel to discuss this matter, and I was chairman of that committee, and I should have been invited there and consulted; but a number of gentlemen met there, some of the members

of the committee, and they discussed this matter. Among that number were these gentlemen and a number of visiting gentlemen here. While they were together there they agreed upon this matter, and that is how the matter was reported to me. (Prolonged applause).

Without my knowledge the very words which I have incorporated this morning in that substitute were written out in that meeting; and there was a prominent republican there, and I do not want any of them to dare to go back on what they did there and try to shift the burden upon my shoulders. (Tremendous applause). I may be a weak man, but no man dares take a position, and then when he finds that he has made a mistake, undertake to put the burden upon my shoulders. (Applause). I am never, Sir, in any position I have ever been in my life, afraid to assert my opinions. I am never afraid to say what I have done, I never ask to go back on what I have done, unless when I find I have made a mistake, and then I honestly confess it and change my course. Now, Sir, I say that what was embodied in that substitute this morning was arranged in a room in the Overland hotel, and by some of the most prominent republicans in this territory. Not only that, but some members of this committee were in that room, and they endorsed what was done there. (Applause). I do not know, Sir, why they met there without inviting the chairman of this committee to meet with them. I, Sir, have a right to say something as to what course shall be taken in this matter when I am appointed upon a committee, and I do not propose, for one, Mr. Chairman, to be ignored. I may be very small, and may be very weak; but if I am appointed upon a committee as chairman, I know my rights, and no man shall crowd me down. I am not made of that kind of metal. Now, Sir, that little substitute was agreed upon in that little caucus in that meeting. That matter was reported to me, and believing that I was carrying out the wish of republicans, and of prominent

republicans, I prepared that substitute in accordance with the agreement arrived at in that meeting. But even then, Sir, I did not undertake to place the matter upon my own responsibility; I consulted the other members of the committee, and all save one, Mr. Salisbury, heartily agreed to it. Mr. Salisbury did not absolutely object to it, but he thought we had better stand by the report of the committee, and he has all the time, and he, for one, has been right. I only regret that I did yield to the wishes of other members, and did not agree with my friend Mr. Salisbury and stand upon our report as we made it, and submit to no outside dictation.

Now then, this is not a matter that comes from the democrats; I tell you, Sir, it is a matter prepared by republicans being submitted to democrats. The democrats were insisting upon the provisions of their minority report, and that I objected to, and all the time objected, and I am glad that many democrats objected to it; but, Sir, this substitute in substance was prepared by republicans and through me was presented to the democrats for acceptance. That is the way of it; it was not my substitute; it was not the substitute of the democrats. They were insisting upon their original proposition, and we, through influential republicans, prepared this substitute and submitted it to them. Now, there has been all the time, from the very beginning of this, an evident effort to try to place the responsibility upon the chairman of this committee. I defy any man here to attempt to place upon my shoulders any responsibility that does not belong there. I am able at all times, in debate or otherwise, to defend my honor and my position; (Applause) and no man shall attempt to reflect upon me, no difference where he comes from or who he is.

I want this convention to understand these facts exactly as they exist. I don't want it to go out from here that the chairman, or my able friend Mr. Heyburn, or other members of this committee were entrapped or

that we have been deceived. I want the facts known as they are, that this was our proposition to the democrats and not their proposition to us. (Applause). And, Sir, moreover, that proposition came from those who are high in the republican camp, higher than myself a great deal. I am not aiming to misrepresent anything that has been said here. I did not understand exactly the language of my friend from Shoshone, but it leaves upon my mind the impression which I have referred to, and I simply want that impression corrected. I don't want that impression to go out, and if we republicans, any of us, have made a mistake, that each man bear upon his shoulders the burden that properly belongs to him. But I say this was not a proposition that came from the democrats; it is our proposition to them. (Applause). I don't propose to shirk anything, I don't propose to deny anything; I don't propose to try to put upon my democratic friends what does not belong to them, and I don't propose to assume what does not belong to me. Let every man bear his own burdens. So far as the mistake is concerned in this matter, I still insist that the gentleman who drew that little substitute knows more law than I do; I believe he is better able to judge of the effect of legislative enactments, and I still believe, as I believed all the time, that that amendment would do no harm. If I had thought it would, notwithstanding it came from a distinguished source, I, for one, should have objected to it. I have not yet been convinced by all I have heard that that amendment would be fatal; but, Sir, I propose from this on to stand by that fourth section just as it is, without obliterating a single letter or a single dot, I don't care who proposes any other amendments; I am going to vote for the Section 4 just exactly as the majority report has made it. I don't care who proposes amendments, that is where I stand from this on.

Mr. HEYBURN. Mr. Chairman, I do not rise at this time to make any extended remarks or make a

speech upon the subject that is before this committee, but I desire to say, in justice to the chairman of this committee that he did consult with me this morning before coming into this chamber about the propriety of introducing this amendment. I desire to say further that I was present at the conference to which he refers that was attended by a number of distinguished gentlemen, members of the republican party, in which this matter was considered, and that at the time it was considered I expressed my approval of it, and that to him this morning before entering this chamber, I expressed my approval of it again; so that he came in here, as far as I am concerned, knowing that the provision met with my approval. But, Mr. Chairman——

Mr. BEATTY. I am much obliged to the member for so frankly expressing himself.

Mr. HEYBURN. But, Mr. Chairman, I exercise my judgment as to the wisdom of any measure, which is proposed before this convention at any time before a vote is taken upon that measure. When I say to the other gentlemen, who are members of my party in caucus, that I will be bound by your action in a given matter, I will be bound by it; and if I cannot give it the hearty support of my voice, I will at least give it that of my vote. But in this matter, when we came into this body after I had had the conversation to which I have referred with the chairman of the committee, I began to think about this section, I began to scrutinize it, and while the opening exercises of this body were being conducted, I had it on my desk before me and my eyes resting upon it, scanning it closely, to see whether or not there could be concealed within the provisions of that amendment anything that was dangerous, that would jeopardize the measure that we are here to protect. And it began to dawn upon me that there was danger hidden behind that amendment, and when the gentleman from Shoshone, my colleague, Mr. Claggett, suggested there was danger, then I felt that

reinforcement that one mind feels from hearing the expression of another; and as the matter came before this convention I am now convinced that there is positive danger in the substitute that was offered, and I am convinced of the wisdom of leaving a wide latitude to the legislature in this matter.

