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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 II.

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The CHAIR. Under Rule 49 the report of the committee is before the convention for further discussion or amendment, or any other disposition that it may see fit to take.

Mr. SHOUP. I move that the convention take a recess until 7:30 p. m.

Mr. HEYBURN. Mr. President, I move to amend that, that the convention convene now and proceed to consider the majority report of the committee on Suffrage and Elections and adopt the same.

Mr. AINSLIE. We would propose some amendments to that, and if you desire to keep us here until after supper, I can stand it.

Mr. MAYHEW. I move that we adjourn until 7:30 or 8:00 o'clock and then take the matter up.

Mr. CLAGGETT. I don't suppose there will be any objection to adjourning.

Mr. HEYBURN. I do not desire to press the motion. I simply desire that the convention shall consider this under Rule 52, and then take it up so that it may be ordered engrossed and put upon its final reading tomorrow morning.

Mr. REID. That is a pretty important amendment.

Mr. HEYBURN. I thought we could finish it in ten minutes.

Mr. REID. No, we cannot.

Mr. AINSLIE. I move we take a recess until 9:00 o'clock tomorrow morning. We have worked nine hours a day, and it is hard enough.

The CHAIR. It is moved and seconded that we take a recess until half past seven o'clock p. m.; to that is an amendment that we take a recess until eight o'clock p. m. and a further amendment that we adjourn until nine o'clock tomorrow morning.

Vote taken and division called for. On the rising vote on the question to adjourn until 9:00 a. m. there were 17 for and 32 opposed. The motion was lost.

The CHAIR. The question recurs now on the motion to take a recess until 8:00 o'clock p. m.

Vote taken and motion carried. Whereupon a recess was taken until 8:00 o'clock p. m.

EVENING SESSION.

The convention was called to order by the president.

EMPLOYMENT OF ENGROSSING CLERK.

Mr. WILSON. I am informed by the secretary of this convention that we are in need of an engrossing clerk, and there is a young lady who has volunteered to act in that capacity and take her chances as to her pay therefor. I therefore move that Miss Hetty Cahalan be appointed engrossing clerk of this convention for the remainder of the time, at the same pay as the assistant secretary, namely, $5.00 per day.

Mr. MAYHEW. I want to inquire about this engrossing business. That is the most important position any one can have in the office of clerkship. I don't say it is not a position for a young lady, but I venture to say, Mr. President, that there is not one clerk in a dozen that can engross the amendments to the different sections and different articles that have been introduced and passed in this convention. It is one of the most difficult things for any clerk to do, and takes an experienced hand to do it, to have the engrossments made in the proper place and in the proper section. While I have no objections to this young lady, if she understands that line of business, I say it should require a very experienced person to undertake to perform that duty. It is no trivial matter. An engrossing clerkship is the most difficult position of any clerk in any body, much more so than enrolling clerk, more so even than that of the chief clerk. The most important thing for the chief clerk is the labor of keeping the minutes correctly, but the work of the engrossing clerk is the most difficult thing in it to be done.

Mr. WILSON. I have information that the young

lady is qualified for the position; if I did not think so I would not make the suggestion.

Mr. MAYHEW. Has she had any experience in this business?

Mr. GRAY. I think she is thoroughly competent. She understands it, and she will be under advice that is good, so that if she needs any advice she knows where to get it. (Seconded).

Mr. SWEET. I don't think it is quite right for the gentleman from Shoshone to question Mr. Wilson's knowledge upon this subject.

Mr. MAYHEW. I don't care what any gentleman thinks about that. We are devoting a great deal of time to this, and if there is any deal to be made to educate a female, I object to it, I don't care whether it is democratic, republican or Mormon. (Laughter).

The motion was then put to a vote and carried.

Mr. BEATTY. Mr. President, I move that we proceed to the consideration of the report of the committee of the Whole upon the majority report of the committee on Elections. (Seconded. Carried).

ARTICLE VI.

Mr. BEATTY. Mr. President——

Mr. CLARK. There are ladies in the house, and I respectfully ask that gentlemen do not smoke.

Mr. BEATTY. Mr. President, I believe that under the rule we are required to take up and adopt this section by section. If I am not wrong in that, I move that we proceed to read it section by section and adopt it.

SECTION 1.

SECRETARY reads Section 1: All elections by the people must be by ballot. 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.

Moved and seconded that the same be adopted. Carried.

SECTION 2.

SECRETARY reads Section 2: Except as in this article otherwise provided, every male 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 offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article, may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho territory.

Moved and seconded that the same be adopted. Carried.

SECTION 3.

SECRETARY reads Section 3: No person is permitted to vote, serve as a juror, or hold any civil office, who is under guardianship, idiotic or insane, or who has at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling his vote, or purchasing or offering to purchase the vote of another, or any infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or who is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, 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, encourages or aids any person to enter into bigamy, polygamy, or such patriarchal, plural or celestial mar-

riage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state;" and then this is added: "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."

The CHAIR. There was an amendment in the beginning of that section which is left out.

The SECRETARY. "—or purchasing or offering to purchase."

The CHAIR. Before that; "Bartering or selling," comes in afterwards.

The SECRETARY. It was not written and sent up.

The CHAIR. "—or offering to barter or sell." "No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has at any place been convicted of treason, selling, or offering to barter or sell his vote," etc. It is moved and seconded that the section be adopted.

Mr. TAYLOR. I move to amend by inserting after the word "marriage" in line 6, the words "or unlawful cohabitation."

The CHAIR. Reduce the amendment to writing and send it up.

Mr. MORGAN. I think it is covered by the language that follows.

Mr. TAYLOR. Well, if the gentleman thinks it is covered we will let it go.

Mr. MORGAN. Mr. President, I call the attention of Mr. Taylor to the language of the section: "or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States." If he is living in unlawful cohabitation, he is living in violation of the laws of the United States.

Mr. TAYLOR. I will withdraw my amendment.

Mr. GRAY. No, I hope he will not; I want it too.

Mr. TAYLOR. It is withdrawn.

"Question, question."

The CHAIR. It is moved and seconded that the section as amended in the committee of the Whole shall be adopted.

Vote taken. Carried.

SECTION 4.

SECRETARY reads Section 4: The legislature may prescribe qualifications, limitations, and conditions for the right of suffrage additional to those prescribed in this article, but it shall never annul any of the provisions in this article contained.

It is moved and seconded that the same be adopted.

Mr. AINSLIE. Before that motion is put I desire to move to strike out Section 4 and substitute in lieu thereof the substitute that was offered in the committee of the Whole. (Seconded).

The CHAIR. It is moved and seconded that Section 4 be stricken out and the substitute which was offered in committee of the Whole this morning adopted in its place. The secretary will read the substitute.

SUBSTITUTE FOR SECTION 4.

SECRETARY reads: Section 4. The legislature may prescribe qualifications, limitations, and conditions for the right of suffrage concerning the classes of persons referred to in the immediately preceding section additional to those prescribed therein, but shall never annul any of the provisions in this article contained.

Mr. AINSLIE. Now, Mr. Chairman, before that question is put—I took no part in the debate prior to the adjournment this evening—but this is a very important section, an innovation upon all precedents I have ever seen established by any other constitution of any other state in the Union. I take it, Sir, that constitutions are adopted by the people for the purpose of dividing the political power of the state among the several departments of the state government, the executive, legis-

lative and judicial; and the respective powers of these three several departments of the government are always placed in the constitution. Now gentlemen tell us that it is perfectly safe to devise to the legislative power of this territory the right to say what class of people shall vote and what class of people shall not vote. I say, Sir, that that is a very unsafe theory to advance. If the legislature is such a pure and virtuous body as described by a good many advocates of the pending section, they can safely be trusted with power every two years to say who shall be electors of the state of Idaho. Why should the committee upon the legislative department of this government reported by the honorable gentleman from Bingham a few days ago, incorporate within Section 20 (19) limitations upon the legislative power in forty different instances in one section? The language in that section was adopted, I believe, by a unanimous vote of this convention; according to my recollection there was not a dissenting voice. And still when it comes to managing the interests of the people of this state; when it comes to regulating corporations, granting franchises, providing for the punishment of crimes and misdemeanors, regulating the practice of the courts of justice, granting divorces, etc., the gentlemen who have advocated this Section 4 in this elections and suffrage article say that you cannot trust the legislature with those powers. That you must in your organic law limit the power of the legislature in all these monied transactions and corporate franchises; and yet, when it comes to the most important interest of the people; when it comes to the rights and liberties of the people, as you might say; when it cames to the right of the people who pay your taxes, who pay the revenue that carries on this government, who are guilty of no crime against the law of the land, who are guilty of no crime against the constitution of your state, *then* you leave it entirely within the discretion of the legislative body,—a biennial mob, you might call them—to say every two years who shall and who shall not vote! Now, this

territory has had some wonderful experiences with these legislatures; and you know in times of excitement, like in 1855 and 1856, when the Knownothing excitement swept over the country, which was only after the hardest political fight ever made in the United States by Henry A. Wise of Virginia, squelched in the United States. I see it springing up here today. It has come up to the second and third generations, and it has also come up in the shape of anti-Masonic excitement over fifty years ago in the state of New York. Now, Sir, it was admitted by the chairman of the committee and not denied by the eloquent gentleman from Shoshone, nor by any man who addressed the convention on Section 4—it is not denied by one of them—but what under Section 4 the legislature can disfranchise, not only the people that it was directed at, but they can disfranchise Masons and Odd Fellows, members of the Catholic church, Presbyterians, Methodists, or those of any other church; and the member from Ada was honest enough to say that they ought to be controlled just the same as Mormons, if they did anything.

Now, I know of no denomination in the United States outside of Mormons that ought to be disfranchised, except Mormons themselves. That has been the hue and cry of republican orators in this territory for the last five or six years. We have met them fairly and squarely on that issue today, and I will say that we will go as far as you or anyone else in this territory to disfranchise Mormons; or any person that aids, abets, assists or encourages them in any of their practices, not only polygamy and bigamy, but who hold their laws superior to the laws of the United States.

The gentleman from Oneida said it was not only bigamy and polygamy that was to be squelched, but this shadow of theocracy that is hovering over the eastern end of Idaho Territory. I say that the provisions of this article as submitted by the majority, and which the minority agreed to, covers that whole doctrine altogether. And we will refer to lines 13 and 14 in Section

3: "to enter into bigamy, polygamy, or such patriarchal, plural or celestial marriage,"—it disfranchises all those classes; "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, by the law of revelation referred to by our eminent Josephite on the other side of the house, and also by the gentleman from Oneida county, that revelations may take place some time or other, I think those fellows are in perfect line with the constitution. Well, if they ever have such revelations, or ever will have them, they must recognize that there is a power superior to the law of the state, either constitutional or legislative enactment; then they are barred out of the right of franchise or the right to hold office, by lines 13 and 14. And it not only covers that case of Mormons, but also anarchists and communists, who believe in no law whatever. And of course, people who do not believe in being bound by any law, human or divine, should be disfranchised in any state of the American Union. That goes far enough—it covers the whole subject—Mormons and anarchists. Why is it necessary to go any farther than that? As to the substitute reported by the chairman of the committee and voted down in the committee of the Whole, it refers particularly to Section 3, and authorizes the legislature to make any limitations or restrictions or rules or regulations necessary to completely disfranchise the class of persons referred to in that section. What was the object of this body on this floor of incorporating in the constitution of the state that Section 4? One of the most infamous declarations that was ever put into a constitution by any free people: "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."

Now, that does not refer to Mormonism particularly, and yet that section stuck to them like death to a dead nigger. They stick to it, and say that the whole sup-

pression of Mormonism, polygamy and bigamy is embodied in Section 4, when it does not mention it at all. The whole thing is covered by Section 3, and the substitute offered by the chairman of the committee and agreed to by every democrat in this convention establishes the right of the legislative body of this territory to prescribe all those rules and regulations necessary to carry out the intention of the makers of this constitution, to suppress entirely and disfranchise all those Mormons and all those persons who entertain those theocratic ideas. Now, why should the constitution in one place limit the legislative power in one interest, as compared with this great question of the franchise? I believe, Sir, that the franchise should be adopted in the constitution as it is in the constitution of every state of the American Union. I say it should be established firmly, so that it could not every two years after an exciting political contest be left to the whims and caprices of a biennial mob of adventurers who seek places in the legislative assembly. I say this convention represents the people, represents both parties of this territory. They know who they want to exercise the right of suffrage; they know who they want to hold the offices of this state; they know how they want them to be elected; and they place in the legislature sufficient power to carry out the intent, and that is all. And I am opposed, Sir, to placing it in the hands of any body of men, be it a republican legislature or a democratic legislature to say every two years who shall be electors and hold office in this state.

I believe I have said all I desire to say on this section. I desired to place myself on record that I will go as far as any republican in this house. Let them draw another section that will cover this Mormon or theocratic doctrine, and as strong as they please, and use every book between the book of Genesis and Revelations, and we will accept it. But when you come to place the liberties of the remainder of the people in the same category with Mormons, I shall object, and

upon this question I call for the ayes and nays. (Applause).

Mr. PARKER. The section under consideration confers upon the legislature of the state of Idaho authority to disfranchise our fellow citizens who have committed no overt acts against the laws of our state or our government. I for one am opposed to it. I say that the doctrine asserted in this section is something that is not contemplated; something that never was transacted; something that was never contemplated in the jurisprudence of our country before. Why, Mr. President, under that section the legislature of the state of Idaho has authority to disfranchise any part of our fellow citizens who generally vote the democratic ticket, even as my friend and colleague, Mr. Ainslie, has said. You have given the legislature authority under this section to disfranchise anything or anybody. And while I have studied the test oath business, while it has been a factor in the politics of this territory, I say here today that the sole object of that test oath legislation in our legislatures has been for no other purpose than to disfranchise these people in southeastern Idaho, not because they were polygamists, not because they were Mormons, but because they voted the democratic ticket. Now, Mr. President, we were told on this floor the other day by one of the distinguished bloodhounds, who came here from Michigan—we were told by one of those bloodhounds who came down here to trail these Mormon people—that there is something worse in the Mormon church than polygamy, and so there is; and that is the theocratic doctrine of the Mormon church. But, Mr. President, look over the tenets of the doctrines of any church in the United States today and you will find the same theocratic doctrines existing. Why, Mr. President, I refer you to the Sharswood edition of Blackstone's Commentaries on English Law, and you will find there that the Romish priest of the Roman Catholic church, when he takes the oath of allegiance, he renounces all allegiance to the

temporal powers of the state, because those temporal powers conflict with his oath of allegiance to the Pope of Rome. Mr. President, we assert the same thing in the preamble to this Bill of Rights. As I told you the other day, you have incorporated in that preamble a constitutional Jehovah, and you thank that constitutional Jehovah for the blessings of freedom you enjoy, and express your gratitude to that constitutional Jehovah for those blessings. Now, I am not an atheist nor an infidel. I am a member in good standing in a Christian church; I am a communicant in the Episcopal church of the United States of America, and I will go as far as anyone to maintain those doctrines of Christianity; but I cannot stand here and put into this organic law of the proposed state of Idaho any law or any power or any doctrine, which shall confer upon a state legislature authority to disfranchise you, Mr. President, or me, or any delegate upon this floor for our religious beliefs. I did not come here, Mr. President, and I was not sent here to give away my own rights nor to give away the rights of anybody else, and I tell this convention here and now that if this clause is put in that constitution I shall go home to my constituents and tell them to vote this constitution down. I would have the gentlemen further recollect that one-half of the people of this territory are democrats, and that we do not propose to sacrifice any of the rights of civil or religious or political liberty, which have been handed down from our forefathers to ourselves.

Mr. MORGAN. Mr. President, I did not think I would take any part in the discussion that has been going on with reference to this section, and I have withheld anything I might have to say until the present time for the reason that I did not think there would be any more discussion with reference to it. But this discussion has been renewed by the gentleman from Boise, for what reason I do not know. I do not know that anything the genteman has said will affect the

vote of this convention at all; I do not know that anything I may say will affect one vote in this convention, or will have any influence upon the gentlemen who are the members of this convention. However, I desire to say a few things in reply to the gentleman from Boise.

He says this is an innovation which is unheard of in this country. The attention of this convention has already been drawn to the fact that we have lived under precisely such a law as this for the last twenty-five years, ever since this territory was organized. We have had the absolute power to disfranchise anybody, members of the democratic party, members of the Catholic church, members of the Masonic order or any other secret societies. Has this power been abused? We have not only had this power, but there is not a territory in this Union—the Dakotas, Montana, Washington, Wyoming, New Mexico and Arizona—every territory within the boundaries of the United States government has had the same power. Have they abused it? I think not. They have intimated that the labor organizations may be disfranchised. Is there any gentleman on this floor who believes for a moment there is any truth in this assertion? Why, we have one man upon the floor of this house representing labor organizations today, and he is more honest, I undertake to say, than any man in this convention. He is a man of good sense, and he gets up and proposes some little amendment, everybody makes haste to adopt his amendment, and yet nobody is a candidate for office! Almost every man in the convention who has spoken, except Mr. Ainslie, and one or two others, I believe, has announced publicly that he is not a candidate for office, and yet, when this gentleman who represents the labor organizations of this territory announces a proposition we all make haste to adopt his proposition into this constitution. Now, this means something, gentlemen. It means simply this, that the labor organization is a power in this country. Not only is the labor organization, but

the Masonic organization is a power in this country; so is the Catholic church a power in this country. So is every church that has an organization within this territory, and no man would ever have the temerity in the legislature of the territory of Idaho to even propose that one of those organizations should be disfranchised. Mr. President, and gentlemen of the convention, it is not this that these gentlemen fear. They tell us they are as ready as the republican party to incorporate in the provisions of this constitution anything that shall prevent the Mormons from voting. Now, I give the democratic party this credit; they stand today substantially with the republican party. I give them further credit. There are democrats upon the floor of this convention who would leave the party rather than be drawn into anything that might favor the Mormon organization, and they would leave it at the drop of the hat. Why would they leave it, and where have they obtained these opinions? Simply, Mr. President, because they have lived under the shadow of this fell evil. That is the reason.

Now, the gentleman from Nez Perce says he has done as much as any man on this floor to wipe out the Mormon organization in this territory. I tell the gentleman, although I admire him very much, and think he is a very honest and honorable man, that he has not begun to learn what Mormonism is. I know this much, that if we had this gentleman down in Bingham county or in Oneida county during an election, or if we had him during a term of court, there would not be a man on this floor who would go further than he would be willing to go to wipe out this organization and prevent it from having any political power in this country. But, gentlemen, we must recollect, we cannot forget, that within the last ten months the democratic party met in convention in the city of Boise and had in its organization, in its councils nominating candidates for office in this territory, a full-fledged Mormon. And when it was suggested by a gentleman who came

from our part of the country that he should be kicked out of the convention, he was voted down, he was not listened to. Then, gentlemen, I say we may well fear that possibly somebody in the democratic party may hereafter desire to get these Mormons into their organization in order to vote for their candidates.