The legislatures that will control the destinies of this state will be drawn from the same body from which this august assemblage was drawn, and I trust that these gentlemen are going back again into the body of the people to reinforce that material from which those legislatures are to be drawn, and that when they are again sent here to make laws for the state, they will bring back with them the wisdom and integrity that has distinguished their deliberations in this body. We have no reason to believe otherwise. And have the gentlemen forgotten that ever since this territory was in existence, by the very terms of the organic act[1] under which it exists, this same power has been vested in the legislature, and that the people have rested safely and securely under its provisions? That there has not been an hour since the first session of the legislature in the territory of Idaho when the very power that is made to direct so much has not rested in that same legislature? Have we any reason for believing that we cannot trust them in the future as we have trusted them in the past? Does any gentleman know of an instance throughout the entire United States where a state legislature has sought to disfranchise any person because he belonged to a secret society, Masons, or Odd Fellows, or to any particular church or creed, unless there was connected with that church or creed something criminal in its character, which threatened danger to the body of the government itself? I know of no instance. All of this scare about danger to labor organizations, or to this or that organization, is all moonshine. The legislators that are coming up here are to be chosen from the very

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1—Sec. 5, Act of March 3, 1863.

people that are to be protected; the people carry the remedy within their own hands, and can administer it whenever the circumstances require. There is nothing in this proposition nor in the position taken by the republican members of this body that needs an apology. It was their divine right, sworn members of this body, to change their minds on the very eve of voting, if they saw fit; they were not pledged by anything that passed between them and the members of the opposition; further than that the chairman of the committee expressed the sentiments of the members of his party (only he unfortunately did not when he expressed only the sentiment of himself and a few other members with whom he had conferred); when he told them he believed this substitute would be acceptable to them, he told them only subject to the right of his party to control the action of this party on party measures. When you tell me this is a non-partisan convention, that there are no politics in this convention, the statement bears its own refutation on its face. We had not been in session many hours when we first convened before the honorable gentleman from Nez Perce called in a loud voice that all the democratic members of this body should meet him in caucus. Am I mistaken in that?

Mr. REID. No, Sir; but I will ask you, if you had not then determined to control the organization, when we organized to meet your aggressiveness?

Mr. HEYBURN. The gentleman is asking me if I had privately determined. As a party we had not. Personally I had so far as I was concerned. I have never at any period since my majority disclaimed or disguised the fealty I owe the party to which I belong. Whenever political principles are being discussed or supported, I am always found on the side of my political party, not because it is my party, but because I believe it is the right side, and I always expect to be there. All this talk, this nice palaver about constitutional conventions or any other political body—because this is a political body, convened here for political pur-

poses, for the purpose of forming a government—when you talk to me in this nice palaver about this body being non-political, non-partisan, I smile or let it pass by as a rule, because there is no such thing. The republican members of this body are republicans; the democratic members are democrats; and they did not come up here because it was a non-partisan body, but they came up here because they wanted to or were willing to be persuaded to come by other people. The people sent them here, and the same elements, the same source that elected this body will select your legislatures; and if this body is taken as a criterion of the judgment of the people, I don't know whether we can trust them or not (Laughter), but I am rather inclined to think we ought to be willing to, because they made a pretty good guess in selecting this body, and I am willing to trust them to select another. ("Question, question").

The CHAIR. The question is upon the amendment of Mr. Mayhew, to insert after the word "article" in Section 4 the following words, "to enforce the provisions of Section 3 of this article."

Mr. KING. Mr. Chairman, before the vote is taken on that subject I would like to express a few sentiments regarding it. If the gentlemen are only striving for the suppression of Mormonism and crime, I can't see why they object to defining, by this clause in the constitution, the action of the legislature relative to this point. The democrats have talked this matter over in caucus, talked it individually, and we agree heartily that this is the greatest curse that can possibly afflict the country, and everything that is necessary for the legislature to do to suppress it, we are willing to agree to. There has not been a democrat I have heard speak on this question that belongs to this convention but what heartily agrees that everything that is possible to be done to suppress it we are willing to do. The amendment offered by the gentleman from Shoshone provides that the legislature shall have full power, absolute power, to provide ways and means for the enforcement of the

disabilities that are set forth in the third section. What more can you ask? If you don't want to apply your power to anything else, why do you object then to that? Under that clause as it is now proposed, I can't see any way that any court under heaven can construe it than an absolute power, given the legislature of this state, to dictate who may vote, who may hold office. It is a general grant of power, you might say, it goes on to provide that certain classes of men shall be disfranchised, that they shall not have the right to vote. It is a clear, distinct disability inflicted upon that class. It includes everything under the name of Mormonism; it includes polygamy, bigamy, the teaching of the doctrine that other laws are superior to the laws of the United States. If any organization whatever—it does not mention the word Mormon—but if any organization, any other influence, is opposed to the supremacy of the laws of the United States, it can be suppressed, and the democrats in this convention are willing to go just as far as you dare them to go to legislate the power to suppress it. What more do you want? Do you want the power still further to do, and say as this clause says, this provision provides, that you may put on other disabilities, other restrictions? Of what? Why, we give you full power, don't we? What more do you want? You can impose other disabilities, other obligations and things that may be had, as to the right of voting. It does not apply to Mormonism, it does not apply to any particular class, but it is broad and general in its whole sweep, and you can disfranchise any man there is in this country under the privileges granted by that section. And it is that I object to. I want to have the rights of a man to vote in this state clearly defined in the fundamental law of the land, beyond the possibility of cavil, but under the provisions of this section you are putting in Section 4 it would give the legislature of the state, when it becomes a state, the absolute power to disfranchise any man you see proper. You may put in any qualification; it puts

in the word "qualifications;" you can put in your laws on the statute book a particular qualification, can you not? I mean to say here that the power is unlimited. Whenever discretionary power is given to any body of men by the constitution of the United States, or by the constitution of the state, if it is discretionary power there is no court under heaven that can overrule it. That has been my understanding of the law. And here you are, giving a discretionary power, no limit to it; and if you give them that unlimited power, the supreme court, no matter whom you might disfranchise, would sustain it under that clause of the constitution which gives the legislature the unlimited power to fix the qualifications of voters. It is for that reason that I am opposed to that section. And I do not see how it is possible, believing as I do, for a man to persuade me to vote for a constitution containing such a clause as that.

Mr. MAYHEW. I have been listening now for two or three hours to political statements of members of this committee, who have expressed their views upon this question. And they have drifted, a great many of them, out into an unknown sea. They have gone so far as to claim that different sections of this country are republican and democratic. This depends upon the future. So far as the members from Shoshone are concerned, and the statement made by my distinguished colleague, Mr. Claggett, on that proposition, and the positive assertion that the gentleman makes, it is not worth while for anybody to dispute him, for no man in the world can convince him to the contrary. (Laughter).

That Shoshone county is republican I don't know. We have been considerably mixed up in that county as to politics, as to party ascendency. Sometimes the republicans have been on top and then they have been on the bottom. The fact is, so far as our county is concerned, we have generally come pretty near to dividing the offices; unless they claim that the delegate

who ran for congress last fall received a very large vote in that county, and therefore it was republican. Allow me to say, so far as that office was concerned, about 400 democrats of that county voted for the republican delegate for congress. So far as the other offices are concerned the vote of the county was considerably divided up. It cannot be claimed, and I do not claim it to be democratic, and still I deny it being republican. Now, what has all this to do with the proposition before the convention? And what has it to do with this convention as to what section of the country we come from, what county we represent; whether we are democrats or whether we are republicans? The purpose and the object of this convention, as I understand the province of it, is to formulate, to create, as I may say, a constitution to be submitted to the sovereigns of this territory for their acceptance or their rejection. For one, as a member of this body, I say that I am in favor of submitting to the people just such a constitution as they will ratify, and one that will secure to all parties their political rights irrespective of any party.

Allow me to digress a little from the main question, in reply to my distinguished colleague, Mr. Heyburn. I accord to that distinguished gentleman the truth of his assertion when he says that he is a republican. I don't believe that if St. Peter or St. Paul or any other saint of ancient times should come into this territory (if that was possible) and ask for the votes of the republican party and announce at the same time that he was a democrat, there is any doubt that Mr. Heyburn would say "Get ye hence." (Laughter). And I approve of such political sentiments myself. I think he is a true, genuine, old-time republican. I don't think anything can be done by the democrats or his democratic friends to persuade him to leave his party, and if I could, in the future, ever do anything to strengthen that gentleman's popularity in this territory I would do so heartily, if I did not have to sanction the sentiments of republicans; but if I have to do that,

I will be as kind and generous to the gentleman and in giving him my support as I know he will be in giving me his, (Laughter), and certainly I shall never ask it. If this matter had been left to the votes of Shoshone county, I don't know whether the gentleman would have come here or not, and I doubt very much whether I could have come here. (Laughter). I am well satisfied that some of us are here who, if it had been left to votes, would have been left at home. But there is no politics in this at all. We have all agreed, I understand, and I want to clear this thing up, I don't want to hear any member from any county get up and say he did so and so, and he advised so. Now, I heard it in my county—I was not there at the time it occurred —that the democrats proposed this to the republicans, that they would have no party lines, and vote the ticket, and Mr. Heyburn was the honorable gentleman who said he would have nothing to do with it. Whether I am correct in that I don't know, but I was told so by my political party friends, democrats there, and after they got in session the republicans at Wallace agreed—mark you, they nominated eight men to go to the convention, and said if the democrats would only nominate four they would send their delegates to the constitutional convention without any election and save the county any expense, and the democrats went. Now, let us stop—let all this talk about politics go.

Now, Mr. Chairman, we all agree upon this question of Mormonism. For one, I say that you cannot make the constitution too strong for me to support, in relation to polygamy, bigamy or Mormonism in any feature. It was remarked by one gentleman here, when he was asked the question if the last legislature did not pass *ex post facto* laws, he said he did not know whether it passed any *ex post facto* law, but there was one man in this body I admit too that supported that measure, and I answered that I did repeatedly; and I am glad I did it. If that law is *ex post facto,* if it is retroactive in its character, then let the supreme court

of this state or of the United States decide it. I was willing then, as I am willing now, to do anything that I can to break down the question of Mormonism. I don't care whether it emanates from a republican or whether it emanates from a democrat. This thing of harping into democratic ears, and threatening them, Mr. Chairman, if they adhere to what they consider a principle, that it will redound against their success in the future—that is not exactly the language of my distinguished colleague from Shoshone, but it carries its import and meaning. And I want to say another thing here. Every one of these gentlemen, who is getting up on this floor is saying he is not a candidate for any office. Well, I am not—at present. (Laughter). Whether I will be in the future depends upon how I stand with my own party. I shall never be a candidate for any office unless I am running on the democratic ticket; you can remember that. (Laughter and applause). Further than that, Mr. Chairman, so far as that matter is concerned, I will venture to say that each one of these gentlemen who said he would not be a candidate and did not expect to be a candidate, in less than eighteen months, whether we remain as a territory or are admitted into the Union as a state—each one of my friends who says he is not a candidate for any office, will be edging around some political convention seeking for the nomination for something. (Laughter). Now, to say that I will never be a candidate for anything—I will not say that, because I love the dear people; and so far as I am concerned in the counties in this territory and in the territory of Montana the people have returned my affection, and when I have ever run for office I have been successful, but it has not been for any office that had any of the boodle in it. (Laughter).

Mr. BEATTY. Do you think they would trust you in that kind of an office?

Mr. MAYHEW. I trust they will not trust me; I don't believe they would trust me.