It has been well said that these Mormons care nothing about the democratic party. It is true. The republicans could get every vote out of the ranks of the Mormon organization inside of a week from today, if they chose to do so. It could get them pledged to cast every vote they might have in the future for the next ten years for the republican organization, if they would adopt a constitution that would permit those people to vote. That is the kind of organization this is. They make terms with anybody or everybody. When you ask these gentlemen if they like the democratic party or if they are democrats at heart, they will tell you that both parties in this country for all they care might be sent to the sulphurous shades of Sheol. They care nothing about that. All they care for is for Mormonism, for this theocracy. It has been well said that polygamy and bigamy are the least of the crimes. Gentlemen, they have been guilty of every crime in the calendar, murder, incest, arson. There is within the sound of my voice today, tonight in this hall, a man who had a son in the prime of manhood, full of the strength of youth, as good a man as has been raised in this country or any other country, who was within the last two years lured into the mountains and shot down and his carcass left to be devoured by carrion birds by this Mormon organization. For what crime? For no crime, except that his father was an anti-Mormon, and had written and had talked against the Mormon organization. Gentlemen of this convention, this is no new crime. Murders have been committed by hundreds by this organization, not only in this territory, but in the territory of Utah; and this old man who sits here, gray, and has spoken in this convention today, can tell

you of crimes that would make your blood curdle in your veins, committed by this organization, and not only committed by members of the church, but ordered to be committed by those who are in power. And the time has been, and it is scarcely past, when they would name some man to be killed, and within a week or a month he would be killed. Within the last few years men have been killed in this way. These are among the crimes committed by this church. They are the least of the crimes. The whole intent and purpose of this organization is to overthrow the government of the United States. When the North and South were engaged in a death struggle only a few years ago, Brigham Young and other prophets of that church, in their public meetings hailed the day when these brothers were warring, and said the time would come when this government would be destroyed and they would be the ruling power, and they prayed God that the day might be hastened, might come soon. They believed with the late lord in parliament, that the great American bubble had burst, and that this nation was no more, and they have taught their people that they would rule this country with a rod of iron; they would have absolute power, and not only this country, but they would rule every kingdom under the shining sun. It is this cloud, this incubus that hangs over the beautiful part of our territory, which we wish to wipe aside, to scatter its power. Why, gentlemen, do we wish to insert this clause in this section? It has been announced by Mr. Standrod and by others upon this floor, it is better that we have nothing in the constitution in regard to Mormonism, and leave the whole power in the legislature of the territory, than that we should have any rule that would bind the legislature hereafter to any rule or line of conduct. And this would bind it down. I care not how strong you make these provisions in this constitution, how iron bound they may be nor what qualifications you impose upon those men, they will bring themselves and their church within those qualifi-

cations. They care nothing for your oaths; you may make any oath you choose; you may frame it as strongly as possible, they will gather together hand in hand and at the bidding of their church they will take it. We have seen it within the last few months, within two days' time that the last election was held, hundreds of Mormons withdrew apparently from the Mormon church. Why? Simply because the law forbade a man who belonged to this organization the right of suffrage—did not allow them to vote. Even the day before the last day when they could register hundreds of those men withdrew from the Mormon church and their withdrawal or resignation was accepted by the bishop and the next day they went in and registered and came up to the polls to vote. Does any man believe those men left the Mormon church in good faith? They left it simply that they might vote for the candidate or persons whom they believed would favor their organization, and they went so far as to say they could leave the church one day and join it the next, and they can. Those men left the church by hundreds, and their resignations were accepted by the bishop. Does anybody believe they left it of their own accord? Is there a man here that believes they are not counselled by the bishops to leave it? No, they were counselled from Salt Lake; George Cannon rules this church with a rod of iron. He has a despotism more tryannical and more despotic than the despotism of the czar of Russia today. He tells one man to go, and he goeth; another to come, and he cometh. And if we adopt a constitution here that will permit these Mormons by any hook or crook to come into this territory to vote, we can be overwhelmed and voted down within six months. All they have to do, they send word to the bishops of the different wards that they want so many men to go to Idaho, to the Snake river or any other part of the country. The bishops call meetings, call for volunteers, as many as choose volunteer, and if they do not get enough from each ward in this way they send their

teachers around to this man and to that man and they tell him to go, and he picks up his little traps, gathers together his little effects and herds, loads his children into the wagon and starts for Idaho. They have the men, they have the power, they have the organization by means of which they could swamp every voter in this territory. And therefore we say, we who have lived in that part of the territory and know their methods, therefore we say that any rule we put in this constitution that makes it a cast-iron rule is utterly useless and worthless, and we want the legislature always to have the power to exclude those men from the right of suffrage under whatever form or in whatever shape they may come up to vote.

Mr. AINSLIE. I want to ask the gentleman a question. I would like to have you take that substitute and ask you as a lawyer whether that substitute does not cover the whole question.

Mr. MORGAN. I do not recollect the substitute exactly.

Mr. AINSLIE. I will ask the clerk to hand it to you, and then I will ask you as a lawyer whether that does not cover the case.

Mr. MORGAN. The substitute is this, I believe: The legislature may prescribe qualifications and conditions for the right of suffrage concerning the classes of persons referred to, in the immediately preceding section, additional to those prescribed therein, but shall not annul any of the provisions in this article contained.

Mr. AINSLIE. That is the substitute.

Mr. MORGAN. That is the substitute, I believe. I have simply this to say. They would put themselves outside of any of those classes. They would change the *name* of the Mormon church. It has been proposed to disfranchise Mormons. They would call themselves by another name, within a month or within a year. They care nothing for the name; it is the power they want.

Mr. AINSLIE. I will ask the gentleman another question, as to whether any provision in this bill by the majority or the minority uses the word Mormon or Latter Day Saints?

Mr. MORGAN. No, it does not.

Mr. AINSLIE. Then why does not the substitute cover the business when it refers to Section 3?

Mr. MORGAN. Simply because it refers to those classes named in Section 3. I say they will put themselves outside of all those classes.

Mr. AINSLIE. I want the gentleman, if he pleases, to give me a candid answer as to whether that does not cover that whole question.

Mr. MORGAN. I have endeavored to give the gentleman a candid answer, Mr. President. My answer and what I have said has been in the most candid way all the way through. I tell you, I have reason to know, and every man who lives in that part of the country has reason to know that any provision you can put in this constitution, which cannot be altered or changed, will be met by this organization. They will put themselves, I say, outside of the classes you have named there. In other words, they will have a revelation, as has been stated, against polygamy and bigamy. They will avow themselves to be obedient to the civil power of the state and of the United States. They even now do those things, and yet it is well known that in their secret organization, and in their secret councils they will defy every law that is upon the statute book that is against their interests and against their principles. Last fall, Mr. President, at the term of court at Blackfoot—and some of these gentlemen have seen those people in those courts, and any man who has seen them will get a pretty good idea of the Mormon organization—last fall when a question came up with reference to a mandamus issued by the court below the register in Bear Lake county registered the Mormons and permitted them to vote when that case was on trial in Blackfoot before Judge Berry, and they brought

in three presidents of the stake in this territory, ten or fifteen Bishops of this organization, and those men testified there in open court that they had forbidden their members to teach polygamy or bigamy anywhere in Idaho Territory, and they said there had been no organization in this country that had taught polygmy or bigamy in the last year or year and a half, and I don't know but what some of these testified that it had not been taught within two years. And therefore they said that members of this organization had the right to be registered and to vote, and they asked Judge Berry to make this decision. Every one of those men from the highest to the lowest, presidents of the stake and bishops, were asking for that, and yet were living in polygamy. They answered that they were. One of them, the old president of the stake in this territory, had six wives with whom he was living at that time. I don't say he was living with them, but he said he had six wives, and he had never put them away. Another answered that he had three wives, another that he had four, and so on to the end. And let me say, there is not a single man put in power or in position in the Mormon church unless he is a polygamist in practice. They will not permit him simply to be a polygamist in belief. And the doctrines of the Mormon church as enunciated in the book of doctrine and covenants, which is the authorized version, which is the authority by which to determine what are the doctrines of the Mormon church, is today just as it has stood for the last forty years, and it upholds and enjoins and teaches and advises polygamy and bigamy. Not only that, but it denounces to damnation and with all the eternal punishment that they believe can be inflicted upon a man or a woman, upon the woman, the first wife, if she does not consent to it. And I tell you, gentlemen of this convention, within the last two years, Mormon women, the first wives, Mormon wives, have come to the Gentiles and begged upon their knees almost that they would frame some law that would put down this terrible crime and enable them to

live as citizens of the United States from this on, and give them their freedom, their liberty. They do not dare to say anything openly, because these bishops have absolute power over them. They can ruin any man who opposes their organization, who has ever belonged to it. That is the reason. When they come into a country to colonize it, they take up the water. The water of this country is the life of the country. You all know, gentlemen, that nothing can be done with the land in this part of the country without the water. The bishop controls absolutely the water, and the man who dares to raise his voice against this organization, either privately or publicly, if it is discovered, has the water cut off; his stacks are burned, his cattle are killed upon the range, his barn is burned, and perchance his house, and he is a ruined man. For this reason they dare not vote, they dare not talk, they dare not exercise any of the rights that an American citizen may exercise in this country. At the beck and nod and command of the church they are absolute slaves. They will do this or that without regard to the consequences, without regard to the criminality of the act they are committing, if it is enjoined upon them by the bishop or by those in authority. Now, gentlemen of the convention, these are some of the reasons why we do not want any rule in this law which shall make a set of qualifications for these Mormons. We must have this left open so that further restrictions can be enacted by the legislature if we would handle these men, and I tell you that the men of this territory are capable of handling it. Men in other parts of the territory may do what they please, they may stick to their republican and democratic organizations, but I tell you in our part of the territory there is not a republican, there is not a democrat on this question. And we will send men here every time to legislate, democrats and republicans who know how to vote and who know what this question means. We sent here Mr. Taylor, he is as good a democrat as there is in this hall today, to the legis-

lature, to the council.[1] We sent here Ned Ireland from Oneida county;[1] he was born in Baltimore, born and bred a democrat, and his father and grandfather before him were democrats, and we were republicans. I with the rest put in my vote for Sam Taylor and for Ned Ireland. Why? Because we knew, notwithstanding they were democrats, they were right on the question of all questions which was near to us, and which we must have settled. We voted for Mr. Sparks, also from Oneida county,[1] another man I believe born and raised in Texas, and if the gentleman from Nez Perce was down there, although he is not a candidate for office, he would not be there six months until we would be willing to vote for him and be glad to do it because he would be as strong an anti-Mormon as there is today on this floor. And that is why, gentlemen, we desire this constitution to be left open. These are among a few of the reasons why you find democrats on this floor like Mr. Standrod, the gentleman from Oneida, who was also born in Kentucky and born like his grandfather and father before him into the democratic party —that is why he stands here and says that the caucuses have no power over him when it comes to this question. Those are the men that are made down there, and those are the men that we believe in. Mr. President, I thank you, and I thank the convention for listening to these desultory remarks.

"Question, question."

Mr. GRAY. Mr. Chairman, just a few words. I have said about all I care to say today. But I want to say this. It seems that the only objection that my friend from Boise has is that it includes, what? It goes further than to include Mormonism. We have lived year after year as we are now. We have not been interfered with, as he says, by the biennial mob— of course, he ought to know more about it, because I don't suppose there is a man in the country who has

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[1]—Election of 1888.

been in the legislature as often as he has, and I think he has been in the legislature oftener than any man——

Mr. AINSLIE. (Interrupting): I was never in the legislature in Idaho but once, and if God will forgive me, I will never be in it again.

Mr. GRAY. You were in the house once and in the senate once.

Mr. AINSLIE. I was never in the house in my life.

Mr. GRAY. Well, you ought to know. He has studied this matter to quite an extent. Now, he says they will disfranchise Masons. I don't think so. I belong to a Masonic lodge, and I believe I have the honor to belong to the one my brother belongs to. I have no fears, and I say if the Methodists or the Baptists or anything else, or the anarchists go too far, I want the power of this legislature to shut them down when they get to be dangerous. I want them stopped; I don't care what they are or where they came from, or what their belief is, I want to know that there is a power in our legislature to stop it. I have confidence in the legislature. I had great confidence in him when he was in the legislature.

Mr. AINSLIE. That is the first time I ever found it out.

Mr. GRAY. And I have yet. But he says we want to bring it right down to this class. I say put in anarchists or any other obnoxious class of people that organize themselves together for the purpose of overthrowing the government; I want the power in the legislature that they can handle it. The gentleman from Idaho, he wants it accepted because it is shutting off the rights, shutting off some right or other, I don't know what is is, but when men do wrong I want their rights shut off. And I am not saying that I am afraid the legislature will treat us or treat any society badly that does what is right. And while I am more liberal than the gentleman from Boise is, I am willing they should all come in, and all stand the same test, and if they do

violate the law, I want them stopped right there. I care not what society it is teaching, I want that power left to the legislature, and I don't want it shut out by this constitution, that they cannot stop anarchists, cannot stop laboring men, I care not if they go too far, or any other society, religious or whatever it may be. And the reason that has been given by the gentleman from Bingham is, that he has shown you the wrongs of this Mormon church.

Now I want that to go in with the rest, and I want some power left in this legislature, for I believe that we can elect honest legislators, and they will do what is right. I have no fear of them. These men that say they have a fear of them, I am suspicious of *them*, because I cannot see why. They say to restrict it to that class. I do not want to restrict it to anything. I want everybody to come under the same rod, and if they come under the rod, let it drop on them; and if they are under it, let it come. I have no sympathy with anything that is against our government or that ever attempts to overthrow our government, let it be Mormons, let it be whatever it be, I want the power in the legislature that they may enact such laws that, if we will not restrict them in this, they may enact such laws as to keep them quiet; and whenever there is an organization of any kind that rises up and says "We are above the law" I want them put down.

Mr. AINSLIE. Mr. Chairman, it appears to me that the members cannot get up on this floor and argue a legal proposition or the necessity of constitutional restriction upon one branch of the state government, without somebody shouting "Mormon." It appears to me that they have this thing of Mormonism on the brain, some of them have—a great many of them, There is no use endeavoring to conceal the intentions of a party by making a big smoke or a big dust about a question that is practically settled between the two parties. That question of Mormonism is settled, so far as it can be settled by the votes of the democratic

party and the republican party of Idaho Territory in this convention. We have deposited in the legislative branch of the government every power they can possibly possess to frame laws of registration or any kind of law, no matter whatever, for additional limitations and restrictions and qualifications upon that class of people. Now, as I understand, they do not complain of any other class of people, but they want to include everybody else under a provision that they admitted in the outset of this whole proposition was intended to put down theocracy in Mormonism. There is no pretense of any other religious denomination practicing that except the Knownothings, and I think there must be a good many of them on this floor. They might come in here in the excitement of a legislative body assembled in this capitol and say there are too many Catholics that believe in the infallibility of the Pope. That is a foreign power, and we will pass a law here, as the constitution authorizes us to pass it, that any person who believes in the infallibility of the Pope is a dangerous person, and the prosperity of the state is threatened and we will deprive that person or those persons of the right of suffrage. That was a Knownothing argument thirty-five years ago. And the legislature may take that same view of it again if you deposit such a dangerous power in the legislative department of this state, as this section proposes to deposit there. I don't say they will do it, but we know how it was no more than a third of a century ago, when it was tried in about one-half the states of the Union. And I say it is not a safe power to vest in the legislative department that is elected every two years in the state, as proposed by the provisions we have already adopted. Now, we have been given a detailed history of the Mormon church by the gentleman from Bingham. You can find mysteries and murders committed everywhere by Mormons and everybody else. Nobody is standing here apologizing for any crimes the Mormons have committed. You cannot take the

democratic party or any other party in this territory as being the apologist of crime committed by anybody, black or white, Mormon or anti-Mormon. No sir, that cry won't go. The gentleman says we have lived under an organic law that vested in the legislature the same power. I deny the proposition. I say that if you read the organic act you will find there are restrictions on the legislative power. And further than that, the congress of the United States had the right to utterly repeal every act passed by the legislature of this territory and of every other territory in the United States. We have no controling power over the legislature. If you embody in your constitution Section 4, giving them that unlimited, unrestricted power prescribed within the qualifications to vote, we have no higher power to appeal to, the legislative power is then supreme; but while we are a territory congress reserves the right, and it is inherent in the constitution, to repeal any law or act passed by the territorial legislature, and it has been done time and time again. An act passed by the legislature awhile ago creating a district attorney for each county of the territory[1]—a matter that was not political, which did not affect the morality or peace of the state—was repudiated and annulled by act of congress.[2] And congress has passed acts frequently at different times, I believe, annulling the whole session laws of the territory of Arizona, and also annulling about one-half of the laws of a session of Montana; and Wyoming to the same effect. That is where the limit came upon the power of the territory; they are subject to the supervision of a higher power, the power of the United States. But, if you place this unrestricted power in the legislature of the state of Idaho, there is nothing in the constitution or general government under which we live that can re-

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1—See People v. Heed, 1 Ida. 404. Act of Jan. 15, 1869, 5th Terr. Sess. Laws., p. 91.

2—Act of July 15, 1870; 16 Stat. L. 366.

strict this unlimited power you propose to vest in a body of irresponsible men elected every two years.

One more thing. The gentleman from Bingham referred, I believe, to a full-fledged bishop in the democratic convention a year or two ago. I was at that convention, and I don't know anything about it; but what I do know is that there was one Mormon in the democratic convention two years ago. And at least fifteen years ago there has been a full-fledged bishop and counsellor on the republican territorial committee, to my knowledge, and may be yet.

Mr. GRAY. Are we afraid of the legislature? Why are we afraid when we do right?

"Question, question."

The CHAIR. The question is, it has been moved and seconded that the section be adopted, and the gentleman from Boise offered as a substitute that which has been heretofore read by the secretary. The question comes up first on the adoption of the substitute. All in favor of adopting the substitute——

Mr. REID. Mr. President, the gentleman from Boise demanded the ayes and nays.

The CHAIR. It was not seconded.

Mr. REID. I second it.

The CHAIR. The clerk will call the roll on the question of adopting the substitute offered by the gentleman from Boise.

Roll-call:

Ayes: Ainslie, Anderson, Beane, Blake, Chaney, Clark, Hogan, Jewell, Kinport, Mayhew, Parker, Poe, Reid, Steunenberg Vineyard—16.

Nays: Allen, Armstrong, Ballentine, Beatty, Brigham, Campbell, Glidden, Gray, Hampton, Harkness, Hasbrouck, Heyburn, Hays, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Pritchard, Pyeatt, Robbins, Salisbury, Savidge, Shoup, Standrod, Sweet, Taylor, Underwood, Whitton, Wilson, Mr. President—36.

The CHAIR. On the motion to adopt the substitute offered by the gentleman from Boise, the vote stands: ayes 16; nays 36. The motion is lost.

ARTICLE VI., SECTION 4.

The CHAIR. The question now recurs upon the motion to adopt Section 4 of the majority report, as recommended by the committee of the Whole. All those who are in favor of adopting the same will——

A member calls for the ayes and nays.

The CHAIR. The secretary will call the roll, and those voting to——

Mr. POE. Before that question is put on the adoption of that article I desire to make a few remarks. We have upon principle, Mr. President, fought that article for the reason that we desired another by way of substitution. The substitute of course has been thoroughly discussed in this convention. It was well understood. The reasons why we preferred that to the section offered by the majority report have been given. Our position upon that is well understood. We believe, and that is my candid opinion now, that it might imperil the passage of this constitution, or the ratification or adoption of it by Congress. That was our candid belief, and it was in behalf of the final adoption of this constitution that we made this fight. If the republican members of this convention have gone too far, and engrafted something upon this constitution, which will prevent it from being passed upon by Congress, then if there is any fault it is at their door.