Mr. Chairman, we are all trying to arrive at one end, at one purpose. The only question of difference between us is the method; it is the language and the sentiment and the principle that is announced in this article upon suffrage and elections which we will adopt. I think the substitute offered by my distinguished friend Beatty this morning to Section 4 was a correct one. It met with the approbation of every member, I believe, with the exception of one or two, in the democratic caucus; those opposed to it thought it was going too far; but the democratic caucus agreed to adopt the amendment of the substitute handed to the democratic caucus by Mr. Beatty. What occurred with the republicans I don't know. All I know about it is their action here today. We agreed to the substitute. I supposed that the substitute emanated from the republican caucus, and from the majority of the committee upon Suffrage and Elections; but it seems that that sentiment and the principle announced in that substitute did not come from either, but it came from eminent gentlemen, as I understand the gentleman, who visited this country from abroad—members of congress. Am I correct in making that assertion, that they were present and partially dictated it?

Mr. BEATTY. I prefer not to be questioned upon that.

Mr. MAYHEW. Very well; silence always gives consent anyhow.

Mr. BEATTY. I don't think I have a right, Judge, to disclose that.

Mr. MAYHEW. Very well, let that be as it is, Mr. Chairman. After the democrats had adopted this and sanctioned it, while we were all agreed to support it—and I am not going to say now that I am not going to support this fourth section as it stands—but I have got this to say, if you had this morning, gentlemen, (I don't desire to speak of unfairness upon the part of republicans) proceeded according to all parliamentary rules in this convention or any other deliberative body, the

minority report would have been taken up first, as minority reports should always first be considered. A motion was made this morning to lay the minority report aside and take up that of the majority; and the gentlemen representing the majority report, or the chairman, and the chairman of the minority of the committee said, as we had agreed upon this subject, "we will lay aside the report of the minority and take up that of the majority." Did any one of the members of this convention upon the republican side of this chamber say there was any objection to the substitute that was reported by the chairman of the committee on Suffrage and Elections? There was not one. But when it came to that particular article, and I desire simply to repeat the language of Mr. Batten, that we were going on so swimmingly and harmoniously that I supposed the whole article would be adopted without a single dissenting voice. I was led to believe so from the action of republicans so far as I had an opportunity to be informed. All at once one of the distinguished members got up and said "Let us stop and reflect, let us stop and think whether or not there is some loophole in this substitute by which the Mormons in the future, by some revelation from on high, by their declaring that they have abandoned the doctrine of polygamy and bigamy, may by that means become voters in this territory, and eventually destroy by that means the political system of this country." That was the gentleman's idea, I suppose, upon that. Now, as I said, Mr. Chairman, it is only trying to get at the same end by different means. Let me read for a moment Article 3. I will not read it all because it consumes too much time, and I only wish to speak but a few moments. I will only read this part as to offenses: "or who is a bigamist or polygamist, or living in what is known as patriarchial, plural or celestial marriage or in violation of any law of this state or of the United States forbidding such crime, or who in any manner teaches, advises, counsels, aids, or encourages any person to enter into bigamy or

polygamy or such patriarchial, plural or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid or encouragement of any order, organization, association, corporation or society, which teaches, advises, counsels, or encourages or aids any person to enter into polygamy or bigamy or such patriarchial, plural or celestial marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct are not the supreme law of the state."

Now, that is all there is of this article so far as polygamy is concerned. Now, gentlemen, Article 4 provides that the legislature "may prescribe qualifications, limitations and conditions for the right of suffrage additional to those prescribed in this article, but shall never annul any of the provisions in this article contained."

What is the purpose of Section 4? I ask every lawyer of this body, and every member of this body if Section 4 in this article is not included therein for the purpose of—what? Is it not engrafted in this article for the purpose of suppressing polygamy and bigamy in this territory? Is it for the purpose of doing anything else outside of what is asserted in Section 3? I say that without the amendment I have offered, that it does give the legislature the power to pass laws to affect other religious societies and secret societies. I honestly believe, Mr. Chairman, that it is a dangerous provision to put in our constitution. But I have this to say, if my amendment should be voted down, and anything should happen to this constitution by way of its rejection in congress, or rejection by the people, it cannot be said that it was done by the aid or influence of the democratic party. Notwithstanding, Mr. Chairman, I am persuaded from what I have heard from the parties upon this floor in relation to this institution, although not knowing and not having the fortune, as my distinguished friend from Idaho county, to live

among such a class of people for so many years that he knows their habits, their conduct, their religious sentiments and political sentiments, I am willing to concede every word that is uttered in relation to Mormonism is true, and if it is, Mr. Chairman, and I believe it to be true, I as a member of this convention, disregarding my political sentiments, am willing to do anything to break down and destroy such an institution as that. I do not believe they have a right to exist in this territory. I do not believe they have a right to exist in any one of the territories of the United States. I do not believe it should be tolerated by the democrats or republicans of this territory or any other territory. Therefore, I say, Mr. Chairman, I am willing to do anything to tear down and eradicate the institution of Mormonism in this territory. But, Mr. Chairman, in doing so I ask if we are not engrafting in our constitution something else. The amendment I offer is simply to the effect that the legislature shall enforce the provision as mentioned in Section 3. I have read to you, and you all know what Section 3 is. Now I ask you, Mr. Chairman, if you put in the amendment I have offered to this section, if the power given to the legislature then is not confined simply and solely to that institution of Mormonism? I don't care in what manner they may come up in the future, neither do I care what revelations they may have from on high; nor do I care where they assemble in this territory; the power then lies in the legislature of this territory to meet them upon the threshold and tear them down. If that amendment prevails it will meet with my approbation; and if it does not then I will have to exercise my own judgment whether it is prudent or not to support the section as it stands—Section 4. But, mind you, the amendment I offer, and I appeal to every member of this convention, if it is not for the simple purpose of directing the attention of the legislature to Section 3 of the article. If Section 3 did engraft within itself "or any other religious denomination, that was antagonistic to the

institutions of the American government," then Section 4 would be proper. But Section 3 alludes to nothing at all except the Mormons, the members of the church and those who teach or encourage bigamy or polygamy, and my amendment goes to that effect, that it requires the legislature to add to the conditions and limitations in the future in order to enforce the provision in Section 3. My distinguished friend said he would answer the proposition as to my amendment, and I listened to him very attentively, but I suppose in the discussion of the main question, as he regarded it, he omitted to give any reasons why that amendment should not be adopted. As I said before, Mr. Chairman, I did not intend to take any part in this debate and I am sorry that I have. I don't believe that I could change the sentiment of a single person in this convention, but I think the amendment I have offered is the proper one to enforce the provisions of Section 3.

Mr. SWEET. Mr. Chairman, while it is very difficult to keep still under a discussion of this character, still I do not intend to enter into this debate beyond one or two little phases of it, and that for not more than two or three minutes. I desire in the first place to answer one question that was asked by my friend, Mr. Reid, of Mr. Heyburn. I desire also to set at rest once and for all by a truthful statement of the facts, as they actually occurred, the deprivation, as it is termed by our democratic friends, of the secretaryship of this convention. At the time this convention was organized or before Mr. Claggett of Shoshone was elected president of this convention, he was acting as chairman of the caucus. Before we agreed upon one single proposition, or before any arrangement or understanding had been reached, Mr. Claggett appointed a committee from our caucus to meet a like committee from the democratic caucus to agree upon the officers of this convention. I had the fortune or misfortune, as the case may be, to be selected as a member of that committee. We met the members of the democratic

committee in this room here adjoining, the speaker's room, and it was conceded that the first choice belonged to the republicans by reason of the fact that they were in the majority in this convention, and it was of course understood without argument or without debate that the republicans would choose the president of this convention. The next choice devolved upon the democracy. They said the vice-president did not amount to anything, that it was purely an honorary office and they did not like to be compelled to select it, that the only two offices that amounted to anything were that of the president and secretary. We replied to them "Very well, if you do that the next choice is the secretaryship." They then replied to us "If we do that, you will select the vice-president." We said "We would make the next selection when our turn came, and it might be we would elect the vice-president, and we might select the sergeant at arms." And they retired from the room and said they were not authorized to select there. Now, what they reported, I do not know. What they reported I do not care, but I do know that there is the fact as as it occurred in that room, and if they wanted the secretaryship of this convention all they had to do was to take it. That is all there is of that proposition.

Mr. PIERCE. Let me ask you a question about that. While we were in caucus in the committee of the Whole, and before that committee was appointed, had it not been decided that the republicans should have the president and the democrats the vice-president?

Mr. SWEET. Not that I know of. I am only stating what was done in that room, and that was about what occurred, was it not?

Mr. REID. We had a caucus of the republicans and the democrats, and the gentleman who is now presiding over the committee made the suggestion of proceeding from that joint caucus, and it was there agreed that that should be the distribution, and the gentleman now in the chair remembers that was the case.

Mr. SWEET. If there were two committees con-

sidering dividing up the offices here, I know nothing about but one of them. If they had a committee appointed to grade and distribute these positions before the committees to which I refer were appointed, then all right. I don't know what they agreed to, but I do know this fact; I know what I have stated concerning what took place in that room is true.

Mr. PIERCE. Mr. Sweet, I do not understand it as you do about that. I understood the president and vice-president had been selected before we met in committee, and that then you asked the next choice.

Mr. SWEET. I did not so understand it, but I used the language repeatedly and I think Judge Morgan will bear me out, "If you think the secretaryship is so important, take it." Didn't I say that?

Mr. PIERCE. I did not so understand it.

Mr. SWEET. Well, I said it a dozen times, and that is the only caucus I know anything about.

Now, Mr. Chairman, I want to say a word or two with reference to my non-partisan friend, Judge Mayhew, because I think Judge Mayhew and myself are the only two non-partisan office-seekers in the convention. (Laughter). We are both non-partisan and we admit it; we are both a candidate for anything in sight, and we admit it—except we are not candidates for the legislature, because that bars everybody out for the senate, and we don't propose to be barred out.

Mr. MAYHEW. I never thought about that. (Laughter).

Mr. SWEET. Well, I was going to post the gentleman from Shoshone as soon as the convention adjourned.

Now, Mr. Chairman, concerning the amendment of the gentleman from Shoshone, I hope it will not prevail. I have always been opposed to an amendment of that character, unless an amendment could be proposed that absolutely and beyond all peradventure dispensed with a legal difficulty in the way of it. I was attending district court in Bingham county just before coming to this convention. I there talked with anti-Mormon lead-

ers, and men, Mr. Chairman, who inaugurated the war upon Mormonism in this territory; the men who, directing the early struggles against that institution, led the Gentiles of this territory to victory, and men who can let us know more about that institution and its peculiarities, its manner and methods of fighting, than all of us put together; and they submitted this proposition, that they would infinitely rather never see statehood at all than to see any provision in this constitution that in any manner might be termed stationary law. Because you might enact what you please, it remains but for some apostle to repair to some wilderness with his apostolic robe filled with bottles, and he will return in a few days and say "Lo, and behold, my brethren, we are in direct line with the constitution of Idaho." And Mr. Chairman, those people down there would rather have no constitution at all than to have a constitution that ties them hand and foot and leaves them at the mercy of this organization. And I say, I do not care how many words you insert in a clause, I do not care how many provisions you may insert in Section 3, so long as you have a clause in the section following that confines the legislature to Section 3, it is of no earthly value in this contest. When I came to this convention with my friend from Oneida county, Mr. Standrod, we talked it over down there, and the gentleman will bear me out in saying that in the republican caucus I combatted very earnestly for that idea, not for the reason I had any objection to the contents of Section 3, because I had none, but for the reason that in my humble judgment it amounted to absolutely nothing at all, and I thought the reliance of the people of this state must be placed upon that clause of the constitution which enables the legislature to meet this question on any phase and upon any ground at any time, and confident of the fact that it would have to meet it upon new ground before one year rolls around after the adoption of this constitution. It will be borne in mind that you adopted the test oath and the anti-Mormons re-