As I said before, we stand shoulder to shoulder with the republican party fighting this question of Mormonism. The republican party acted no doubt in sincerity and with a desire and a design to use every means within its power to crush this institution of Mormonism. I say in their wisdom and in their judgment; whether it be correct or not is not for me to say. But I am satisfied that they are honest in their convictions and that they desire to crush the institution of Mormonism in common with us, and therefore, according to their judgment they conceive this substitute not to be sufficient to accomplish that end. Therefore, without

any partisan design or anything of that kind, or without any design to get any party advantage over the democratic party, they saw proper for the purpose of accomplishing that end, to put this more radical section in than we thought was safe to go. I will say now that while I fought this measure I fought it not upon the principle that it was intended to, and would ultimately, crush the Mormons, because it is my heart's wish that that may be accomplished, and if the constitution can or will be received by Congress with that sweeping clause in it, so far as I am concerned, I am willing that it should go. I will say, furthermore, to the gentlemen of this convention, that I came here with the bona fide design and intention of adopting a constitution republican in form which Congress would accept and which the people would ratify. I hope that we may accomplish that end, and not one word nor line nor letter from me when I go abroad into the land among my constituents shall ever be said in opposition to whatever constitution we may send out to the people. (Applause.) I will do all that I can to have it ratified by the people, and if in my humble station I could assist in its passage in Congress I would do so. And I ask every democratic friend that I have on this floor to vote in support of the proposition that is now before the convention. And I ask every democratic and every republican friend that I have in this house, that whatever inability they may have had, whatever failures they may have made to get certain provisions into that consitution which meet with their approbation, if the majority say no, I shall bow to the majority. And I say to all of them ; be men and go out and accomplish what you came here to accomplish, if in your power, towit, the ratification of this constitution by the people and by Congress. (Applause.)

Mr. VINEYARD. So far as I am concerned, I shall vote No, when this question is called, for the reasons assigned in my talk this evening; — too much power here conferred on any legislative body.

"Question, question!"

On the roll being called the vote stood: Ayes 42, nays 10, as follows:

Ayes: Allen, Armstrong, Ballentine, Beane, Beatty, Brigham, Campbell, Coston, Glidden, Gray, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Robbins, Salisbury, Savidge, Shoup, Standrod, Sweet, Taylor, Underwood, Whitton, Wilson, Mr. President—42.

Nays: Ainslie, Anderson, Chaney, Clark, Jewell, King, Kinport, Parker, Steunenberg, Vineyard—10.

And the section was adopted.

Section 5.

SECRETARY then reads Section 5: For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this state, or of the United States, nor while engaged in the navigation of the waters of this state or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense.

Moved and seconded that the section be adopted as read. Carried.

Article VI. Adopted.

Mr. BEATTY. I now move the adoption of the entire article, and upon that I demand the ayes and nays.

The CHAIR. Is there any second for the call for the ayes and nays? (Seconded.)

The question was put by the chair, the secretary called the roll, and the vote was recorded as follows:

Ayes: Allen, Armstrong, Ballentine, Beane, Beatty, Brigham, Campbell, Chaney, Coston, Glidden, Gray, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Jewell, Kinport, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Robbins, Salisbury,

Savidge, Shoup, Standrod, Sweet, Taylor, Underwood, Whitton, Wilson, Mr. President—45.

Nays: Ainslie, Anderson, Clark, King, Parker, Steunenberg, Vineyard—7.

There being yeas 45, nays 7, and the article as a whole was adopted.

The CHAIR. The question now before the convention under rules 49 and 52 is the engrossment of the article (Article 6) and fixing a time for its final reading.

Mr. MAYHEW. Mr. President, I believe that we have no committee on Engrossment at all.

Mr. MORGAN. Mr. President, it occurs to me it should be referred to the committee on Revision.

Mr. MAYHEW. I think not.

The CHAIR. I will read the rule. The chair is proceeding under the rule. "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 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."

The question now is, fixing a time for the final reading.

Mr. REID. I will call the chair's attention, and the gentleman from Shoshone, to Rule 53, spoken of awhile ago.

The CHAIR. The chair understands that refers to when it goes to the Revision committee after it has been finally read and adopted.

Mr. POE. Mr. President, it would appear now, that at this present time, at this stage, someone would have

to take that bill and engross it. Have we any engrossing committee to copy it and put it in form so that it can be passed to third reading? If we have not, we must have one, and I move that the chair appoint an engrossing committee.

The CHAIR. I presume the matter could be engrossed by the clerk.

Mr. POE. Very well, if that is understood.

Mr. MAYHEW. I would like to ask this question. I would like to inquire of the chair or any other member if these matters could be engrossed, and the chair understands the clerk can engross? Of course, the clerk can engross it, but there should be a committee to see whether the articles are correctly engrossed.

The CHAIR. Does the gentleman move to appoint a committee?

Mr. MAYHEW. Yes, a committee of three.

The motion was seconded, voted upon and carried.

Mr. MORGAN. Rule 54 seems to indicate that the third reading — I will read the rule: "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 committees on Enrollment and Revision and signed by the president and members of the convention."

Mr. McCONNELL. Mr. President, I move that the committee on Engrossment be ordered to report this bill tomorrow afternoon at 2 o'clock, and that it be made the special order of the day at that hour for its final reading.

Mr. MAYHEW. I don't think that is a proper motion. It may take some time for the engrossing clerk to engross this article. We could not report until the article is engrossed and returned to the engrossing com-

mittee. Then the committee is given time to examine the engrossed article and compare it with the original.

The CHAIR. It there any second to the motion of the gentleman from Latah?

Mr. GRAY. I second the motion.

Mr. McCONNELL. This is not a lengthy bill. I am satisfied our clerk can engross this bill in an hour, and I am satisfied the committee can check it over and see whether it is correct in another hour, and I think it would be better while we are at work on this article to have it out of the way. I think there will be ample time by two o'clock tomorrow. If not, if the committee comes in and gives reasons why it cannot reach it, I presume the convention will excuse them.

The motion was put to a vote and carried.

Mr. BEANE. I move we adjourn.

Mr. GRAY. That committee has not been appointed yet, I understand.

The CHAIR. No, not yet.

RESOLUTIONS.

Mr. REID. I desire to offer the following resolution and move its adoption:

SECRETARY reads: *Resolved*: That the thanks of this convention are hereby tendered to Mayor and Mrs. James A. Pinney for the pleasant and enjoyable reception extended to the members thereof on the evening of the 22nd inst.

The motion was seconded. (Carried.)

Mr. REID. I also offer the following resolution and move its adoption:

SECRETARY reads: *Resolved*: That the thanks this convention are hereby tendered to the ladies and gentlemen of Boise City for the artistic and highly entertaining concert given in compliment to the members hereof on last evening.

Motion seconded. (Carried and resolution adopted.)

The CHAIR. I congratulate the convention on discovering two propositions upon which it was a unit.

Mr. BEANE. I move we now adjourn until ten o'clock tomorrow morning. (Seconded.)

Mr. HEYBURN. I move to amend by making it nine o'clock. (Seconded.)

The question was put and the vote taken and before announced a division demanded.

Rising vote taken. Ayes 40. Carried.

And the convention adjourned until nine o'clock July 26, 1889.

NINETEENTH DAY.

SATURDAY, *July 26, 1889.*

9 o'Clock A. M.

Convention called to order by the president.

Prayer by the chaplain.

Roll call:

Present: Ainslie, Anderson, Armstrong, Beatty, Bevan, Blake, Brigham, Campbell, Chaney, Crutcher, Hampton, Harkness, Harris, Hays, Heyburn, Jewell, King, Kinport, Lewis, Maxey, Melder, Myer, Morgan, Moss, Pierce, Poe, Pyeatt, Reid, Robbins, Savidge, Standrod, Steunenberg, Taylor, Underwood, Vineyard, Whitton, Mr. President.

Absent: Allen, Andrews, Ballentine, Batten, Beane, Cavanah, Clark, Coston, Crook, Glidden, Gray, Hagan, Hammell, Hasbrouck, Hendryx, Hogan, Howe, Lamoreaux, Lemp, Mayhew, McConnell, McMahon, Parker, Pefley, Pinkham, Pritchard, Salisbury, Sinnott, Shoup, Stull, Sweet, Wilson, Woods.

The secretary read the journal.

APPOINTMENT OF ENGROSSING COMMITTEE.

The CHAIR. I have appointed the following as the Engrossing committee: Hasbrouck of Washington; Mayhew of Shoshone and Sweet of Latah. I wish to say that I have not appointed the mover, Mr. Mayhew, chairman of the committee, because he requested that I should not do so.

TRANSCRIPTION OF NOTES OF PROCEEDINGS.

Mr. HEYBURN. Mr. President, it has been sug-

gested that it is necessary to take some action — the suggestion has come from the Secretary of the Territory to me — with reference to having the notes of the stenographers of the proceedings of this convention transcribed, and that it ought to be in progress during the sitting of the convention. When these gentlemen have finished their work they will expect to be paid for it, and the convention does not of course desire that their work shall be delivered in stenographic notes, as it would be useless to them in that shape; so that there should be some provision made that this work of transcribing should be going on during the sitting of the convention, and there should be a committee appointed to correct such manifest errors as will appear necessarily in a report of proceedings of this kind. I desire also, while moving for such a committee, to say that the chair will not consider that it is necessary to name me as one of the committee, because I am liable to have to be absent for a few days, and I would move that the chair appoint a committee of three for the purpose of making the necessary arrangements for transcribing the notes of the proceedings of this convention. I will reduce the motion to writing. I make the motion at the request of the Secretary, who will necessarily have charge of the publication. (Seconded.)

LEAVES OF ABSENCE.

Mr. BEATTY. Mr. President, if it is in order, I desire to ask leave of absence for a few days. As reasons are desired always, I will state mine. As known to most of you, I left my home the day after a fire, and left my matters all in the utmost confusion; my books and papers that were saved are piled up in a heap, and in addition to that, since I left there I have learned of a number of matters which I ought to attend to, otherwise I will suffer considerable inconvenience and loss. I am not desiring to shirk any duty or work, and will come back as soon as I can next week. I may say I

have not been absent at any time since the convention met.

The CHAIR. There are no objections, and it is so ordered.

Mr. TAYLOR. Mr. President, I also desire leave of absence a few days. I have got to be in Blackfoot on next Monday to make report there and settle up some business, and it will be necessary for me to be there.

The CHAIR. Are there any objections? There are none and it is so ordered.

Mr. STANDROD. I shall have to make the same request on account of an adjourned term of court in Bingham county. The court convenes on Monday and I have some matters there I must absolutely attend to on that day. I will perhaps return on Tuesday morning.

The CHAIR. Does the gentleman ask leave of absence from now until Tuesday?

Mr. STANDROD. Yes.

The CHAIR. Are there any objections to leave being granted? There are none, and it is granted.

Mr. SALISBURY. I would ask indefinite leave of absence. My business is such that it is impossible for me to remain longer, and I cannot tell how soon I can return; but I will come back to sign the constitution anyway.

Mr. HARKNESS. I would like to request leave of absence from now until about next Wednesday. My business matters are in such shape at home that I must be there.

The CHAIR. Is there any objection to Mr. Salisbury having indefinite leave of absence? There is none and it is granted. The gentleman from Oneida requests leave of absence until next Wednesday or Thursday. There are no objections and it will be granted.

Mr. POE. Mr. President, after Monday I desire to have an indefinite leave of absence granted me. I have business at home that absolutely requires my presence. I will state now that I expected to remain, and I ask

indefinite leave of absence about Monday. I will be here Monday.

The CHAIR. If there are no objections it will be granted.

The next order of business is presentation of petitions and memorials. (None.)

Reports of standing committees. (None.)

Reports of select committees. (None.)

Final readings. (None.)

SECRETARY reads: I move that a committee of three be appointed to provide for the transcribing of the report of the stenographers of the proceedings of the convention, and for the publication of the same. (Heyburn.)

The motion was seconded. (Carried.)

Mr. REID. I move that the convention resolve itself into a committee of the Whole for the purpose of taking up the unfinished business, the report of the committee on Public and Private Corporations.

Motion seconded. Carried.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. SHOUP in the chair.

ARTICLE XI.— PUBLIC AND PRIVATE CORPORATIONS.

The CHAIR. The business before the committee is the further consideration of the report of the committee on Corporations.

SECTION 6.

SECRETARY reads section 7 (6). The amendment offered by Mr. Ainslie and adopted was: "Amend section 7 (6) after the word 'state' in line 3 by adding, 'except that preference may be given to perishable property.' "

Mr. WILSON. There was another amendment to that section also. After the word "corporation" insert the words "similarly situated."

The SECRETARY. Yes. Also "I move that the

words "similarly situated" be inserted after the word "corporation" in line 1.

On motion duly seconded the amendments were adopted.

Moved and seconded that the section as a whole be adopted. Carried.

SECTION 7.

Section 6 (7) read by the Secretary, and it was moved and seconded that the same be adopted. (Carried.)

SECTION 8.

Section 9 (8) read by the Secretary, and it was moved and seconded that section 9 be adopted. as read. (Carried).

SECTION 9.

Section 10 (9) was read, and it was moved and seconded that section 10 be adopted as read. (Carried.)

SECTION 10.

Section 11 (10) was read, and it was moved and seconded that the same be adopted. (Carried.)

SECTION 11.

Section 12 (11) was read, and it was moved and seconded that the same be adopted. (Carried.)

SECTION 12.

Section 13 (12) was read, and it was moved and seconded that the same be adopted.

Mr. POE. Mr. Chairman, I move that that section be stricken out. I don't see that there is any necessity for it or that the legislature has not such right, and it seems to be an absurdity to put such a section in the constitution.

Mr. CLAGGETT. I was about to move to strike out the word "retrospective" and insert the word "ret-

roactive." In law the two words have a very different meaning. Retroactive acts are frequently passed and are perfectly legal and binding, while "retrospective" is *ex post facto*. (Seconded.)

The CHAIR. It is moved and seconded that section 13 (12) be entirely stricken out, by the gentleman from Nez Perce. Mr. Claggett offers an amendment, that the word "retrospective" be changed to "retroactive." Under the former ruling I presume the motion of the gentleman from Nez Perce is first. Does the gentleman from Shoshone having this bill in charge desire to speak?

Mr. MAYHEW. I desire to understand why they want this stricken out. I think the amendment offered by Mr. Claggett would be proper and necessary.

Mr. POE. With that amendment it would be satisfactory to me.

Mr. MAYHEW. Very well, then I second the amendment.

The CHAIR. Does the gentleman from Nez Perce withdraw his motion to strike out?

Mr. POE. You might put the question, Mr. Chairman, and let the convention vote on the question of striking it out.

Mr. MAYHEW. I hope that motion will not prevail. I am satisfied the gentleman does not understand the real purpose of this section, or he would not make the motion. As a legal proposition, or as a general proposition and a legal one too, the legislature of the state is generally prohibited—in fact, is prohibited—from passing retroactive and *ex post facto* acts. But this should be expressed in the organic law of the legislature, to pass no act, to have no law in relation to these corporations in this territory or state to be retroactive in its operation; that is, to go back and add to these corporations any greater rights than they had, or take from them any right they had prior to the passage of the bill affecting those corporations. That is the only object of this. It is to restrict and prohibit the legis-

lature from adding to or taking from them any additional rights these corporations may have had at the original passage of their charter, or origin of the corporation. That is all there is in this law; I hope it will not be stricken out.

Mr. HEYBURN. Mr. Chairman, I cannot sit still and see any inconsistency of this kind incorporated into the constitution. This committee of the Whole has just passed upon a retroactive section (Section 7); upon an *ex post facto* law, in section 8 (7). And we might as well be consistent now, and go on and add it ourselves and leave the legislatures the power to do it. Section 8 (7) says that railroad companies shall, before they are to receive the benefits that individuals and corporations do in the future, subscribe to the terms of this constitution, which in effect says they shall keep all rights cut off by this constitution, however they may have been obtained. I simply mention this to show its inconsistency. I do not desire to discuss it, but simply call attention of the committee to the fact that section 8 (7) says that railroad companies or corporations of any kind shall yield up whatever rights they had heretofore acquired before they shall have any rights in the future. That is in effect an *ex post facto* law being passed by this convention, because we are doing in the constitution what you have said in the legislative article the legislature can never do. I simply call attention to it in the interest of consistency.

Mr. CLAGGETT. My colleague is certainly wrong with reference to that matter. Section 8 (7) reads as follows: No railroad company, express company or other corporation "shall have the benefit of any future legislation," reserving and preserving every right which any corporation in existence at the time the constitution is adopted may have. But, *provided,* that unless they are willing to subscribe to the terms and conditions of this constitution in the manner pointed out in the section, that then they shall not receive the benefit of any future legislation for the benefit of corporations, when

they will take the benefit on the one hand, and refuse to submit to the limitations of the constitution on the other. I think my friend has not carefully considered the language of section 8 (7).

Mr. MAYHEW. I don't think section 8 (7) will affect this at all. The matter was stated by the gentleman from Shoshone, Mr. Claggett, that before any corporation can have the benefit of any future action, it must accept this constitution in binding form with the secretary. That is, file what? File their charter setting forth what the corporation is for, whether railroad or any other corporation. The law in the territory now requires all corporations to file their charter,[1] having their place of business already in this territory, before they can have any effect, or have the right to sue or be sued. And this says it shall in the future be done. Section 8 (7) has no effect here. Section 13 (12) is in here for the purpose of preventing any legislature, notwithstanding they may have filed it, from taking from them any right which they may have by virtue of their charter filed with the secretary. It is to prevent the legislature passing any act in relation to those corporations that will be retroactive in its character. I hope the provision will not be stricken out.

I call the attention of the convention to the fact you will see that it is really necessary for this section to be in here to protect these institutions and other institutions against encroachment on their rights by the legislature. A great many times these things are an oversight; a great diversity of opinion exists in the minds of even lawyers as to what a retroactive law would be, and the effect of it upon individuals and corporations; but if this section remains, it settles it for all time that the legislature shall not infringe upon their rights, or destroy any rights a corporation may have acquired. The fact of the business is, if the gentleman thinks this law has no effect in the constitution because legis-

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[1]—Sec. 2587, Rev. Stat. 1887.

latures generally cannot pass *ex post facto* laws, or a law retroactive or retrospective in its character or nature, that is true. But I think, taking everything into consideration, it is necessary for this section to remain in this article.

Mr. HEYBURN. Mr. Chairman, I desire to say all I have to say now in a few words. The gentleman says this will do no injustice to corporations. We have today in Northern Idaho perhaps twenty or twenty-five very considerable mining corporations. They were organized under the present law, that empowers a majority of the stockholders to control the action of those mining corporations, to elect their board of directors. Their by-laws have been so framed as to enable them to elect by a majority of the stockholders, and they have elected, and their present management is controled or formed in that way, upon the assurance that the rights that were granted to them by their incorporation would remain to them, and not be disturbed by the legislature. Six of those corporations have been placed upon the market at a value which was based upon the conditions that surrounded the incorporation and the rights that had attached to it. Men have invested their money in those mines and in those mining stocks relying upon that good faith that is always guaranteed by the people, that the legislature will not come in and by subsequent legislation depreciate the value of their rights that have attached; that is to say, that they will not pass an *ex post facto* law. A constitutional convention should have some conscience. It should not do that which it says is incompetent or wrong for the legislature to do, because we are simply legislating a primary law; and we should not in good conscience do that which we say it is wrong for the legislature to do. If we do, it would be hard to find a reasonable excuse for it as a moral principle.

You have already provided — passed upon it the last time the committee had this matter under consideration —that hereafter corporations shall not proceed in the

way they have proceeded heretofore. That is to say, that hereafter a majority of the stockholders of corporations cannot elect its board of directors; you have said that by your vote, by an overwhelming vote. This committee has said that, and this vote goes out as the law of the land that cannot be changed by the legislature. Now, the gentleman is asking you to say that hereafter any corporation whose rights have attached; any stockholder whose money has been invested upon the faith of the stability of this law that has existed heretofore, shall not have the benefit of any future legislation unless he is willing to concede the righteousness of this principle, and unless a corporation is willing hereafter to change its by-laws that are already in existence to conform to the will of this legislature or of this convention. Now, that is the effect of it. Those by-laws are in existence, those corporations are in existence; and unless those corporations subscribe to the provisions of this article in this constitution hereafter, your legislature may represent everybody else in the territory, it will not represent them, because they cannot have the benefits of any legislation in the future. Now, is not that a reasonable interpretation of that proposition? Is it fair? I have nothing further to say.