tired to southeastern Idaho and you congratulated each other that at last this question had been settled. Two years had not rolled around before the anti-Mormon leaders came into this legislature and asked for further legislation upon that very subject, and it became evident that the test oath was of no more value, that it was of no more power as against the Mormon organization in this territory, and affected it no more than a pea would affect a monitor fired from a squirt-gun, not a bit. Now, Sir, if that is the case, if that is our experience in the past, we want to profit by it. Gentlemen say that they have no fears that the people of Idaho territory will not take care of this question. Mr. Chairman, as a matter of fact, I have no fear upon that point, either. The gentleman who addressed us from Vermont the other day, as he looked over this convention, thought he saw in the faces of the delegates here a character of men that would not permit Idaho to be surrendered to Mormon control, and I agreed with him in that respect. And as I said before in discussing this question, if I believed it was possible that Idaho Territory could ever, under any circumstances be subject to this institution, with or without that clause in it, then, I say, as I said then, she is absolutely unworthy to even appeal to be admitted into the sisterhood of states, because it is the most despicable, disgraceful and disreputable thing with which I, in my short life, ever came in contact. But in our attempt to protect ourselves, if you stop short of giving the people absolute control and power to meet it in its newest phases, as they meet them from day to day, you will fail to do what is absolutely demanded by the situation in Idaho, not only as indicated by the past, but what we may anticipate in the future.

Now, Mr. Chairman, it is true that perhaps we may feel secure; it is perhaps true that no man will very soon desire to form any combination with Mormons. But when I discussed this question, Mr. Chairman, as was stated by the gentleman from Nez Perce, my friend Mr.

Reid, I did not discuss it as a republican or as a democrat, but, Sir, I discussed it as an American citizen. And I am going to tell you where I have seen republicans oppose it, and that is the very reason why we want this clause. Mr. President, combinations have been made in the past with this institution; and what has become of the men who made them? Why, Sir, wild flowers blossom over their little green graves like stars in the flowery dell. And so they will with anybody who should attempt to combine in the future; but mark you, it is not to be feared that democrats are going to combine; it is not to be feared that republicans are going to combine; but it is to be feared that the man who belongs to either party, who has no character and no conscience, may make that combination. It is a well known fact that in our neighboring territory of Wyoming they vote the republican ticket; that in Utah territory they vote the democratic ticket; that in Arizona they vote the democratic ticket, and in Colorado they vote the republican ticket. How are you going to deal with men of that character? There is but one way to deal with them, and that is to make it impossible for that organization to enter into any sort of negotiation with one party or make up any combination whatever.

Mr. PEFLEY. I am tired of sitting and thought I would get up awhile. I have been listening a long time to a great deal of eloquence. I have many times wished I was a great orator, and never more perhaps than on this occasion, from the fact that this is the time at which I think the very essence of the privilege of American citizens is endangered in this territory. I will read from the Fathers a few maxims in regard to this matter indicative of their jealous care of the right of election by the people: "No republican government can be permanent in which the people are denied a direct voice in the election of their representatives."

"Universal suffrage and equality of all men before the law."

"No religious test as a qualification for holding office, the right of citizenship, nor the right to vote."

"Taxation without representation is tyranny."

Such are a few of the maxims, Mr. Chairman, of the Fathers and framers of the Constitution of the United States, the Declaration of Independence, and of the various states of this Union. The constitutions of nearly all the states have qualifications for voters simply on citizenship, and being twenty-one years old. Even Indians, negroes, mixed breeds, are allowed those true American prerogatives without hindrance, without question with regard to what they believe on this or that question. Then I ask, why make a distinction of the people of Idaho? Other states and territories have the same people. There appears to be no particular objection and there appears to be no trouble in Utah where they vote and hold office. Mr. Kane is the delegate in congress, he visits the president, calls on the committees, he gets his pay from the United States, and no republican member that I have read of has made any attempt to kick him out of the halls of congress. Mr. Stewart here the other day, I think, gave the best solution in one word, solved this problem better than all the speeches I heard today, and that is, that there are not Mormons enough in these United States to affect Idaho or any part of it. But, Sir, it appears to have been reserved for Idaho's constitution to put in the first religious test in regard to the right of suffrage and holding office. Why not put in force that other despotic doctrine, which is the very same our fathers rebelled against, to-wit, Taxation without representation, a heresy against all good government, and which has been repudiated by every good citizen from the first settlement of the colonies down to the present time? Also that other more cruel, more bloody and more fiendish punishment for opinion's sake or any action? Sir, American citizenship is the highest work that can exist; I honor our principles and government. With it a man can travel the wide world over and all the time be pro-

tected by the hues of the stars and stripes. And if any court, potentate, no matter what his power is, should attempt to infringe the rights and prerogatives of an American citizen, all the powers of this government would be brought to bear, if necessary, to avenge his wrong and restore his liberty. Though it might exhaust the treasury, might decimate the army and navy of the United States, yet, if he were landed the next day after all this exhaustion of treasury and blood, in Idaho, and was a Mormon, and some of these statesmen should see him put a two-bit piece into a Mormon contribution box, he would be disfranchised and barred from holding office in Idaho. That is a proposition, gentlemen, which I do not believe anybody can deny. And I call upon every man here to defeat this measure, and if you cannot do it here, go before the people and show them their danger. Because what you empower a legislature to have by this power, would be to have the right to disfranchise every person that did not accord with their sentiments. But Mr. President, even this is not the worst proposition in this infamous code. It strikes down innocent men and women, who have never violated any law or statute in this territory, and whose faith is as firmly fixed as the martyr's ever was, and who are so situated that it would be impossible for them to renounce the faith even if they so desired. It even goes farther; it goes into the school among innocent children, it goes into the cradle of future generations and says "Because your parents were Mormons you are disfranchised forever." And these people being born in this state, and, without any fault of theirs, of Mormon parents, of course would be disfranchised under this law. But the most startling thing of all to every citizen of this territory is the granting of unheard of powers to the legislature in order to regulate the right of suffrage to suit the republican party and keep it in power forever. That is a broad clause, that every man in this convention, who cares anything about the rights of manhood should vote down. If Washington and

his compatriots assumed the right to repel these same invasions of the rights and liberties of the people, and received the plaudits and approbation of the world, I ask what has occurred since to deprive us of those liberties since achieved, and without which life itself is not worth living. (Great applause).

Political and religious persecution are supposed to have died at the termination of the revolution; but it appears that Idaho is again an exception, and that the bloody history of two hundred years ago is about to repeat itself, in sentiment at least, with all its hideousness in this state, which should be one of the most liberal, tolerant and enlightened in the American Union.

Now, these Mormons are citizens, subject to all the pains and penalties of laws and regulations, military and otherwise; pay taxes, bear arms, and are liable to the draft in case of war, but for all this they have nothing but suspicion and abuse. It may be very funny for any particular party to disfranchise those people, but I don't believe the republicans are any more scrupulous than any other party, and that they care nothing about the moral part of this business, but it is simply for spoils and honor. The very quintessence of the whole foundation of republicanism as announced in its formation was the equality of all men and universal suffrage. I challenge any republican to deny that. On that humane and just idea they succeeded. If not, why were the negroes made voters, when nine out of ten had no just conception of what the ballot meant? But now, in Idaho, this appears to be all changed, and you want the legislature to regulate the whole business as far as the right of suffrage is concerned. As for myself, I have very little confidence in legislatures, especially where a majority is made up of any one party. Under the lash they would be very likely to disfranchise any man that did not agree with the majority sentiments; on that it would be as complete in its inquisitorial powers as the holy Spanish Inquisition ever was in its palmiest state.

Let me say to every man in this house who does not expect to live by politics, who does not expect to live from office, to vote this thing down; and go before the people, if you cannot defeat it here and defeat it there. I wish to say one thing to a certain class of people here, and that is this, that I have a request to make of a certain kind of people on this floor, and that is, when you shall reach that beautiful shore and look over the jasper rampart into that dark abyss, you will bear witness in heaven that Pefley did not vote on this occasion to punish the innocent with the guilty, and that I shall have credit at least for one righteous act on the great Book.

"Question, question!"

The CHAIR. The question before the committee of the Whole is upon the adoption of the amendment offered by the senator from Shoshone.

Mr. MAYHEW. Don't call me out of my place, Mr. Chairman. (Laughter).

The CHAIR. Excuse me; the member from Shoshone. (Vote). The chair is in doubt.

A rising vote was taken; 19 for, 35 opposed.

The CHAIR. The amendment is lost.

Mr. MAYHEW. Mr. President——

The CHAIR. (Interrupting) It is moved and seconded that Section 4 be adopted.

Mr. MAYHEW. Mr. President, I have an amendment.

The CHAIR. (A vote having been taken while Mr. Mayhew was speaking) The ayes seem to have it. The section is adopted.

Mr. MAYHEW. This is the first time I have ever been in a deliberative body and was denied the right to address the chair.

The CHAIR. I did not notice.

Mr. MAYHEW. I spoke to the chairman three or four times, almost as loud as I could speak, and the chair paid no attention.

The CHAIR. I hope the member will excuse me; I did not notice him.

Mr. GRAY. Give him an opportunity now.

Mr. MAYHEW. No, Sir, I will not take it; but I do not like that kind of treatment.

The CHAIR. The secretary will read Section 5.

SECTION 5.

Section 5 was read. Moved and seconded that Section 5 be adopted. Carried.

SECTION 6.

Section 6 was read.

Mr. ARMSTRONG. I have an amendment.

Mr. BEATTY. Mr. Chairman, I move to strike out the section.

Mr. GRAY. Mr. Chairman, I move to strike the section out.

The CHAIR. Have the amendment read.

SECRETARY reads substitute for Section 6: "An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the legislature to enact such laws as shall carry this section into effect." Armstrong.

Mr. GRAY. I would ask, has not the motion to strike the section out covered it?

The CHAIR. I thought I would give the gentleman an opportunity to have his substitute read. The chairman of the committee moves to strike out Section 6.

"Question, question!"

Mr. CLAGGETT. I understand there is a substitute offered for the section.

Mr. REID. You must vote on the substitute first.

The CHAIR. That is correct. Is there any second to the motion? (Seconded).

The CHAIR. It is moved and seconded that the substitute offered by Mr. Armstrong be adopted.

"Question, question!"

(Voting in progress).

Mr. CLAGGETT. Mr. Chairman——

The CHAIR. Do you wish to speak to the question?

Mr. CLAGGETT. Well, I should remark. I rose before the question was put and addressed the chair.

The CHAIR. I will give you an opportunity.

Mr. CLAGGETT. The substitute offered by the gentleman from Logan is one worthy of the most careful consideration at the hands of this convention. Here is a proposition to provide for an absolutely secret ballot. I am ready to concede two things, that an open vote has merits and a secret ballot has merits, but our present system, which is neither secret nor open, has no merits whatever. We profess to have a secret ballot, yet leave it in the power of great combinations to control the votes of their laboring men by the hundreds of thousands. It ought not to be so, for when an American citizen goes to the polls to drop his ballot into the ballot box, nobody but himself and his God should know whom he voted for.

Mr. GRAY. How would the section read with that amendment?

Mr. CLAGGETT. The amendment is a substitute. It gets rid of Section 6 altogether and requires the legislature to pass such laws as will procure an absolutely secret ballot. Take the Australian system, for instance, or any one of those systems which have been adopted in any one of the states of the Union.

Mr. GRAY. I would be in favor of not adopting it at all, but will reject part of it.