Mr. MORGAN. My objection to this section is that it has no force or effect whatever. The gentleman misapprehends, it seems to me, having charge of this bill, the effect of this provision in the constitution. It is this: "The legislature shall pass no law for the benefit of a railroad, or other corporation, or any individual or association of individuals retrospective in its operation." There is no provision here, which prohibits the passage of a law against a railroad company, which is retroactive in its operation, none whatever. There is a provision here, which prevents the passage of a retroactive law generally. Is it pretended by the chairman of this committee that the legislature would have power to pass retroactive laws with reference to railroads or anything else if this provision were not in the constitution? I

don't think the legislature would have such power under any circumstances; and if it does have the power, the constitution should prohibit in terms the passage of any retroactive law. Again, the second clause of the section is this: They shall pass no law "which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past." Is it pretended by any lawyer that they can pass laws which will impose new conditions for an old consideration? New liabilities upon the county or state or any subdivision of the state, which are retroactive in their character, or which will impose a new liability for considerations that are past? Such a law would be necessarily invalid; and it seems to me that the section is entirely unnecessary and has no force whatever. Neither of the provisions can have any action whatever with reference to the power of the legislature.

Mr. MAYHEW. I am satisfied, Mr. Chairman, that no corporation lawyer looks upon any act, or those who desire to be corporation lawyers cannot look with complacency at measures that have a tendency to prevent those corporations from infringing upon the rights of the people. The gentleman asks me as a lawyer, if I think the legislature would have the power to do such things as are prohibited by this section. I say yes, as a lawyer. And I say further than that, that the provisions of this section are wholesome and necessary for the protection of the people against those corporations —absolutely necessary. And it is no argument that the legislature cannot pass a retroactive act, that therefore this should not be in here. I am perfectly willing to be guided by other constitutions of other states of this Union; and I will not go so far as to say that the members of this convention, with their great wisdom, can do away with or do without the examples that are set us by the different constitutions of the states. Such a provision is in the Colorado[1] constitution, such a pro-

[1]—Art. 15, Sec. 7, Colo. Const., 1876.

vision is in the California[1] constitution, such provisions are in the different states or territories now forming, or that have heretofore formed a constitution, and asking to be admitted into the Union. I know very well what the feeling is of most of these men upon these questions; and I say it is best for us to follow some of the examples of other states in the constitutions that have such provisions in constitutions of this character, in order to protect the people against these institutions.

The general feeling with the people is that they are imposed upon by these corporations; not all of them, but a great many. The gentleman says there are fifteen or twenty corporations in the northern portion of this territory who have issued their stock and placed it upon the market. I admit that. I don't know the full history of all of those corporations, but I believe, and I know, in fact, that some of those corporations have been formed upon wild-cat property. They have issued their stock, placed it on the market and sold it. A number of men in our section of the country have done so, and that stock has been issued and is today worthless. I know such transactions are still continuing there. And while they have done that, I claim it is no argument against this section. I believe Mr. Ainslie has an amendment here; if the convention desires to adopt it, I don't know as I shall have any particular objections to it.

Mr. AINSLIE. I offer an amendment to section 13 (12).

SECRETARY reads: Amend section 13 (12) by continuing line 4 as follows: "other than to enable such corporations, individuals or associations of individuals to comply with the provisions of this article."

Mr. MAYHEW. I move the adoption of that amendment.

Mr. CLAGGETT. I don't think this section 13 (12) seems to be thoroughly understood, and I think the

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[1]—No exactly similar section in the California constitution.

amendment offered by the gentleman from Boise, makes it even less capable of being understood than it seems to be now. The only criticism I would make upon that section as it stands now is that it might prohibit enough in this regard to forbid the passage of any or all retroactive laws, which certainly ought not to be put in any constitution. Let me illustrate.

Mr. MAYHEW. Just let me ask you how many constitutions have erred in the same way?

Mr. CLAGGETT. Well, I don't know anything about that. I don't know of any constitution anywhere that forbids the passage of all retroactive laws. I have never seen one.

Let me illustrate. Your statute books are full of them. Has any injustice been done by them? For instance, here in early days we had our statutes relating to what was necessary to convey property. It was required to be conveyed by deed under seal. Nevertheless, miners went to work and transferred their properties, involving the whole mining section of the country around here by bills of sale that did not comply with the law. What did the legislature do?[1] Came in and validated those past defective interests, without which the whole real estate of the country would have been at the time thrown into confusion. I don't think in reading the matter that it is subject to that criticism. But it is not as clear as it ought to be. I shall support the section most heartily, whether it is in the constitution or not. "The legislative assembly shall pass no law for the benefit of any railroad or other corporation or any individual or association of individuals retroactive in its operation." That is, the law must be passed for the benefit of special classes in order to be obnoxious to this section, "or which impose on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or con-

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1—Act of Jan. 10, 1866, validating transfers of quartz claims in Idaho county made by bill of sale without acknowledgment. 3rd Terr. Sess. Laws, p. 201.

siderations already past." Now, that last clause is put in for the purpose of covering this thing which has been in the past a very gross abuse, and that is, where towns and counties and municipalities would grant subsidies to railroads on certain terms and conditions, which terms and conditions were not complied with. And the consequence was that they would go to work and issue the bonds of the corporation, and then the legislature would come in and by a subsequent retroactive law validate this concern and cinch the people to the extent of the bonds. But the point about it and where the thing comes in is this, that we have absolutely forbid that any municipality shall issue any bonds, and as a consequence I think this section must have been taken from some constitution, where at the time it was adopted, the state was endeavoring to guard against that particular trouble. But that particular trouble we have protected ourselves against in another section of this constitution, by prohibiting it. I shall vote for the section for fear that there might be some special necessity for it, and I certainly don't see any harm in it.

Mr. AINSLIE. Mr. Chairman, section 8 (7), referred to by the gentleman from Shoshone, only applies to railroad, express or other corporation companies, in existence at the time of this constitution. There is no conflict between section 13 (12) and section 8 (7), because it requires the future legislature to provide for the manner of filing the acceptance of these provisions by those corporations. But the constitution, or this section, is self-operative; it does not require anything on the part of the legislature to provide the manner in which railroad, express or other transportation companies in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation; they shall have such benefit by filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form. The manner and time of filing and the contents of the article to be filed have

all got to be provided by the future legislature. The constitution cannot operate as a law itself without the aid of the legislature providing by law and detailing the manner in which it shall be done. Therefore section 13 (12) would be in conflict with section 8 (7) so far as that is concerned. The amendment I propose now, goes only to this, that the legislature shall pass no law compelling a railroad or other corporation or any individual or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past, "other than to enable such corporations, individuals, or association of individuals to comply with the provisions of this article." It fails to specify for what purpose; it does not enlarge their powers any.

Mr. BEATTY. I hope this section will be stricken out. I am ashamed, for one, that we ever adopted it, and I hope we will go a little cautiously. We have started off this morning to adopt everything we have come to. I am sorry my friend Gray is not here to call a halt. If I understand the meaning of this, it would prevent the legislature from doing the very thing I understood my friend Claggett said should be allowed. It frequently occurs, Mr. Chairman, that legislatures do want to pass retroactive acts, as, for instance, in the case which Judge Claggett referred to; in the case of mining conveyances, as we all know. There was a time here when conveyances were made which were entirely invalid, and even some are made now, and only a few years ago an act was passed retroactive in its character allowing those mistakes to be corrected, validating, in other words, conveyances and transactions which were entirely invalid under the law. Now, if I read this right, the legislature will be prevented from ever enacting any law that is retroactive in its nature, and from correcting any errors of the past, either as to individuals or anybody else. The legislature "shall pass no law for the benefit of a railroad or other corporation,

or any individual, or association of individuals, retroactive in its operation." Now, I ask, if a law of that kind is passed, if that is made a part of the constitution, how can a legislature ever correct any errors such as have been referred to by Judge Claggett? And we all know those occur, and it is a very frequent thing for legislatures to pass some law, which to some extent is retroactive in its character. I think that part of the section is certainly objectionable. As to the latter part, "or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past," I doubt whether that can be done. I doubt whether the legislature can pass an act imposing a new liability upon the people. However, that part of it I should have no objection to if it were really necessary. My objection to that is that it is unnecessary, because the legislature cannot do that.

SECTION 7.

Now, reference has been made to section 8 (7). It is passed. I am glad to say I did not vote for it. I don't know whether I voted against it or not, but I did not vote for it. We passed over several things that ought to have been more carefully put; but I call your attention to what we have done to show what a strange provision we have adopted here. We undertake to bind railroad companies, corporations, and everybody else named in that section 8 (7) — to bind them if they even have a cause of litigation, that they shall bind themselves not to litigate that section.

Mr. MAYHEW. I don't understand the remark.

Mr. BEATTY. I am referring to section 8 (7). It is passed, it is true, but I am calling attention to what we have done. And under that section, if I read it right, if a railroad company or a mining company or any other company, is convinced that it has a right which it ought to litigate in court, you bind them by this section to waive that right; you bind them to come

in and submit to the laws passed here, whether right or wrong, and as a penalty, if they do not submit to those laws, they shall have the benefit of no future legislation. Then, if I have any matter which I desire to litigate in court, and you have some advantage of me, you compel me to come in and waive my rights to litigate that matter, and as a penalty, if I fail to do so, you will put upon me some other punishment. That is the substance of this section. You say to the corporations: "Here, you come in and subscribe to this document, no difference whether you think it is right or wrong; if you don't come in and bind yourselves to obey what is in this law, we will cut you off in the future, we will give you no right of any legislation in the future, give you no benefit of any future legislation."

Just look, gentlemen, at what we have adopted. I think when we come to look over this in the future we will regret a little that we are adopting some sections while running along here and adopting them without a word of discussion. I think we better say with our friend Gray, "Let us call a halt here." Somebody ought to do it. I take upon myself the fault, for one, the way we are running over matters this morning, and I object to this section 13 (12) going in for the reasons given. It seems to me that we make a fatal mistake to prevent the legislature from passing any retroactive law, for there are numerous instances where that becomes almost absolutely necessary to protect the rights of individuals or associations or corporations. It includes all the people, and I think it would be a dangerous section to adopt.

Mr. VINEYARD. I want to inquire if we could not reconsider that section 8 (7). I am like Judge Beatty; my attention was not called to it. I voted for it, and I move that we—

Mr. WILSON. I rise to a point of order, that we are considering section 13 (12) now. Let us get through with that first.

The CHAIR. The point of order is well taken.

Mr. CLAGGETT. Section 8 (7) seems to be the block on the consideration of 13 (12), and after we dispose of this motion to reconsider this we can proceed.

Mr. VINEYARD. I move that we drop back to section 8 (7) and reconsider the vote by which it was adopted.

The CHAIR. I think the motion will not be in order until this section is disposed of.

Mr. VINEYARD. I don't know how we can dispose of it.

The CHAIR. My understanding of the committee of the Whole is that it is not necessary to reconsider, to go back and reconsider anything that has already passed. There is a certain amendment latitude allowed in the committee of the Whole, which is not allowed in the house. That is my opinion, but I may be wrong, of course. I think a vote to reconsider is not necessary.

Mr. HEYBURN. I see that in the Washington Territory constitutional convention this question was raised and discussed at length, and it was held there that in the committee of the Whole it is not necessary to make a motion to reconsider; that until the committee has reported to the house, all matters before it are under consideration; the fact that they are considering it by sections nothwithstanding. That was the ruling of that body.

Mr. VINEYARD. Then I move to strike out section 8 (7). (Seconded.)

The CHAIR. The chair is of the opinion that there is a motion already pending, which I think is in order. After that question has been decided, then the gentleman's motion will be in order.

Mr. VINEYARD. Well, I substitute, then, section 8 (7).

The CHAIR. You can substitute the entire proposition, but not on this. The question is on the motion of the gentleman from Nez Perce.

Mr. MAYHEW. There is so much disorder here and confusion that I cannot hear.

SECTION 12.

The CHAIR. The question is now on the motion of the gentleman from Nez Perce (Mr. Poe) that section 13 (12) be stricken out.

"Question, question." (Vote.)

The CHAIR. "The chair is in doubt."

A rising vote was taken: Ayes 14, noes 20. The motion is lost.

The CHAIR. The question now is upon the amendment offered by the gentleman from Shoshone (Mr. Claggett) that the word "retrospective," in line 2, be stricken out and the word "retroactive" inserted in lieu there of. Are you ready for the question?

"Question." (Vote and carried.)

The CHAIR. The question now is upon the amendment offered by the gentleman from Boise.

SECRETARY reads: Add at the end of the section "other than to enable such corporation, individual or association of individuals to comply with the provisions of this article."

The question was put.

The CHAIR. By the sound the ayes have it. (Division demanded. On the rising vote: ayes 20, nays 10.) The motion prevails.

SECTION 7.

Mr. VINEYARD. Mr. Chairman, I now move that we drop back to section 8 (7) and reconsider that or strike it out.

The CHAIR. The chair is of the opinion to reconsider is not in order, but that any section can be returned to at any time in committee of the whole that has already been passed without a motion to reconsider.

Mr. VINEYARD. I move to strike out section 8 (7). (Seconded.)

Mr. MAYHEW. I don't think this committee can

do that; I don't think it has any authority to do it. It has been stated by my friend Heyburn of Shoshone that notwithstanding what action this committee may take, whenever this matter comes up in convention they can change any action this committee has taken in relation to that section or any particular article. The action of the committee is not binding upon the convention. When it comes up in convention it can be stricken out in its regular order; because they have as a body a right to reject any amendment that the committee may have made to any section or any article; or they can strike it out if necessary. But I think when a matter is once disposed of by this committee,—and you cannot in committee of the Whole reconsider a matter parliamentarily,—then it would not be in order if you cannot reconsider after the committee has once adopted a measure—you cannot go back in the committee and strike it out. It should be reported to the house, and in convention it can come up anew, and in that body can be stricken out if it is the pleasure of the convention.

Mr. VINEYARD. I understand that we are in committee of the Whole on the consideration of this article.

Mr. MAYHEW. No, sir, we have passed upon this.

Mr. VINEYARD. I am talking about the article. We are in committee of the Whole, considering the article section by section, of course; but at the same time if we can pass this now, there being no motion in committee of the Whole to strike it out or amend it in any shape or form under the rule as has been amended, and as I understand it, when this matter comes up for consideration in the convention, no matter will be in order as to section 8 (7) except the matters that have been considered with reference to it by the committee of the Whole. Am I right about that?

A MEMBER. Yes.

Mr. VINEYARD. Well, that seemed to be the ruling the other day, and —

The CHAIR. The chair has no power to rule what would be in order in the convention.

Mr. VINEYARD. Whether we can consider section 8 (7) outside of amendments or motions that have been made with reference to section 8 (7) while under consideration in committee of the Whole. Whether that can be done in convention or not.

The CHAIR. The chairman of the committee of the whole has no authority to decide that.

Mr. VINEYARD. To go beyond the action of the committee of the Whole. I ask the ruling of the chair on that.

The CHAIR. The chair cannot rule on that.

Mr. VINEYARD. Then I renew my motion to strike out section 8 (7).

The CHAIR. The chair has already ruled that if the committee makes a mistake, it has the power to go back and re-examine. The chair has decided that, but of course it is subject to appeal.

Mr. WILSON. I will inquire if the ruling of the chair is that the gentleman's motion to strike out is in order.

The CHAIR. Yes.

Mr. WILSON. I am in favor of striking out section 8 (7), for this reason. It has been said, and very properly, I think. that we have enacted fundamental law, which, taken in connection with that section, would be retroactive in its nature, so far as some corporations, or perhaps so far as all corporations, are concerned, and it would probably impair the obligation of contracts. I am aware that some retroactive laws have been sustained, and properly so, but all retroactive laws are not necessarily good laws. Retroactive laws validating deeds which were invalid before, anterior obligations, contracts impaired, or where any wrong has been done, are sustained.. Now, I think if this section is adopted, we do pass a retroactive law and impair the obligation of contracts. If we do that, manifestly this section is void. That is one horn of the dilemma. On the

other hand, if the section is good, and we do not pass a retroactive law, and do not impair the obligation of contracts, then it is not necessary to say that corporations shall file acceptance of it with the secretary of state, because they are bound by it anyhow just as you or I or any other individual. A corporation is simply an artificial person and we are natural persons, but we are all bound by the same law. A corporation, therefore, if the section is good, good fundamental law, or good legislative law, is bound by it. It is not necessary to say they shall file acceptance of it with the secretary of state. That is the other horn of the dilemma. It seems to me that section in law is a *reductio ad absurdum.* That section is absolutely worthless, or if good, it does not, leaving that latter clause out, require them to accept it by filing acceptance thereof with the secretary of state. For that reason I think it ought to be stricken out.

Mr. SAVIDGE. Mr. Chairman, the gentlemen of the committee, when they were considering this report, gave it a good deal of careful attention and compared it as the chairman has said, with the constitutions of other states. We found that this section 8 (7) did appear in many of the other constitutions, and we took those somewhat for a guide. But it does seem upon consideration that the provisions of that section might work a hardship upon corporations, which compels them to file an article of acceptance with the secretary of state to all of the provisions that may be contained in this constitution. It puts an absolute liability upon them to comply absolutely and unquestionably with whatever may appear in the constitution. Now, it may be that there will sections appear in this constitution that will put great hardships upon corporations, and prevent or discourage them from coming into this state. For that reason, and that only, I think it would be well to have that section stricken out, because it imposes upon them an absolute covenant to comply and abide

by whatever may appear in this constitution, and file a written article to that effect.

Mr. CLAGGETT. It may be that I am all in a muddle about this, but I don't think I am; and I certainly do hope that that section, of all the sections of this article, will not be stricken out, for there are the most vital reasons for retaining it; and neither do I think section 8 (7) has anything whatever to do with section 13 (12). It has nothing to do with retrospective laws. Section 13 (12) simply provides that the legislature shall pass no special law for the benefit of a railroad or other corporation or any individual or association of individuals. They are all really single persons. A railroad, or other corporation, an individual, which is a single person, or an association of individuals, which is a firm or a joint stock company,—it shall pass no law for their special benefit, or of some particular person. It is aimed at retroactive legislation for the benefit of some particular person. That is one thing. But when you come to section 8 (7), it deals with a subject that is altogether different. "No railroad, express or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation," without first filing in the office of the secretary of state an acceptance of the provisions of this constitution. Now, what is the object of putting that in? It is this. The committee will readily see that section 8 (7) does not take away one single right which any corporation or any person has at the time the constitution is adopted. It leaves them with every right which they had before that absolutely unimpaired. But it goes on and imposes upon the corporation a thoroughly reasonable and necessary restriction, that if they are going to come to the legislature hereafter, while existing rights are all protected in every respect, if they are going to come to the legislature hereafter and claim the benefits of future legislation, that then they must accept the terms of the constitution in other respects and must not go out, and

while hanging onto everything which they have, obtain the benefit of everything which the legislature may impose, fighting the provisions of this constitution and prevent or try to prevent their being put into force and carried into execution. That is exactly what this section 8 (7) is.

Mr. POE. Is not this in the nature of class legislation, and would not they have the same right to require every individual within the limits of this state included? Instead of saying "corporations," suppose it stated "individuals" and required every individual in this state before he should have the benefit of any laws passed by this legislature to first file an acceptance of the provisions of this constitution?

Mr. CLAGGETT. Why, certainly not. In the first place, corporations are not like natural persons; they are the creatures of the state. They have no power and existence except such as created by the laws of the state. And in answering the question of my friend from Nez Perce I would say yes, if any individual should come before the legislative body and say, "I will not obey the provisions of this constitution, but I will demand the benefits of future legislation." I would say, "Not at all, sir; when you get ready to obey the law you don't like, then we will be ready to consider the question of what benefits we will confer on you."

Mr. POE. In the absence of this section would not the legislature or the people have the same right to say that to the railroad companies if they came and said, "We don't like the provisions of your law," and then we could tell them to take a walk.

Mr. CLAGGETT. To take a walk, so far as the benfits of future legislation are concerned, most assuredly it would. And this section is aimed exactly at those autocratic powers, persons, individuals, firms and corporations, who claim the benefit of all the laws while repudiating the obligations of the laws. And while protecting every right they have which existed at the time of the adoption of the constitution it says "Unless you

will obey the constitution of the state you shall not get the benefit of any future legislation," and I say it is right.

Mr. POE. Isn't it a matter of law, fixed and established beyond all doubt, that every man, corporation or individual is bound to obey the law before he can ask for the benefit of it?

Mr. CLAGGETT. No sir, it is not, because if you go ahead and pass a general law by the state relating to corporations they will come in and do it, unless you go to work and require them to accept this provision. They may turn in and claim they have certain existing rights, and they have certain existing rights; they have existing rights which it is not competent for the legislature to take away. And this section 8 (7) preserves and protects those rights, inasmuch as it does not in any way, shape or form, take them away, or profess to take them away; but it does say this: that whenever they claim the right, for instance, suppose they shall come in and claim they were properly incorporated and chartered prior to the time of the adoption of this constitution, and whenever the legislature undertakes to regulate freights and fares, they set up that it is unconstitutional and does not affect them; that it only applies and can only be made to apply to corporations created after the adoption of the constitution, and hence all existing railroad corporations in this territory now will be entirely freed from the obligations of the laws and constitution in that regard; suppose they should set it up,— and set it up they will, to a dead moral certainty—nevertheless, if you strike out section 8 (7) you will give them the benefit of all future legislation, while they are trying to evade all legislation which the constitution imposes. I say it is right the way it is.

Mr. HEYBURN. I have sent up an amendment and ask that it be read.

SECRETARY reads: Amend section 8 (7) by inserting after the word "railroad," in the first line, the words "private corporation or individual."

Mr. VINEYARD. In support of the motion to strike out, I have a word to say. It is quite true, as Mr. Claggett has said, that corporations are creatures of the state. If that is so, they are amenable to every law enacted by the state under which they exist. Then what is the use of that section if that is so? That before they can receive the benefit of any future legislation they must file in the office of the secretary an acceptance of the provisions of this constitution. I understand that this is absolutely worthless there. It adds no force or effect to the constitution. They are under and amenable to the laws, not only of the constitution of the state as it exists, but to the laws made in pursuance thereof. When a corporation is organized in this state or comes into this state to do business here, it by that very act assumes the obligation to live within the laws of the state, and to live under the constitution of the state. It amounts to an acceptance of every term and condition imposed upon them by the constitution and by the laws made in pursuance thereof. Hence this Section 8 (7) is absolutely worthless so far as giving additional powers to the state over corporations. And it would be so held, I think, in the courts. It is a condition precedent to the very existence of corporations, to the very existence of their doing business within the limits of the state, that they must conform not only to the constitution, but to the laws made in pursuance thereof.

Now my friend, Judge Mayhew, said it appeared to him that it was necessary to file a charter, etc., in the office of the secretary of state under this article. I do not so understand it. I understand this Section 8 (7) to mean exactly what it states, that before any corporation can get the benefit of future legislation it must first file in the office of the secretary of state an acceptance of the provisions of this constitution. There is no use in that. They have already accepted the provisions of the constitution if they propose to do business in this state. It does not add any additional force to their liabilities to the state or to an individual, if

any acceptance was filed in the office of the secretary of state. They could not go scot free and get out of liability, which they are equally liable for on any law in the world. Hence the section is worthless standing here as it does in the article. I will admit it has no particular connection with Section 13 (12); but it is simply encumbering this constitution with a lot of stuff that is worthless so far as an addition to the liability of these corporations.

Mr. MAYHEW. I would like to hear that amendment read.

SECRETARY reads: Amend Section 8 (7) by inserting after the word "railroad" in the first line the words "private corporation or individual."

Mr. BEATTY. Mr. Chairman, I did not expect, when I made the suggestion awhile ago in passing, referring to this Section 8 (7), that any motion would be made to strike it out; but I am glad the motion was made, for I think we passed over it rather hastily. But let us look a little further. I did not comment on the section before, but let us look at what it means. "No railroad, express or other corporation now in existence." You are making that provision apply only to railroad companies now in existence. What about other companies that come into existence hereafter? They are not bound by it at all; "in existence at the time of the adoption of this constitution shall have the benefit of any future legislation." You are legislating now as to companies in existence at the time of the adoption of this constitution. Other companies that come in are not bound.

Mr. MAXEY. I would suggest that when members talk and whisper when gentlemen are talking we cannot hear what is said.

Mr. CLARK. I would ask the chairman if the gavel is lost

The CHAIR. The gavel is here.

Mr. BEATTY. Now I claim that there are two fatal objections to that section. It is undertaking to put

a rule upon certain corporations, those in existence at the time of the adoption of this constitution, and does not apply the same rule to any future corporations which may come into existence. So there you have class legislation. The next objection is that they shall not have the benefit of any future legislation. I would like to know how you can pass a law, or how you can in the future pass any laws, which shall apply to one corporation and not to another. Does any lawyer here pretend to tell me that in the future, if some corporation fails to comply with this section, you can pass a general law applicable to all other corporations save that? That is class legislation of the worst nature. I undertake to say that that cannot be done. But my last objection is this, that that section is not worth the paper it is written on. My objection to it is simply, not that it does anybody any harm, but it is simply a lot of fudge and stuff put in the constitution that we should be ashamed of. Does any lawyer here pretend to tell me that I have no right to litigate any question; that you can prevent me, by putting me under duress, from litigating that question? Can you, by putting me in a position where I am not a free agent, bind me to a certain thing and attempt to hold me to it afterwards? All courts and lawyers will tell you that if a man is put under duress, if he does that which the conscience says is not right; for instance, while in prison or under the control of another person; any act he performs under those circumstances is not binding upon him. Now, I submit, is not this an attempt to put corporations, or if the amendment of my friend goes in here, individuals and associations, under the duress of a threat that the benefits of future legislation shall not apply to them unless they comply with this section? I submit, is not that such duress as that the party subscribing to the article shall not be bound by? I suggest these three objections, and I ask any lawyer here to answer them. First, we apply this only to corporations that now exist, discriminating against them in favor of future cor-

porations. In the next place we say that in the future laws shall be passed that shall apply only to one set of corporations but not to another. And in the third place we attempt to put parties under duress and compel them to endorse that which they say is not right, or which they have a right to litigate, and hold them by that process.

Mr. HEYBURN. My amendment may seem rather broad and sweeping in its terms, but inasmuch as we have not yet finally passed upon the question of a free ballot in this convention——

The CHAIR. The question is now on striking it out.

Mr. HEYBURN. Very true. I will speak to that. But inasmuch as the amendment goes to the vicious feature of the section itself, I desire to give my reasons for it. I desire to have harmony throughout this state, and that this constitution shall be ratified by a unanimous vote; and I cannot see any better way to do it than simply to put a penalty on the man who votes against this constitution and who is not in favor of it, by excluding him from the benefits of all future legislation. In other words, make every gentleman—all the people come into court, everybody litigates, make everybody who does, file an acceptance of the terms of this constitution or ratification of it before the secretary of state, before they shall have a right to sue or go into court at all, or have any benefit of future legislation. I think it would result in obtaining for the constitution a unanimous ratification. The provisions of Section 8 (7) provide now that a certain percentage of the people shall ratify it as a matter of compulsion; that is to say, they shall not be free to oppose the provisions of this constitution or its ratification at all; that is to say, railroad corporations. They are a part of course of the citizens of the state; and the section takes away from them the right to object to the action of this convention; and inasmuch as I have great confidence in its wisdom I want to compel all the people to ratify it. I have

offered an amendment therefore that "no railroad, private corporation, individual, or express or transportation company, shall have any benefits of any future legislation," unless they are heartily in sympathy with our action in this convention.

Mr. ANDERSON. I have sent up an amendment to cover the point made by Judge Heyburn as to railroad companies now in existence.

SECRETARY reads: Amend Section 8 (7) line 2 by inserting after the word "constitution," the words "or hereafter created in this state."

Mr. AINSLIE. Mr. Chairman, in regard to the position assumed by the gentleman from Alturas, as a legal proposition I will state that the deprivation of any benefits of future legislation by the legislature, of corporations now in existence, would not be impairing the obligations of a contract at all, any more than the passage by the legislature of the statute of limitations or changing the statute of limitations. It has been decided by the supreme court of the United States[1] as well as by the supreme courts of the states that the statute of limitations never impairs the obligations of contracts, because it only affects the remedies under them. So, therefore, the right of the convention to adopt a provision of this kind is, in my opinion, not only a very proper exercise of legal authority, but I think Section 8 (7), as stated by the gentleman from Shoshone, Judge Claggett, is one of the most important provisions that could be put into this article. We all know that no corporations can be formed under the laws of Idaho without filing a certificate signed by the incorporators stating the purpose of the incorporation, etc., in pursuance of the laws of Idaho Territory, which provide the manner in which corporations shall be formed.

Now, Sir, in our transition from territorial to state existence, it is necessary that something should be done to indicate that the corporations in existence at the

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1—Sturges v. Crowninshield, 4 Wheat. 122.

time of this change accept the law as embodied in the organic law of the state in regard to the formation and perpetuation of their rights.

Mr. BEATTY. I would like to ask the gentleman a question.

Mr. AINSLIE. Certainly.

Mr. BEATTY. I will ask you whether, if this constitution is in conflict with the Constitution of the United States, and a corporation in order to get the benefits of future legislation, files its acceptance of this constitution, binds itself to comply with all its terms, whether it then is prevented from litigating any question of conflict in this constitution with the Constitution of the United States?

Mr. AINSLIE. I don't know any corporation in existence that is organized under the Constitution of the United States.

Mr. BEATTY. Perhaps I do not make myself understood.

Mr. AINSLIE. There are railroad companies incorporated by act of congress.

Mr. BEATTY. My point is this: If this constitution is in conflict now with the Constitution of the United States——

Mr. AINSLIE. Then it falls to the ground, of course.

Mr. BEATTY. But, is a corporation then, which files an acceptance of this constitution prevented from litigating that question in the future?

Mr. AINSLIE. I will state in answer to the gentleman, it is a proposition universally established by supreme courts wherever a provision similar to the one we have in our constitution has been passed upon; but I don't know whether the legislature is prohibited by this language in the second section of this act, from the passing of special acts under which these bodies can exist—"provided, that any such general law shall be subject to future repeal or alteration by the legislature." Now, in the absence of a provision of that character in many state constitutions, considerable litigation has

arisen in regard to the power of the legislature to alter or amend an act of incorporation, or a general act of incorporation where the power was not deposited in the constitution, as we provide here. But a great many of these cases that have been litigated have arisen under special charters of incorporation. You will find the law books full of cases of litigation, where special charters of incorporation have been granted by the legislature, where the constitution contained no provision that these corporations shall be formed under general law, and then an attempt of the legislature to alter or amend the special charter of such corporation has been decided in the negative in a great many cases. The Dartmouth College case, argued by Mr. Webster, is familiar to every lawyer on the floor. Now, it is necessary in our transition state from the territorial to the state organization, that these corporations existing under the statute law of Idaho Territory, the territory having no organic law, except the act of organization passed by congress, should renew their filing of certificate, and in a similar manner to that in which they organized under the territorial statute. For instance, suppose we should pass, or incorporate in this constitution, as they passed in Montana, that all territorial officials and county officials should hold over until the expiration of their terms of office for which they were elected under territorial statutes, and serve out their terms under the state organization. Would you deny but what it would be proper for those officers, after the adoption of that constitution, to be required to give new bonds in the state of Montana, or renew their official oaths that they will support the Constitution of the United States? It provided that they should support the Constitution of the United States and the organic act of the territory of Montana. It is the oath which would be required of the makers of the constitution itself, to serve out their terms of office when they are elected under territorial government, without which could they support the Constitution of the United States? Of course not. Then

you see, these corporations that have been organized and gone into existence under territorial act of the state legislature should, when that is merged in the higher power under the constitution, come in and renew their allegiance to state authority which supercedes territorial authority.

And I propose to meet the other objection stated by the gentleman from Alturas. There might be some force in another amendment, which I think will cover the whole business, which is a very short one, namely: Strike out of line 1 in Section 8 (7) down to the word "in" just before "existence." This confines it to railroad, express or other transportation companies. Strike out all that line, and insert "no corporations other than municipal corporations in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form." And I think that covers all the objections the gentleman stated. It is general legislation affecting all corporations, and that takes it out of the special inhibition.

Mr. MORGAN. The amendment that was offered by Mr. Heyburn shows the inconsistency and impropriety of this clause being inserted in the constitution. We certainly don't want to legislate against any class of corporations or any class of individuals. His proposition is that we shall insert after the word "railroad" the following words "private corporation, individual." It would then read "no railroad, private corporation, individual, express or other transportation company in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form."

The amendment that is offered by the gentleman from Boise does not do away with the objection at all. This increases the objection, if anything would increase

it, and gives it more force. His amendment to the section as it stands here would apply not only to stage lines and express lines and railroads, but it would apply even to freight lines, any corporation organized in this territory for the purpose of carrying freight from one point to another over a wagon road—would have no benefit of this constitution or laws enacted in pursuance of it, unless they file this acceptance of the provisions of the constitution. Therefore, every freight line or corporation in existence in the territory must file its acceptance of the provisions of this constitution before it could have any benefit of any future legislation. It will be noticed also that this cuts off all those corporations from the benefit of the criminal laws. If a railroad company should be robbed of one-half of the contents of a car it could not employ the criminal laws of this country to pursue the criminal and imprison him. Neither could any other transportation company or stage line or freight corporation, if the amendment of the gentleman from Boise is adopted—every corporation in the country, including water corporations, corporations organized for the purpose of furnishing water, corporations organized for the purpose of working mines, amounting to hundreds of corporations in this territory —must all of them file their acceptance of the provisions of this constitution or they cannot have any benefit either from the civil or criminal laws of the territory.

Mr. MAYHEW. Mr. Chairman, I have listened to the argument of this gentleman who has just taken his seat. I must say that argument was amusing. I won't say that the argument is logical, I won't say that it is nonsensical; and I don't desire to criticize the argument to any extent, farther than to say that when any man, being a lawyer, can get up in this body and say that when a man steals anything of any person the thief could not be prosecuted for that theft unless the person robbed was born in the United States or had declared his intention to become a citizen he is, to put it mildly, a man of remarkable courage. If that is the law under

this constitution, and if this provision in this article can go so far as to say that if you do not file your acceptance of this constitution with the secretary of state, that every road agent in this territory has a right to steal all you have got—if the gentleman thinks that it a legal argument——

Mr. MORGAN. Will the gentleman allow me to say I did not say any such thing. I did not say that they could not be prosecuted under the laws. I say it will prevent these corporations appealing to any of these laws of their own motion.

Mr. MAYHEW. Does the gentleman change his position? No, not a bit. I say the argument of the gentleman goes to the effect of saying that it prevents these corporations from pursuing a criminal who has stolen their property. Such an argument as that as a legal proposition is absurd, and I venture to say that no such idea ever emanated from any person's mind before. You can't excuse by the organic act of this territory a man who has committed treason against the government of the United States. You could not excuse a man who commits a crime against the laws of another state by engrafting such a provision as this in the constitution. Nor can you in this constitution engraft a law that will prevent a corporation of any character at all from pursuing persons who commit a crime against the laws of the country. That is to say, Mr. Chairman, this: How can any law be passed, or could it be possible, can you put such an interpretation upon this section as the gentleman puts upon it when he says it will prevent these corporations from pursuing parties who commit crimes against them? Now, that is not the question.

What is the object of this law is clearly stated both by Mr. Claggett in his remarks and also by Mr. Ainslie. That is, changing from the territorial position to that of the state simply requires these corporations to file their acceptance of this constitution with the secretary of state. What does that mean? It simply issues a com-

mand to them to file this acceptance—to show what? That they have accepted the constitution of this territory, showing to the state itself that they have a corporate existence. That is all there is of it. And I say it is absolutely necessary that some provision of this kind should be placed in the constitution, as it has been said here, the laws of this territory require all corporations to file a certificate of incorporation with the secretary of state before they can have any legal existence. This requires them to renew their fealty to the state by filing an acceptance similar in character to that of the certificate of incorporation, with the secretary of state. I understand exactly the argument and the amendment offered by my distinguished friend from Shoshone, and his argument was very amusing to me in relation to the adoption of this constitution by the people, requiring individuals to go to the secretary of state to file their acceptance of this constitution. The gentlemen seem to forget that corporations are artificial persons. When they say that a corporation is nothing more than an individual, a corporation is an individual for what purpose? As it is laid down by all text writers, there are two kinds of persons, one a natural person, the other an artificial person. What are the artificial persons? Corporations. Now the reason of the law that makes them individuals is this, that they can be sued and they can sue; they can plead and be impleaded in court, and appear and defend and prosecute matters in the courts the same as individuals. That is all that means, but it gives to corporations such powers as individuals do not have; and that is the object of this Section 8 (7) in this constitution, that they, being creatures of the law, creatures of a creation of law giving them certain powers and immunities and privileges that individuals do not have, that they shall do certain things before they can have an existence under the law.

Now let us read this section and look at it calmly. If this constitutional convention desires to cut this out, I don't think I am going to go crazy over the subject;

but I think it is important, and hence put it in here. Another argument, I desire to say to my friend Mr. Savidge: In the discussion in the committee in regard to this matter we all agreed there as to the importance of this provision. So did he. But I see that he has deemed it necessary, according to the reason that he has given, to change his position; and what is his reason? If there is any legal reason, if there is any philosophy in his reason, if there is any legitimacy in his reason, he has failed to state it in this committee. He says that his reasons are that it would be a hardship for these railroad companies to file this acceptance with the secretary of state. Is there any reason in that? Is there any political philosophy in it? Is there any legal argument in it? Not at all, only this, that it would be a hardship for these corporations to file this acceptance. I tell the gentleman this: That this constitution will provide and require that these individuals (as some gentlemen here have desired to call them, that these corporations are simply individuals) that had been once created under the territorial general law of this territory and filed their acceptance and their certificate of incorporation with the secretary—it simply requires those persons or associations of persons in the way of a corporation to file their acceptance of this constitution, or to renew their fealty to or faith in the state government with the secretary of state. And my friend from Shoshone who pretends to get up here, not for the purpose of amending this article, but with a view, adroitly as he has done this, to bring this section (as I presume my distinguished friend has done) into a condition of ridicule before the convention in order to defeat this section! Requiring individuals to file their acceptance of this constitution, before they can do what? Now, before they can do what? Read the amendment that the gentleman has sent up: "and that individuals shall file this." For what purpose? Can we place any reason with that amendment there, further than to bring this matter into such ridicule that it may be defeated by men in this

convention, perhaps as he thinks, who will not give sufficient attention and consideration to this section? And that is all the gentleman's object and purpose. If the amendment cannot defeat the legitimate cause of the section in the constitution without placing it in any other light than that of ridicule, then his wits and his great wisdom fall short indeed. There is no reason in that, in a matter claiming the serious attention of this committee to a subject which is, I think, of a serious character. "No railroad, private corporation, individual or express or transportation company shall have the benefit of any future legislation, without filing in the office of the secretary of state an acceptance of the provisions of this constitution." Does that amendment, according to the argument of my friend from Alturas, require a man and these corporations to simply come here and bow down and accept all provisions of this constitution? Not at all. It simply means that they shall file in the secretary's office a renewal of their certificate of incorporation.