Mr. MAYHEW. Mr. Chairman, I understand in relation to this, that ballots should be numbered as they are cast. It has but one purpose. And while I am not in favor of interfering with the ballot of any elector of this state, yet I am in favor of one thing, that in the event of a contest of election, in order to arrive at the fact of how any elector may have voted in order to ascertain the fraud, or whether he was entitled to vote, and whether that vote was a fraudulent vote, there should be some law by which that can be ascertained. The purpose of having that in the constitution, I can support that, for

the reason that it is necessary in a contest of election for officers, where it is contended that a person voted illegally, that there is no way of ascertaining the fact so far as the votes are concerned, but to ascertain how that particular person voted for a certain man. Then let the court ascertain that, and through that method—not that they should inquire and find out how everybody voted, but—allege in the complaint that A, B or C were fraudulent voters and that they voted so and so, but the only evidence would be the record itself. That would be primary evidence, and secondary evidence could not be inquired into, as to how he may have said he voted or any person said he voted. That would be secondary; in fact, it would be tertiary, too. And the object of that amendment is for that purpose, that in a case of a contest, that you may inquire as to how a man voted, and have the ballot box examined, his name, number and number of the ticket, which he puts in the box, in order to ascertain that fact. That was the object of the original, and hence I am speaking against the amendment by way of trying to retain the original text.

Mr. SWEET. I just want to say one word with reference to this matter. I hope the substitute will be adopted. I do not, in saying this, deny the fact that Judge Mayhew has given some very good reasons and sound reasons why the clause should stand as it is. The only question is whether there are better reasons why it should be stricken out and the substitute adopted. I think the reasons why it should be stricken out and the substitute adopted are better than the reasons why it should be kept; and I can state it in just one word and in just one minute. The great mass of men, who labor in this country for their daily bread, men who are working by the day and by the week for the various corporations throughout the country, ask of this convention an absolute guarantee that no man who employs them shall know how they vote. And I tell you it is an absolute right; it is simply protecting those men in

the exercise of the only great and sovereign right that should not be under any circumstances inquired into, and that should not be taken from them. Whenever you place it within the power of the employer to inquire by any means whatever, as to how his employee votes, then you injure the liberty of the employee in casting his ballot.

Mr. MAYHEW. If the gentleman will observe the section and its language he will see that it does not go to that extent. If I thought it would go to the extent he imagines, I would be in favor of striking it out or supporting the substitute. The hard working, industrious men of this country have a right to vote, and the employers and the heads of those great corporations should not have the right to inquire into how their employees vote. I say amen to that proposition. And I am in favor of a stronger election law, such as the Australian law or some other law that will take from the hands of those powerful corporations the right to dictate to their employees and the honest voter how they shall vote. I have seen it, and so has every member of this convention, from the section of the country we represent, that corporations have dictated to the voters how they shall vote, and stay at the ballot box, or dealt them out their tickets, and I am opposed to it. But that is not the question. The question is, in a contested election, to ascertain, when it comes to be proven before a legal tribunal, whether a man is entitled to his office, whether he was legally elected or not; the last resort is to ascertain how the person voted who is alleged to be a legal voter. That was the only point in it.

Mr. GRAY. I am in accord with that general right, if there is not too much of this. My early life was in New York on the Erie canal. I have seen too much of this, and I don't want to see any more of it. I don't want any system by which they can trace a man's vote. If they can, he loses his job, and I am bitterly opposed to anything, I care not if he is not a legal voter, whereby you can tell how he voted. You can tell whether he is a

voter or not. As to how he voted, I am with my friend from Shoshone; it is between him and his God. Because these votes can be investigated, you may put all the restrictions around it you want to. I have seen hundreds of Irishmen going and voting the whig ticket because they had to.

Mr. MAYHEW. Did they belong to the Tweed outfit?

Mr. GRAY. No. Tweed came after my time.

"Question, question."

Mr. ARMSTRONG. My friend Mayhew wants a secret ballot. I cannot see for the life of me how he is going to have a secret ballot. It is a system that has been in vogue until lately in the territory of Utah. I had some practical experience of it there myself in 1872. I found it was not a secret ballot by any means; it can be known to anybody who desires to know. The object of this substitute I have introduced is simply to provide a secret ballot. The legislature may provide a secret ballot, or shall do so. And that working men may not by corporations be driven up to the polls and voted as they choose to vote them. If they don't vote that way they lose their positions; and there is many a poor man in this country who votes against the dictates of his own conscience for the simple reason that he has a family to support, and has to hold his position.

Mr. GRAY. Let me hear that substitute read again, and perhaps I will withdraw mine.

SECRETARY reads: An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the legislature to enact such laws as shall carry this section into effect.

Mr. GRAY. I will withdraw my motion.

SECTION 1.

Mr. CLAGGETT. Mr. Chairman, I would suggest that that clause be added at the end of Section 1. "All elections by the people must be by ballot;" and then add "An absolutely secret ballot is hereby guaranteed,"

and if the gentleman will make his motion in that way it will save making two motions and it will come in under that head.

Mr. ARMSTRONG. I accept that suggestion.

"Question, question."

The CHAIR. The question is upon the adoption of the substitute for Section 6 as offered by the gentleman from Logan county.

Vote taken. Carried.

Mr. CLAGGETT. I now move that it be added to the end of Section 1 as a part of the section. (Seconded. Vote and carried).

Mr. BEATTY. Mr. Chairman, I now move the adoption of the majority report as so far adopted. (Seconded).

Mr. TAYLOR. Do I understand that that strikes out Section 6?

Mr. BEATTY. Yes.

Mr. CLAGGETT. It was adopted as a substitute for Section 6, and stood as Section 6, and then by a second motion, as Section 6, it was added to the end of Section 1; so that it is all disposed of.

The CHAIR. It is moved and seconded that the majority report as amended be adopted.

The vote was taken on the question. Carried.

Mr. GRAY. I move that the committee rise, and report the article to the convention. (Seconded).

The CHAIR. It is moved and seconded that the committee rise, report progress to the convention, and ask that the convention adopt the majority report.

Vote taken. Carried.

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. McCONNELL. Mr. President, your committee of the Whole has had under consideration the majority report of the committee on Suffrage and Election, and beg leave to report the same back with amendments, to the convention, with the recommendation that it be adopted.

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