Another argument of my friend from Alturas is that if this article is adopted it prevents these parties litigating any rights they have or should have, or think they have in the courts—those rights that should be litigated. The gentleman assumed that if a corporation which had not filed its acceptance with the secretary of state felt it necessary to litigate some imaginary or real right that it had against another person, and filed its complaint against this individual, that that complaint would be demurrable on the ground that it did not state facts sufficient to constitute a cause of action at law. That would be all there is of it, but that is not the case. That section does not deny them the right of litigating or trying any rights they may have. But what does it say? Unless they file their acceptance of this constitution "that they shall not have the benefit of any future legislation." That is it. Not that they are cut off from litigating any of their rights, not at all.

There is no such proposition as that in this constitution.

Mr. BEATTY. May I ask the gentleman a question? Is it the meaning of this section then that if a corporation files acceptance of its provisions that they are cut off from contesting any constitutional questions under this constitution?

Mr. MAYHEW. Why, no sir, no sir, this constitution does not go to that extent.

Mr. BEATTY. It looks so to me.

Mr. MAYHEW. It does not look so to me.

Mr. BEATTY. I do not mean to say they would be bound by it. I think if they filed their acceptance of it, it would be held that they filed it under duress, and may still contest any matter under the constitution.

Mr. MAYHEW. Not at all. I don't know what the gentleman means by being under duress. I don't know how you can apply such a legal term to anything of this kind.

Mr. BEATTY. Allow me to interrupt you.

Mr. MAYHEW. Certainly. I would rather be interrupted than not, to get your meaning and understanding.

Mr. BEATTY. This section holds out a threat that unless they comply with the provisions by filing an acceptance of the terms of this constitution, they shall have no benefit of any future legislation. I claim that is a threat, and puts them under duress, compels them by filing an acceptance to subscribe to an article, which they may think is unjust and unconstitutional.

Mr. MAYHEW. Then say so; but don't come up here and argue to the committee that they are denied legal rights in a court of justice; that they could not litigate any right they may have there. That is a different question. This question involved here is, if they do not do so, they can only be barred from having the benefit of future legislation.

Mr. BEATTY. Well, I did not claim anything beyond that.

Mr. MAYHEW. But I understood your argument to go much farther than that, if you will pardon me.

Mr. BEATTY. No, I claimed this, Judge. I simply claimed this, that this prevents them from receiving the benefit of future legislation.

Mr. MAYHEW. No question about that; that is the purpose and that is the understanding.

Mr. BEATTY. That the benefits of any future law could not apply to them.

Mr. MAYHEW. That is it in so many words.

Mr. BEATTY. I did not mean to say nor have you understand that I thought they could not have the benefit of any laws now in existence.

Mr. MAYHEW. I am happy to be corrected. That is just what I understood your argument to be. I am perhaps a little dull of comprehension. The only reason is, I am made that way and can't help it. Another one of his arguments was this, that this was class legislation. Now, don't the gentleman see the difference between the creation of a corporation at the present time under the state constitution? I presume to say that the legislature will pass a general incorporation law, and in that general corporation law they will require the parties who are then incorporating to comply with the provisions of the constitution and the general corporation act that the legislature may pass. I presume to say that the legislature will require all those corporations to file their certificate with the secretary of the territory or the treasurer, more than likely the office of the secretary, because that is the office where such records are made. Now, the gentleman says that is class legislation. How can it be? All corporations created under state law will have to file their certificate under state law as passed by the legislature in accordance with this constitution. Now it only requires the party that has heretofore been incorporated to do the same thing that corporations created after the organization of the state are required to do. That is all. Or

in other words, Mr. Chairman, it places these parties upon an equal footing.

Now, I do not desire to go on to any extent and argue this thing, but I have answered this question of the gentleman, particularly my friend Morgan, who I thought truly and sincerely made an argument that was not correct and cannot be correct, when he attempted to argue to this committee that the provisions of this article prevented these associations and corporations from pursuing persons who committed crimes against them. I have no objection, Mr. Chairman, to any amendment that may be offered to this, because I happen to be chairman of the committee. There are many things, even in this article, to amend if I had my own individual view about it; but I think so far as my individual views would go, it would go to the extent to place a larger and more extended restriction upon these corporations. For I must say, Mr. Chairman, that I am jealous of their rights, and I think it is prudent and necessary in our legislative bodies to throw such a safeguard around the people that they may not be imposed upon in any manner or form by corporations. Not that I say they all do it in this territory, but in order to prevent their doing it, I am in favor of this section.

Mr. HEYBURN. Mr. Chairman, the gentleman has objected to the remarks I have made in this matter because he says they were trifling with a serious matter. Very well, for a moment we will consider this matter seriously. When the gentleman speaks of all future legislation, he speaks of all legislation in this state, because all of the legislation that is to govern the affairs of this state is a thing in the future. The state is not yet organized. There will doubtless be adopted by the legislature of the state when it is organized a code of civil and penal laws, so that when he uses the term "future legislation" he covers all laws that will govern the people of this state. Now then, we find that there has been a contract entered into upon the faith of this

territory with certain individuals who have formed themselves together for the purpose of forming a corporation. We find that contract, and the terms of it set forth in the present laws of the territory of Idaho in section 2584[1], which says:

"Upon filing the articles of incorporation in the office of the county recorder of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county recorder, with the secretary of the territory, and filing the affidavit mentioned in the last section, when such affidavit is required, the secretary of the territory or such county recorder must issue to the corporation, over his official seal, a certificate that a copy of the articles containing the required statement of facts, has been filed in his office; and thereupon the persons executing the articles and their associates and successors shall be a body politic and corporate by the name stated in the articles, and for a term of fifty years, unless it is in the articles of incorporation otherwise stated, or by law otherwise specially provided."

Mr. Chairman, I say that is a contract, a solemn contract between the people of the territory of Idaho, speaking through their legislature, and this aggregation of individuals who form themselves together for the purpose of doing business within the territory. It is a contract for the term of fifty years that these people shall have the rights guaranteed to them by the provisions of that law.

Mr. MAYHEW. Will the gentleman allow me to ask him a question?

Mr. HEYBURN. Certainly.

Mr. MAYHEW. I admit that is a contract, and they are entitled to be protected, because it is a legislative contract, a contract between the legislature and individuals and associations for the purpose of forming a corporation. But I say this: While they are doing that, does this article take from them any rights at all? I ask you that question, by requiring them to file an acceptance with the secretary. If they do not do it,

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1—Rev. Stat. 1887.

they do not comply with the law; that is all of the proposition.

Mr. HEYBURN. I will try to answer that inquiry. If it does not take away from them any rights, and if it is not intended to take away any rights, then the section should be stricken out. Any individual citizen of this state will have the right, if he considers that the provisions of this constitution are in violation of the rights guaranteed to him by any higher law, to test that fact in the courts. The provisions of this section 8(7) take that right away from the corporations. Corporations sometimes consist of only five persons, a very limited number, and sometimes of a great many people. There are various kinds of corporations that will come within the scope of this provision and amendment as proposed by the gentleman from Boise County. It is a discrimination against those persons who have associated themselves together as a corporation, which is not made against a single individual. And if a corporation were to refuse to file its acceptance of the terms and provisions of this constitution, then if its property was stolen, if its rights were invaded, the door of the court would be closed to that corporation, because it would be necessary, if this provision were contained in the constitution, to plead the fact that the corporation, after you had pleaded its existence, had complied with the provisions of this constitution, because it would be a jurisdictional question. So that if in filing your complaint in the court you fail to set up the fact under oath,— if your complaint was under oath, that your corporation plaintiff had complied with the terms of the constitution by filing an acceptance in binding form of the provisions of this constitution, then the complaint would be demurrable on the ground that it did not state facts sufficient to constitute a ground of action. And it is not, as it seems to be considered by gentlemen who have discussed this, that it follows the same legislation which we already have. Every enactment which

we now have contained in the code, and every enactment which is to be contained in the laws will be future legislation, so far as the provisions of this act are concerned; because it has to be re-enacted and will be re-enacted by the legislature of the state as the fundamental law of the state. Are you going to impose this condition upon corporations,—-some of which I have in my mind in this territory are composed of but five individuals—who have, in order to more conveniently work their mining property or their property of any kind, associated themselves together—are you going to say that those individuals shall be precluded from the right to test the constitution, or test the validity of the provisions of this constitution as applied to the Constitution of the United States or to any other interpretation? Are you going to take away from them that right that is reserved to every other citizen in the state? Is it fair and equitable to do it simply because they are corporations, simply because they are another class of corporations, which are a little more indefinite in their being, such as a large railroad corporation, where the stockholders are scattered all over the country? Are you going to make a sweeping provision in this constitution that all corporations shall be prohibited from contesting the validity of it, unless they agree as to the terms of it, when, in their judgment of it, its terms may be an abrogation of their rights or a curtailment of their privileges which they have now under the state or territorial government or government of the United States? Are you going to compel them to do that which you do not compel anybody else to do, to accept without demur this constitution we present? Where is the ultimate justice in that? Apply it to the whole mass of the people or apply it to no part of them. That is as strictly class legislation as it is possible to conceive. I say again, that it is a contract that has been entered into between you gentlemen, as a part of the people of the state, and these persons who have associated themselves together,

that they shall have those rights. The legislature always has a right to control them, to keep them within bounds, so that they may not infringe upon the rights of others; but this constitution has no right to exclude from them any rights and privileges which it reserves to the balance of the people.

Mr. CLAGGETT. Mr. Chairman, I do hope this committee will not allow itself to be befogged by these extraneous and outside suggestions and arguments which have nothing to do with the question before the committee. The entire proposition embraced in this section 8 (7) which is proposed to be stricken out can be stated in a nutshell, and has been stated in a nutshell before. It is this: It does not propose to take away one solitary existing right of any corporation in this territory. Every chartered incorporation which was created or granted under territorial law is a contract, which cannot be impaired in any shape or form. To that extent it is protected by the Constitution of the United States. And that Section 7 (8) does not propose to impair it in any way, shape or form. It leaves every corporation precisely as it was at the time the constitution is adopted, *except* that it does say this, that if you want to go ahead and fight the provisions of this constitution, all right, gentlemen, go on and fight it. If you want to test the validity of this constitution in any way, shape or form, we claim these provisions are put in for the restriction and control and *necessary* restriction and control, of corporate bodies under the laws of the territory, and we say, all right, go ahead, contest it, bring all the statutes you are a mind to, and stand pat and ha ha, if I may use the expression, upon every right you have; but during the time and while you are contesting the right of the state to regulate and control you, you shall not receive the benefit of any future legislation. That is the operation of this law. You can fight it just as much as you are a mind to, you can test the validity of it as much as you are a mind to, but as long as you are fighting the sovereign power of the state in these

matters which the sovereign power has deemed proper to exercise—the right to regulate and control—as long as you do that, as long as you fight the state on this proposition, and will not accept the terms and provisions of this constitution, and as long as you insist upon standing upon your existing rights and stand outside the pale of the law, then do not ask any favors, while you are occupying that attitude, of the law in the future and for your benefit. That is the whole business in a nut-shell.

"Question, question."

The CHAIR. The question is upon the motion of the gentleman from Alturas, Mr. Beatty, that section 8 (7) be stricken out. (Vote.) By the sound the noes have it.

Division demanded. On the rising vote, ayes 14; nays 26.

The CHAIR. The question is now upon the amendment of the gentleman from Shoshone, Mr. Heyburn.

Mr. HEYBURN. Mr. Chairman, I will withdraw the amendment.

The CHAIR. The question then recurs upon the amendment offered by the gentleman from Boise.

Mr. AINSLIE. I do not withdraw my amendment; I think it is a very important one and material.

SECRETARY reads: Amend section 8 (7) as follows: strike out all of line 1 down to "in" in said line, and insert "no corporation other than municipal corporations."

The question was put, vote taken, and amendment carried.

Mr. AINSLIE. I now move the adoption of the section as amended.

Vote taken. Carried.

SECTION 13.

Section 14 (13) was read by the secretary.

Mr. CLAGGETT. I offer an amendment, to strike

out all after the word "section" in line 5. (Seconded.) I just want to say a word.

Mr. MAYHEW. I think it is necessary to try and make it comply with the whole section.

Mr. CLAGGETT. Yes, I don't think we ought to undertake to interfere with the business of private or public corporations.

The CHAIR. The chairman of the committee agrees to accept the amendment, as I understand it.

Mr. MAYHEW. Yes.

The CHAIR. If there is no objection those words will be stricken out. The chair hears no objection, and it is so ordered.

Mr. POE. I move that the section be now adopted. (Seconded. Vote and carried).

SECTION 14.

Section 15 (14) was read by the secretary, and it was moved and seconded that the same be adopted. (Vote and carried).

SECTION STRICKEN OUT.

Section 16 was read by the secretary.

Mr. MORGAN. I move that section 16 be stricken out. (Seconded.)

Mr. WILSON. Mr. Chairman, I desire to ask a question of the chairman of the committee having this article in charge. Is it not true, as a matter of law, that the contract referred to in that section would be absolutely null and void, whether the section was adopted or not? In other words, is not a contract releasing or discharging from liability or responsibility on account of personal injuries, made as condition precedent to appointment by the corporation of the individual, void as a matter of law?

Mr. MAYHEW. I am rather inclined to think that the courts have in some instances held that that is true. But while this is an organic act it settles the question as to that matter, and hence we think it is necessary

to have it inserted. I would like to hear from my friend Morgan why he wants it stricken out.

Mr. MORGAN. I will ask the gentleman if it has not been the decision of every court in the country that has ever passed on this question that such contracts are void?

Mr. MAYHEW. I can't say that it is the decision of every court in this country, because I have not read them all. (Laughter.)

Mr. MORGAN. Well, every one that you know anything about?

Mr. MAYHEW. I have seen some dissenting opinions on this subject in several courts, but I will say the majority of the courts have sustained the provisions of this constitution. I will say that I have seen some dissenting opinions, and if the gentlemen will observe, the text writers on the question of contracts, even Story and Parsons, you will find give quite a number of instances of dissenting opinions upon these main propositions. I can't see that because there have been dissenting opinions — and opinions of courts at all, affirming or rejecting that proposition, goes to argue that this should not be in this constitution — I don't know any reason for having it stricken out.

Mr. WILSON. Mr. Chairman, I believe it is a rule of law in England and this country both that contracts of this kind have not been sustained for the reason that they were void as against public policy. I think that is the general rule of law both in England and in this country. I had occasion to look it up before I came here this morning. If they are void, I don't think we better encumber the constitution with it. Put nothing in for buncombe. If the chairman admits that is the rule of law, and he is a very good lawyer, for that reason I would not burden the constitution with it. We are putting things in here because they are law and of right ought to be here. Now, it is conceded this is immaterial, and I think it ought to be stricken out.

Mr. MAYHEW. I beg to disagree with my friend

Wilson. I cannot say positively that the courts have held that they are null and void. It is true, the main principle that governs the courts in their decisions on this question is the legal position, and unquestionable too, that it is against public policy. But if you let this section remain in here it settles for all time that question of litigation, and prevents any future litigation upon any question of that kind, stops it entirely.

Vote taken on the question to strike out section 16. (Division demanded. On the rising vote, ayes 22; nays 17, and section 16 is stricken out.)

SECTION 15.

SECRETARY reads section 17 (15).

Moved and seconded the same be adopted. (Vote and carried.)

SECTION 16.

SECRETARY reads section 18 (16), and it is moved and seconded that the same be adopted.

Mr. CLAGGETT. I move to strike section 18 (16) out. It seems to be entirely and wholly unnecessary—defining a corporation; we all know what a corporation is. And certainly the articles herein contained should not apply to joint stock associations, except where it has been made so by the terms of the various sections as we go along. It is too broad and sweeping. And as for the rights of corporations to sue and be sued, that is fundamental; it is a particular right of every corporation. I submit to the chairman whether or not it is not pure legislation.

Mr. MAYHEW. The gentleman is correct in saying that the proposition is declared upon in this section, and there is some question about the section itself. All there is about it in relation to joint stock companies is this: "shall be held and construed to include all associations and joint stock companies" for instance, at this time; includes them all. All there is about it, it

declares them all to be classed as corporations.

(The motion to strike out was seconded.)

Mr. AINSLIE. I move to strike out all after the word "partnerships" in line 3, and leave the remainder standing.

Mr. CLAGGETT. I would suggest to the gentleman that he include the word "and" at the end of line 3.

Mr. AINSLIE. No, my motion was to strike out all after the word "partnerships."

SECRETARY reads: Strike out all after the word "partnerships" in line 3 in section 18 (16).

The CHAIR. The question is shall section 18 (16) be stricken out?

Mr. MAYHEW. I would like to have the section read as proposed to be amended.

SECRETARY reads: The term corporation as used in this article shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships."

The CHAIR. The gentleman from Boise moves to strike out all after the word "partnerships." The question is on the motion that the section be stricken out. (Vote.) The noes have it. The motion is lost.

The question recurrs upon the motion of the gentleman from Boise, who moves to strike out all after the word "partnerships" in line 3. (Vote and carried).

Mr. MAYHEW. I move the adoption of the section as amended. (Seconded. Carried).

SECTION 17.

Section 19 (17) was read.

Mr. CLAGGETT. I move to amend section 19 (17).

SECRETARY reads: At the end of section 19 (17) add "at the time the liability was created."

Mr. CLAGGETT. It is indefinite now. To get at the question of how much stock he owned at the time the suit is brought, not at the time of the liability.

Mr. BEATTY. This tends to make him liable on

the stock owned at the time the debt was created.

Mr. CLAGGETT. Yes.

Mr. AINSLIE. Suppose one man owned ten shares of stock in a corporation, and it contracts some very heavy debts, twenty or thirty thousand dollars, and after it contracted these debts the man who owns the ten shares of stock buys three-fourths of the stock of the corporation. Now, after he owns three-fourths, according to that amendment he could not collect from him only what he would owe under the ten shares. And the public have no means of knowing the financial condition of the corporation. I think it ought to be on the amount of shares he holds at the time the suit is commenced, not at the time the debt is contracted; because there would be stock transferred on the books back and forth, and persons dealing with them would not know anything about how many shares one man has got more than another. It seems to me it places it rather in the hands of the corporation.

Mr. CLAGGETT. So far as this matter is concerned, I simply offered an amendment to correct an ambiguity. It does not specify when it shall be. My own idea, when I come to think about it, is that it ought not to be in the constitution at all, but leave the matter to the legislature. They might desire to change it to meet the shifting conditions of business. The fact of the business is, there has been a great deal of experimentation on this subject, and at one time you would have a law opposing the individual liability of stockholders; but I am not speaking now of corporate liability, where the creditor can go after all the corporate property, but in cases of bankrupt corporations, and then you go after the individuals; and at one time it has been fixed one way and another time fixed another way in the same state. But I will withdraw my amendment by the leave of my second and move to strike the section out altogether.

Mr. AINSLIE. I think that would be better.

Mr. POE. Mr. Chairman, I am opposed to striking

this section out. I think this section as it now stands will be a greater inducement for capital to come into this country to invest in mining and other enterprises than anything we could engraft in this constitution. For the reason that if it stands there, whoever may appropriate or lend his money to an enterprise of whatever nature it may be, or enter into a company that is incorporated, he knows when he puts that capital in there that he will only be liable to lose the amount that he subscribes in stock. To that extent his liability goes, no farther. But if you leave it open, so that a man may become liable and held individually for the entire loss of the whole company, he might be the only responsible party in that corporation, and the whole loss would fall upon him. Whereas, if we leave that section in he will know he will only be liable to the extent of his stock, and therefore a man of capital will be much more liable to invest his money in the country. If there is any section in this article that is going to result to the benefit of the people, I think this is the very section, and the gentleman of Shoshone now proposes to strike it out; it is the one most essential, and that will do the country the most good. I therefore oppose it being stricken out.

Mr. MORGAN. I think, Mr. Chairman, the section ought not be stricken out. If we go to the east to raise capital for the purpose of building railroads in this territory or in this state, a man worth a million dollars might be willing to take $50,000 of stock in this company if he knew what his liability was; but if he knew he was liable to lose millions, he would not invest a single dollar. That is why I think it should be retained. He knows his liability; he may be willing to lose $50,000 because he can stand it, but he may not be willing to jeopardize his whole fortune.

("Question, question")

The motion to strike out was put by the chair. (Vote and lost.)

Mr. CLAGGETT. Then it will certainly require

some very substantial amendments. The first thing here is with regard to the time and amount of stock. What does that mean? Face value of the stock? It ought to be amended in such a way as to omit the amount of unpaid capital stock owned by him at the time the liability was created. Suppose a man, for instance, has a thousand shares of stock of $5.00 per share par value, amounting to $5,000; and on that he has paid $2,500 as it is called in under the assessment plan, which is provided for by all corporation laws nowadays. He has paid 50 cents on the dollar. Here the corporation becomes bankrupt and he is sued. Now, then, how do you get at it? If you leave it in the way it is you have to provide for it in some way, shape or form, so as to make it the unpaid capital stock. And then suppose he owns a lot of stock today and sells out. And suppose he steps out altogether, and after he has ceased to be a stockholder some debts are created and he is sued individually on the outstanding indebtedness of the corporation. Then at what time are you going to fix his liability and measure his proportion or ratable share? Why, in order to carry out that provision in there and make it definite and clear you have to pass a law upon the subject which will cover all of these and twenty other considerations I can mention. But certainly we cannot amend it; we can't amend it without drawing a bill, such as we have under our corporation law. Let the gentlemen that vote to not strike this out draw a bill.

Mr. POE. If the gentleman wants to amend it, let him draw his amendment.

Mr. MAYHEW. The gentlemen that vote for it as it stands don't want to amend it.

Mr. CLAGGETT. Well, I call attention to what it is. I would not undertake to amend it inside of twenty-four hours' hard work.

Mr. MAYHEW. I have no objections to an amendment such as the gentleman proposes, but as to drawing a bill—

("Question, question.")

Mr. MAYHEW. There is no question before the house.

Moved and seconded that the section be adopted. (Vote and carried.)

SECTION STRICKEN OUT.

Section 20 was read.

Moved and seconded that section 20 be stricken out.

Mr. WILSON. Section 22 is duplicated in the Legislative Department, already adopted.

"Question, question." Vote and carried.

Mr. MAYHEW. Mr. Chairman, I have two amendments to two of these sections. Section 21 (18)—the two sections are too broad to change—

The CHAIR. There was no section 21.

Mr. MAYHEW. No, but the sections sent up were section 21 and section 22. Now, I desire in offering these amendments to state that these are not individual amendments of my own, but they are amendments to this article on corporations by the committee. After the committee had reported and our attention had been called to the important subjects of these amendments sent up, we concluded we would hold them until after the action of the committee of the Whole on this section. I desire to have them read.

SECRETARY reads: Section 21 (18) : That no incorporated company or any association of persons or stock company in the state of Idaho, shall directly, or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price, or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people, and that the legislature be required to pass laws for the enforcement thereof by adequate penalties, to the extent, if neces-

sary for that purpose, of the forfeiture of their property and franchise.

Section 22: The legislature shall prohibit the granting of subsidies of either money or land to any corporation.

Mr. MORGAN. Mr. Chairman, that section 22 has been substantially adopted in the Legislative Department.

Mr. MAYHEW. Yes, I think it has myself, but I desire to say this in relation to the section, after somebody moves the adoption of it.

Moved and seconded that the section be adopted.

Mr. MAYHEW. After consultation with the committee on Corporations and after the report, they concluded that it was necessary that there should be something in the constitution that will prevent these trust companies from being formed in this territory for the purpose of regulating the production and sale and price of commodities, either produce or manufactured articles. The purpose was to destroy the creation of those trusts in the territory, notwithstanding it is the opinion of a great many persons that it was nobody's business in relation to those trusts. But I observe there has been quite a discussion in many states, and in fact in the state of New York late decisions of the courts are to the effect to annul these associations that combine for the purpose of creating corners upon the products of the country, whether the natural production of the soil or manufactured articles. Individually I think it is an important measure and should be incorporated in our constitution, and I hope it may be adopted.

Mr. CLAGGETT. I presume this is a section that will give rise to a good deal of debate. As twelve o'clock has arrived I move the committee rise, report progress, and ask leave to sit again on this measure. (Seconded. Carried.)

CONVENTION IN SESSION.

Mr. Claggett in the chair.

Mr. SHOUP, chairman of the committee of the Whole. Mr. President, your committee of the Whole desire to make the following report: Your committee of the Whole have had under consideration the report of the committee on Public and Private Corporations, have come to no conclusion thereon, and ask leave to sit again.

The CHAIR. The report of the committee will be received and lay on the table.

Mr. HEYBURN. Mr. President, the last amendment proposed in the committee of the Whole by the chairman seems to be an important one, directed at a subject that is attracting a good deal of attention. I therefore move it be printed and laid on the desks of the members. It is impossible to consider anything without having it read. I mean the one that is directed at trusts, section 21 (18).

(Seconded and carried.)

Mr. WILSON. I move that we take a recess until two o'clock. (Seconded and carried.)

AFTERNOON SESSION.

Convention called to order by the president.

Moved and seconded that roll call be dispensed with. (Carried.)

The CHAIR. I think after taking recess that is not necessary.

Is the committee on Engrossment ready to report on the bill that was offered for engrossment?

Mr. HASBROUCK. Mr. President, I think not. There was a slight error in the engrossment of the article, which is now corrected, but I have not been able to call the committee together for them to note the correction.

The CHAIR. What time will the gentlemen be able to report?

Mr. HASBROUCK. Just as soon as I can get the members of the committee together.

The CHAIR. In one hour?

Mr. HASBROUCK. Yes.

The CHAIR. If there is no objection we will postpone that matter until three o'clock. These is no objection and it is so ordered. What is the pleasure of the convention?

Mr. SHOUP. I move the convention go into committee of the Whole on the report of the committee on Public and Private Corporations. (Seconded.)

Mr. WILSON. I believe we completed the report except the two last sections which were reported by the chairman and are to be printed. I believe we postponed action on them until they could be printed and laid on the members' desks. We have nothing to do now on that order in committee of the Whole, and I would amend the motion by saying, on the general order.

The CHAIR. I will state for the information of the gentleman from Ada that the two sections were ordered printed and the printer thought he would have them here by two o'clock. They have not arrived, but they are looked for every moment. The question is on the motion of the gentleman from Custer that the convention resolve itself into committee of the Whole for the purpose of taking up the report of the committee on Public and Private Corporations, to which there was an amendment offered that the convention resolve itself into a committee of the Whole for the purpose of taking up the regular order. As many as favor the amendment say aye. (Vote and carried.)

COMMITTEE OF THE WHOLE IN SESSION.

Mr. McCONNELL in the chair.

ARTICLE XV.

The CHAIR. Gentlemen, the matter next for consideration in committee of the Whole is the report of

the committee on Agriculture and Irrigation, being number 10.

SECTION 1.

SECRETARY reads section 1, and it is moved and seconded that Section 1 be adopted. (Vote and carried).

SECTION 2.

Section 2 was read, and it is moved and seconded that section 2 be adopted. (Vote and carried.)

SECTION 3.

Section 3 was read, and it is moved and seconded that section 3 be adopted.

Mr. SHOUP. Mr. Chairman, I don't exactly understand that section, and if the chairman of the committee is present I would like to have him explain it. I understand by the reading of it that agriculture has the preference over mining.

Mr. CHANEY. Over manufacturing.

Mr. SHOUP. If any person or company has been using this water for mining, and any person desires to use it for agriculture, they shall have the preference over those using it for mining?

The CHAIR. I don't know that the chairman of the committee is present. I will say to the gentlemen that I was on that committee, and the object of putting in that clause was, that where water had been used for the three purposes from one ditch, and the water ran short, the preference should be given first to domestic purposes, household use, and next to agricultural purposes, because if crops were in progress, being green, and the water was taken away for mining purposes, the crop would be entirely lost. That is the reason why the committee saw fit to state it in that manner.

Mr. SHOUP. It would then stop any person or company from using the water for mining purposes, provided they desired to use it for irrigation?

The CHAIR. If it had been during the season for irrigation, and also for use for mining, and the water failed to such an extent that there would not be enough to carry on both purposes, then agriculture should take the precedence over mining. That was the object of the committee.

Mr. SHOUP. And mining would have to stop?

The CHAIR. Mining would have to stop if it was necessary to protect agriculture.

Mr. WILSON. I don't understand that section as the chairman of this committee interprets it. As I understand it, priority and preference is given those who desire to use water for domestic or household purposes, to all there is.

The CHAIR. Yes.

Mr. WILSON. That is the first clause. Then next, those using water for agricultural purposes shall have preference over those using the same for manufacturing purposes. Now, that does not say that those desiring to use the water for agricultural purposes have priority over those desiring it for mining purposes; manifestly not. Nothing said about those desiring to use it for mining purposes at all.

The CHAIR. No, it is manufacturing and not mining.

Mr. WILSON. And mining is not manufacturing by any means.

Mr. SHOUP. You manufacture bullion, don't you?

Mr. WILSON. No sir. I don't take it that the word manufacture includes mining. I am certain I am right about that. There is no preference given to agriculture over mining, but there is a preference given to agricultural purposes over manufacturing purposes, which I think is proper.

Mr. BEATTY. Mr. Chairman, I move to strike that section out.

Mr. MORGAN. I second the motion.

Mr. BEATTY. I can't understand what is the full intent of all that, but I do see enough in it to make it

very damaging. "Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes."

Now, let us see what that will lead to. That section proposes to disregard entirely priority of right. In other words, we will suppose that the three classes of persons are using the water of one stream. It makes no difference now who has priority of right. Some manufacturing establishment may have started there first and obtained the use of the water. An agriculturalist may go in after that and locate a farm and take up all the water if he needs it for agricultural purposes, and virtually destroy the manufacturing establishment. Now, there are many things resulting from this. Here you will give the farmer, we claim, more preference right to all the water of that stream, and shut down a manufacturing establishment that may employ a hundred families in carrying on its business. You will destroy the interests and rights of a hundred families in order to benefit one agriculturalist. That is not all of it. If you enact a law of that kind, I would like to know what manufacturing establishment would ever be put up on a stream of water, when that stream may be suddenly taken away from him by some one else who wants to use it for agricultural purposes? Now, see the danger it leads to by undertaking to establish a law of that kind? It would be most destructive, I think, to the interests of the country. I know of but one way to regulate it, and that is that the parties first in time hold the water; the parties who come and take up the water for any purpose should be entitled to the use of that water. If parties come

along, an agriculturalist, a farmer, and have taken the water up, they are entitled to it. If some one wants to establish a manufacturing business, and wants that water, let him buy of the farmer; or if, on the contrary, a man takes up the water for manufacturing purposes, it is his. If somebody else wants to start a business more productive, and can afford to buy the water, let him buy it. But to attempt to say here that prior rights shall be divested in that way, because, forsooth, we think some interest is more entitled to protection than another, would lead, in my opinion, to fatal results. More than that, I don't believe such a law as that would be constitutional; it would be taking away the priority right of one man and giving it to another; and I do not see how it is possible that we could make such a law as that. But the main objection is this; it makes all interests uncertain. I put the question to any of you, who of you would invest your money in establishing any large manufacturing establishment when you know that the water that you desire to use in running that establishment may at any time be taken away from you by either of these two other interests, that is, the agriculturalists, or for domestic use? For that is what this section means, if it means anything, or else I do not properly construe it. I have for the first time just read it, I have not examined it before, but on first blush that is what it means.

Mr. WILSON. Judge, let me make a suggestion. I think if you would strike out all after the word "purpose" in line 7, you will get at the point. Of course, we are giving the whole preference and priority to those desiring to use the water for household purposes, for food, if you please. In some places they depend upon ditches for water for household use, and their stock and such things, and they must be given the preference; it is absolutely necessary for life that they be given the preference; but I would not give those engaged in agriculture preference over manufacturing, for large manufacturing establishments might be erect-

ed depending upon that water. I would move to strike out all after the word "purpose" in line 7.

Mr. AINSLIE. Leave out the word "purpose."

Mr. BEATTY. Suppose the case, Mr. Wilson, of a stream of water running through some section of country here, and there is just enough water in that stream to start a large manufacturing establishment, which may employ from fifty to one hundred men. Now, some other parties come in and locate in the neighborhood not connected with this manufacturing establishment. They may be there as stock-growers or for different purposes, and they come in and claim the water of that stream for domestic purposes. Now, I ask you, are you going to pass a law to allow them to take the water out of that stream and shut down the manufacturing establishment, shut up the houses of all those employes working for the establishment? In other words, to benefit probably half a dozen families, you may discommode or inconvenience or throw out of employment a hundred families. That is what I think the section holds, but that is what I want to guard against, and that is why I say this ought to be governed by the law of prior appropriation. The man who first goes there and takes possession is the man entitled to it, and if somebody else wants that right and can make better use of it than the man who first took possession of it, let him buy it from him. That is the principle I think we ought to incorporate.

Mr. WILSON. It is among the possibilities that a few settlers or many settlers, or a few head of stock or many head of stock, can drink up all the water in a ditch simply for the necessary existence of life. I think that is absolutely essential. I would not give agriculture the preference, nor mining, nor anything else the preference, but I would give domestic purposes the preference.

The CHAIR. Gentlemen of the committee, if you will allow me to call Judge Morgan to the chair a

moment, I will explain the position taken by the gentlemen who formulated this article.

Mr Morgan in the chair.

Mr. McCONNELL. Mr. Chairman, the chairman of the committee on Agriculture is not present, I believe, and it is necessary for some one to defend the report of this committee. I was not the chairman—

Mr. BEATTY. Who was the chairman?

Mr. McCONNELL. Mr. Cavanah. When we came to consider this matter of irrigation and appropriation of waters in this territory, we found that beneath the surface there was something more than what appeared to the causal observer, or appeared to any of us who were on the committee at first glance. We found it was a difficult problem to handle, and as a result we took the experience of Colorado and carefully reviewed it; we took the experience of California, which in this matter alone was largely the cause of calling a new constitutional convention—the matter of adjusting priority rights of water. We called in the wisdom of several attorneys, and we formulated this article. I believe by a careful scrutiny of this clause you will see that it does not do what the gentleman thinks it does; for instance, a man takes up a stream of water for manufacturing purposes, and there is nothing in this article to prevent him from retaining that; but the moment he thinks he has a surplus of water and undertakes to rent that surplus of water for domestic or agricultural purposes to as to derive an additional revenue thereby, he then dedicates that amount of water to domestic or agricultural purposes. So long as he retains that water for the original purpose for which it was taken up, he has priority of right over everyone else. But if he diverts it, and through that diversion causes men to come in and settle on these arid plains, to build houses and barns and the different accompaniments of civilization, it is for a right he could never take away from them and divert back to his own use at his option. Because if he did, he might conclude

at any time after those farms were in a high state of cultivation, that he could use this water temporarily for such a time as should compel those men to abandon their properties or sell them out for a mere nothing. That was the object of this committee. The object was to fix the fact that when water was once diverted for domestic or agricultural purposes it could not be taken away from those people, because their homes and everything they had in the world depended upon its continued use. I hope the motion to strike out this section will not prevail. I do not know of anything that will come before the convention at our sitting which will probably be of more importance to the future existence of the state of Idaho than this question of irrigation; and this committee has as carefully considered it as it was in their power, with the records before us, to consider it. All the history we have on this question of irrigation is the history of Utah, Colorado and California. We carefully reviewed all these. We considered the important matters brought up, which have caused so much litigation in the courts and so much feeling in entire neighborhoods, and we formulated this, thinking it would come as nearly as possible to administering the wants of the community as they may arise hereafter. If there is any other objection I have not explained I would like to have opportunity to explain.

Mr. AINSLIE. While you are on the floor I would like to offer an amendment to section 3, line 3, by striking out "for the same purpose."

Mr. BEATTY. I have a motion to strike out, prepared by the present chairman, Judge Morgan, and I will send it up, as he is now occupying the chair.

Mr. WILSON. I have a motion to strike out.

SECRETARY reads: I move to strike out all after the word "purpose" in line 7, section 3.—WILSON.

Amend section 3, line 3, by striking out "for the same purpose." [1]—AINSLIE.

Strike out all of section 3 after the word "denied" in line 2, and insert "and those prior in time shall be superior in right."—MORGAN.

Mr. BEATTY. I will withdraw the motion I made to strike out the entire section, in view of the motion which you have just submitted.

Mr. SHOUP. Mr. Chairman—

The CHAIR. I think the gentleman from Ada has the floor.

Mr. COSTON. Mr. Chairman, I simply want to state what my understanding is of the meaning and purport of this section. It starts off primarily with this assertion or with this assumption that water is sacred, no matter about the priority of use; that water is sacred for domestic purposes, and for such must ever be held; that priority views do not apply to that; that all using water to drink, for cooking and for the ordinary domestic purposes, have the best right by nature. Now, as it passes from this, we will take for instance, to illustrate this right, which by the theory of this section is held sacred. It must always remain so. It cannot be diverted from the community for that purpose. Second to that comes the use of it for irrigation. As to any conflict between irrigation and manufacturing, it is deemed to be proper that there should be a preference given to the use of water for irrigation. Why? Because all manufacturing establishments can substitute power in case of unusual scarcity of water or drouth. As illustrating that feature we will say that all the waters of a stream have been appropriated and used; as year after year has passed that stream would supply a given amount, for domestic, agricultural and mining purposes. These comes an emergency like this season, when from natural causes there is a limited

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[1]—These words appeared in the section as reported, after the words "as between those using the water." See p. 1127.

supply. Now, the question is which will suffer the most; the orchards that are located along this stream for which the water has been used to irrigate them, or those manufacturing plants. We can see that situation today on many streams. Suppose this priority right should give to those men for manufacturing the absolute priority of use. If so, all those agricultural interests, all the work of years would be sacrificed for the want of water; while the injury done to the manufacturing interests, inasmuch as that power could be supplied from other sources, would not compensate for the loss done to the agricultural interests. The latter loss would be irreparable, it could not be remedied, there is no substitute for it; and I claim there is good logic, and anyone having due regard for the public interests will recognize that right and preference. It is not an absolute one. This question of irrigation and the use of water is yet in its infancy. We do not know yet all the conflicting interests or all the circumstances, which it will be necessary to know, to exactly regulate it at this time; but the committee was desirous of incorporating in this fundamental law some fundamental principles which should be a foundation upon which future legislation could work and build up to meet the necessities of the country. I object to striking out that section. I think it covers the case, if gentlemen will recognize this principle enunciated in this argument. I want them to bear in mind that this prior use when taken up and used for manufacturing purposes may be superceded by greater necessities. Bear in mind that they, to tide over an emergency like this, could substitute other power and other power is likely to displace water power. If the water power of this country can be used to prevent irrigation of the country, if it can be held by virtue of a prior right, good-bye to all the prosperity that we expect to come from the use of water in irrigating our plains and developing this country. It will be seen by reading this section carefully—"the right to divert and appropriate the

unappropriated waters of any natural stream to beneficial uses, shall never be denied." "Priority of appropriation" for what purpose? What does that mean? Say all the water of a stream limited in quantity has been located from time to time for domestic purposes. Say there is a failure to supply all these locations for domestic purposes. Then as to the use of that limited supply, when there is not enough in that stream, who shall have the first right to what there is? The first appropriator shall have it. That is all that portion of that section means. "But when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose." I have given the reason for that. That is held to be the most sacred purpose to which water could be applied. It belongs there, and agriculture must suffer, and manufacturing must suffer if people are thirsty and want drink. "And those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes." Subject to such limitations as may be prescribed by law. We did not desire to incorporate all the details of an irrigation system that should be necessary to meet all the exigencies of the future, or all the circumstances that surround us. We only aimed to incorporate here a foundation upon which future legislatures might create a law to the best advantage of the public good. I think the section is not ambiguous, that every word of it could be explained to the comprehension of every individual here, and I think the principles that underlie it and govern this distribution of water under those different circumstances are the correct ones.

Mr. McCONNELL. Is this discussion on the amendment offered by the gentleman from Ada?

The CHAIR. It seems to be a kind of general discussion on the section.

A MEMBER. It was my understanding it was in addition to that, of the intention of the committee.

Mr. McCONNELL. Yes, but I want to speak to whatever question is before the house, if there is one.

The CHAIR. The question is upon the amendment offered by Mr. Wilson.

Mr. McCONNELL. What is the amendment?

SECRETARY reads: To strike out all after the word "purpose" in line 7, Section 3.

Mr. McCONNELL. That is the question which comes up first, I believe. I desire to explain to you one little proposition, which is right under your own eyes, and particularly of the gentleman from Ada, that I think would cause him perhaps to withdraw this amendment. You have here, as I understand it, quite a large irrigation canal on this river. Part of the waters of that canal are used today for manufacturing purposes, in generating electricity to light this town. It might occur, as the science and use of electricity become more fully developed in this country, that it will pay the proprietors of that ditch better to use the water entirely for the generation of electricity, and if they should so conclude and there should be no law to prevent them diverting that which is their own to that use, they could throw that country, which is now attempting to be brought under cultivation, and some of which is already blooming as a garden, out again into a waste. I hope this amendment will not be adopted. I can see danger in it, very great danger.

Mr. WILSON. After listening to the argument of my brother from Ada, Mr. Coston, and the gentleman from Latah, I find there is much method in their madness. I am rather inclined to think that portion of the section ought not to be stricken out, but ought to be left there. I will withdraw my motion to strike it out; but if it is left there, it is absolutely essential that there should be an amendment, and I shall offer one. I shall move to insert the word "power or motor" after the word "manufacturing" in line 8, and for this reason.

The case Mr. McConnell cites is motor power of the electric light company of this city on the other side of the ditch. Of course that is not the manufacturing purpose; they might have several establishments of that kind for the purpose of generating power and monopolize all the water of that ditch, and this word "manufacturing" would not include it. They don't manufacture anything; they generate electricity.

A MEMBER. They manufacture light.

Mr. WILSON. They don't manufacture light.

Mr. MAYHEW. What does it come under?

Mr. McCONNELL. I think it is a distinction without a difference, but I do not object to the change.

Mr. WILSON. I will show you the difference. Supose they want to run an electric motor car in this town some time. You are not manufacturing anything there; you are generating electricity for the purpose of running that car, and generating it by means of that power over there, and nobody can say that it is a manufacturing purpose, I think. I think there is a distinction and a difference both; and therefore I move to insert the words "power or motor" after the word "manufacturing."

Mr. McCONNELL. I second the motion.

Mr. POE. Mr. Chairman, this question of the use of water as has been stated is one of great importance to the people of this country. I have looked over this section very carefully and I am aware that there are certain provisions in it which might appear to be taking vested rights away from parties. But when we come to look at it in its proper light, and give the proper construction to it, I do not think that construction can be placed upon it that it would deprive any person of vested rights. It reads: "the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied." That simply says that any water that is unappropriated may be appropriated by any person for any use he sees proper.

The CHAIR. Will the gentleman suspend a mo-

ment? I want to ask Mr. Wilson, the gentleman from Ada, if he withdrew his first amendment to strike out all after the word "purpose"?

Mr. WILSON. I did.

The CHAIR. The secretary will read the next amendment.

SECRETARY reads: Amend section 3 in line 3 by striking out "for the same purpose."

Mr. AINSLIE. That is the amendment I offered, Mr. Chairman, and I think it renders the section more consistent with itself by striking out those words.

The CHAIR. The gentleman from Nez Perce has the floor.

Mr. AINSLIE. I was speaking to my amendment. I thought he was speaking to the one that had been withdrawn.

Mr. POE. Well, I do not wish to occupy the floor only one time, and I will give my views upon this subject, and I will come to that place in the section to which I wish to speak. "Priority of appropriation shall give the better right as between those using the water." Strike out the words Mr. Ainslie suggests "for the same purpose;" I think it is perfectly proper that should be stricken out, because this simply says this, as a proposition of law, that "priority of appropriation shall give the better right as between those using the water." Now, there is no constitution and no law, no legislature, than can deprive a citizen of a vested right. A man who has once by prior appropriation used and taken the water from a stream and appropriated it for a particular purpose, either for the purpose of mining, the purpose of agriculture, or for a manufacturing purpose, so long as he uses it for that purpose his right is vested and no law can divest him of it. "But when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose."

Now, that is merely a dictum interjected here which will never probably be denied by any man who has priority of right to the use of the water. He will never deny a man who has located along that stream or ditch the use of sufficient water for cooking and drinking and to water his stock; never deny him that purpose, that right and leave him there parched, dry and thirsty for the want of that water, and use it absolutely for manufacturing purposes. While I do not pretend to say that it is even within the power of this convention to deprive that man of the use of that water which he has taken from the stream and flows along in the ditch there—while I do not pretend to say that any law would take that away from him so long as he used it for the purposes for which it was originally taken, yet, at the same time I am satisfied that no man would ever deny the family who lived on that ditch, or would permit them to perish for the want of that water, and use it for agricultural purposes. Therefore, I should not be in favor of striking out "domestic purposes." Now, the next clause: "and those using the water for agrisultural purposes shall have preference over those using the same for manufacturing purposes." Now, the right to water; no man can acquire any right to water. There is no such thing as property in water. It is what is called a usufructuary right, or the right to the use. Now, a person who apropriates a stream of water, having the first right, and conveys it along the hillside by means of a ditch to a mill, is always required and always expected at the time of its location to state for what purpose he is taking it out. He either takes it out for mining or for agricultural or manufacturing purposes. What this law is intended to get at is that the man who takes water for manufacturing purposes, and appropriates that water while it is running along there in his ditch, has the right to the use of it during the time it is passing through his ditch. The moment it leaves his ditch it becomes subject to relocation. Now, what I claim, Mr. Chairman, is this:

that so long as that man uses that water for the purpose for which he took it out of its original bed, to-wit: for the purpose of manufacturing, he has the right to use that water for that purpose. So, if he has taken it out for mining purposes he has the right to use it for that purpose; and if he has taken it out for irrigation or agricultural purposes, he has the right to use it for that purpose; but the moment the manufacturer might conceive of the time when he could make the water more profitable for irrigating purposes than for manufacturing purposes, then he loses his priority right as a manufacturer, because he undertakes to appropriate it for a purpose which he never intended when he took it, and his priority right does not come in, and those men who have located along the line of that ditch then step in and say "here, we are first entitled to the use of this for agricultural purposes." We do not propose that we shall take the ditch away from him; the right to his work can never be forfeited; but the water was taken for a specific use, the use of manufacturing. He now undertakes to say that he has a priority right to use that water for another purpose; but the law, and in my opinion is that this article, if it is adopted, will confine him to the use for which he originally took it; and I am satisfied, Mr. Chairman, that if this article is adopted it will be of great benefit. There is no use in talking about depriving a man of a vested right; you cannot do that, however much you may attempt it. The only attempt here made is this: that that man having taken water for manufacturing purposes, so long as he uses it for that purpose and that alone he has a priority right, but if he should attempt to appropriate it for another purpose, then his priority right would be gone.

Mr. SHOUP. I will say to this committee that I have no interest in any manufacturing establishment anywhere. My business is agricultural—

Mr. GRAY. What do you raise?

Mr. SHOUP. —and nothing else, and I am opposed

to this section and provisions of this section; not because it will affect me personally in any way whatever, but because I have lived too long. We heard a great deal about retrospective law. If that is not retrospective law then I am unable to tell what a retrospective law is. We certainly cannot go back and take rights away from persons that they have had twenty-five or maybe fifty years in the use of water. As regards this question of giving the preference to agriculture over manufacturing, I do not believe in that. I think the history of any country that has been devoted exclusively to agriculture shows that that country will never advance to any great extent and never become a great and powerful country or state. Agriculture only gives employment to the strong; for those who can go into the fields and do hard work. While manufacturing establishments give employment to everybody; they give employment to the strong men, they give employment to women. Under this section, if any manufacturing establishment should take up the water of some stream and should establish a large manufactory there, giving employment perhaps to a thousand people, and another company would come in and take out a ditch from that stream for the use of that water for agricultural purposes; that water is rented out and sold to persons living along that ditch. There is a drug which is one of the by-products or waste from many manufacturing establishments, which is carried away in the water, and this product by polluting the water of this ditch renders it unfit for domestic purposes, and therefore the manufacturer must shut down his factory, notwithstanding he had a prior right to the water and used it long before it was ever used for agricultural purposes. For that reason I am opposed to it; not on account of any question of profit to myself, because I believe it is wrong in principle and not good law.

Mr. GRAY. Mr. Chairman, I want to say one word about this. I am in favor of the preference to agricultural purposes. In the east we have nothing further

than every man placed in the same position; but in our country here is situated differently, and without we have water for agricultural purposes, what in the world can our country amount to? As for manufacturing, I am not opposed to it, but I maintain that we must first protect those who cultivate the soil. I certainly firmly believe that that is the correct principle. In the east we do not require laws that give preferences to anyone, but the condition of this country is different from the east. I care for the manufacturing interest too, but first we must give the preference to those who till the soil, for from that we get what we live on. We can get our food from no other source. Let us protect that particularly. I want this section to pass as it appears in the text of the article.

Mr. VINEYARD. I have sent to the clerk's desk an amendment which I desire to have read. I am in favor of this section as it stands with the addition of that amendment.

SECRETARY reads: Add in line 8 after the word "purposes" the following: "but no appropriations shall defeat the right to a reasonable use of said water by a riparian owner of the land through which said water may run."

Mr. VINEYARD. I want to add to my amendment after the word "use" the following, "for irrigation." Now, there is an effort here to make every other right to the use of water secondary to its use for agricultural purposes, notwithstanding the time of its appropriation. That is the effect of this amendment. Priority of right is governed by priority in time, except in instances here specified. Now, if the doctrine of appropriation is to obtain in this territory absolutely, it will be for this convention to announce that doctrine as against the doctrine of the right of the riparian owner for the use of the waters to a reasonable degree and a reasonable use of the waters for irrigation, which would be cut off here.

Mr. Chairman, I desire the committee to understand

my position here. The owner of land through which a natural stream of water flows is the riparian owner; and according to the doctrine of the common law he has the right to the use of the waters of that stream as it flows through and along his lands, provided he turns it back into the stream so that the riparian owner below him may enjoy the use of the water of the stream without any diminution thereof except by the former use. There is no question about this doctrine, and it is admitted here in this territory. I tried a case upon this proposition here not a month ago in Alturas county in which this very question arose. I maintain, and I maintain it in all sincerity and candor, if you propose to protect agriculture in this territory, as my friend Gray says, I think this is the first step towards their protection.

Mr. GRAY. Let me add, that I don't propose that this takes away any vested right that lives today.

Mr. VINEYARD. But suppose the doctrine of appropriation obtains here. A man who gets a patent from the government to his land, although he has no appropriation, somebody has appropriated the water of that stream, either above or below, and claims another use of the stream; what becomes of the rights of the owner of the land?

Mr. POE. Let me ask you a question right there. Suppose that water had been appropriated by some party prior to the time that he located that land. Now, I will ask you if he does not have to take that land as he found it?

Mr. VINEYARD. He takes under the act of congress of 1866; but no vested water rights.

Mr. POE. That water has been appropriated.

Mr. VINEYARD. That is, for the purpose for which it had been appropriated, and no other purpose.

Mr. POE. But he has no right to go and take that water out of that stream just because he does live along the stream, subject to that right.

The CHAIR. I hope the gentleman will be permitted to proceed with his argument.

Mr. VINEYARD. I will answer that by putting another question to the gentleman. Suppose that the appropriator attempted to take all the waters of that stream for manufacturing purposes, and for no other purposes, we will say, to the exclusion of the riparian owners who may have located upon the land subsequently and gotten patent from the government; and this appropriator attempted to divert the use of that water for commercial purposes. Would he have the right to do it to the exclusion of the riparian owner along the banks through which the water ran, or could that water be taken absolutely away? It could be if you engraft in the constitution here that the doctrine of appropriation shall have precedence to the doctrine of the common law upon the subject of riparian ownership. That is the second effect of it.

Mr. AINSLIE. Will the gentleman allow me to ask him a question?

Mr. VINEYARD. With pleasure.

Mr. AINSLIE. If the waters of a stream are already appropriated and taken out, how could the man go to the head of that ditch, who never had any riparian rights or ownership?

Mr. VINEYARD. I am not talking about a ditch, Mr. Ainslie. I am talking about a natural channel, not about artificial ditches. I am talking about a stream like the Boise river where it flows through his ranch or farm. Can a man by prior appropriation exclude the riparian owner of the land through which that stream runs from a reasonable use of the water for irrigation? I say no, unless you overturn the common law. That is all there is to it. I want that added by this amendment.

Mr. ALLEN. Gentlemen, I think that the committee have taken under consideration all the arguments that have been presented, and in behalf of the committee I wish to say that these points that have been

brought up in detail, have been carefully considered. I think that Mr. Ainslie, who has been present before the committee, would have been very glad to yield and withdraw his amendment striking out the words "for the same purpose," because it vitiates the very idea which is carried out in the balance of the article. That matter was very carefully considered, and I wish to say on behalf of the committee that I have listened very attentively, and I find no argument presented yet that changes the view or alters the determination of the committee in coming to a conclusion to adopt this theory. For if we take the proposition of the gentleman who has just taken his seat (MR. VINEYARD) we throw aside all the experience of California, Utah and Colorado and go back to the primitive age when the riparian doctrine was first established. They considered this question in all fairness to all interests; and as the gentleman from Alturas, Mr. Beatty, who first asked to have this section stricken out, considers all the facts I think he would yield that point. Answering his question in regard to the right of domestic and agricultural purposes taking precedence over manufacturing, I will say that the committee deemed it more important that a woolen mill or a brewery or a cannery or any manufacturing purpose which are established, should suspend operations, if necessary to the life and health and sanitary interest and welfare of the people during the two or three months in the summer which are the months of irrigation; that those interests should be subsidiary to that of agriculture, and it was for that very purpose that this language was inserted by the committee. I have in mind a town of a thousand inhabitants in this territory whose vital question today is, shall we have the right to the use of water for domestic purposes as against those who have appropriated water for agricultural or manufacturing purposes, who perhaps had a preference in that right of appropriation, and are turning out the waters of that stream upon which the people are

dependent for their meadows, and nearly one-half the stream is appropriated and used today by three or four parties, and there has been a great deal of trouble; and as one individual I represent that community in asking that the right for domestic purposes shall be protected. That is, the right to the water for a town in preference to all other agricultural interests. They may divert the entire stream, when it becomes so low as it did at one time this year and did a year ago, and I think the committee should be sustained. Practically I have no objection to one or two amendments at the close of this section, but I think the section should be adopted practically as it is presented by the committee.

Mr. GRAY. Let me hear the question that is now before the committee.

The SECRETARY. It is the amendment offered by the gentleman from Boise: Amend Section 3, line 7 by striking out the words "for the same purpose."

Mr. GRAY. I want to say this: First in time, first in right. In answer to the gentleman from Alturas I will say this: When I go upon a stream I take it subject to all prior rights. I don't want it so that after I have got a farm and have been irrigating from a stream, some man may come there and settle and say riparian rights to me. I say first in time, first in right, and that water he has appropriated and which is for a necessary purpose, he shall have.

Now let him read the west coast doctrine and he will find it clear in that. The idea is here: I go first upon a piece of land, I take the water upon it, then this gentleman from Alturas wants to come and say "riparian rights," and he will go and shut me entirely out, notwithstanding I owned it first, and after the loss of water by percolation and what would be absorbed, there would be nothing left for me. Why wasn't there? I found it in the condition it was; I took it; my rights were good upon it; but he wants to come in years after I have cultivated my land and

say "It is for me now, because I am a riparian owner on that stream." I say take it as you find it. When I find that men have taken the water from a stream I say it is theirs, not mine. I adapt myself to the condition of things as I find them. When I go there first I will take what I need; we cannot have any more than we need as a matter of course; the law won't permit us to do that. But I say, let the first man who goes and blazes a trail into the country and finds a ranch and cultivates it, let him have his rights because he is prior to me, and I shall not go above him or below him or any other place and say "it is riparian, I must have it." As I said before, I say again, first in time, first in right, and that doctrine must be protected in this country.

Mr. McCONNELL. I believe we are participating in a sort of general discussion, debating all of these amendments at the same time. I will refer first to the amendment offered by the gentlman from Boise as regards striking out in line 3 Section 3 the words "for the same purpose." The committee in formulating this section put that in there for what they deemed good cause. I think it would be fatal to strike that out. Now, you may read "priority of appropriation shall give the better right as between those using the water." That would be the way it would read if we struck that out. A man might go up here on this stream and take out a ditch and use the water for generating electricity or running a flour mill; but as I explained before, he might after a while conclude that he could dispense with a part of that water and let it out to his neighbors below for irrigating purposes. But if those words "for the same purpose" are stricken out, he might afterwards conclude he would take that water all back and not allow the people to have any for irrigating purposes, but use it all for his manufacturing enterprise. He might for a dozen years let them have a portion of that water so that they would make valuable a section of country which he practically had the

key to in his own hands, and when they got their farms made and in a condition to be profitable as an investment, he could crush those farmers by turning the water again on to his wheels and taking it away from the farms. It is all right to have priority "for the same purpose" where men are along the ditch; one man goes in here today, another tomorrow, another next year. And this article provides that those who settle first shall have first claim to draw water from that ditch, those second, and so on to the end. And where there is not water enough for all parties, it provides that the legislature may prescribe in what proportion they shall get it under rules and regulations.

Now, in regard to this riparian right business, I had my attention called to a question since I have been here, on that subject; and as I told the gentlemen of the committee, that was very largely what was the occasion of the calling of the late constitutional convention in California. They found that under those claims of riparian right large capitalists were crushing out the poor settlers, and there was a clamor for a constitutional convention that this thing might be regulated, so as to give every man an equal show. I believe I had the first irrigating ditch that was ever taken out of the waters of this or Boise county for irrigating purposes, and under the plea of riparian rights today one of the finest farms in Boise county is left a desert after the crop was planted and grown. Parties came in above, and under the claim of riparian rights, diverted the water, and the man who has been cultivating that land and using that water for twenty-six years is today deprived of it and is compelled to go into the courts, and probably spend as much in litigating for what should be his vested rights, what every man would admit are his vested rights, as the farm is worth. I hope this section as printed will be adopted; I hope there will be no further amendments to it, or if further amendments appear that they will be brought up one at a time, and let the different members of

this committee explain why the lines are as they are and why they should not be amended. I don't like this scattering discussion. I would like to meet every line as it comes up in detail, and let us explain. I don't think it would require very long. I think we could explain it so that amendments would be withdrawn.

Mr. BEATTY. Mr. Chairman, one of my chief objections to incorporating this as a part of the fundamental law is that we do not know just what we want. I do know that this is a very important question. I know that the question of appropriation of water is yet in its infancy in Idaho, and I, for one, scarcely know what we want. But we are undertaking in the doctrines here incorporated to establish as it were something that will result in a great deal of damage. My friend from Boise touched upon the keynote. My friend, the Ajax of the bar, as he has been properly termed, of southern Idaho, seems to use good logic, but I don't like some of his conclusions. He says "first in time, first in right." That is the true principle, but when he argues farther and comes up to his conclusion, he says he proposes to dry the manufacturer up, if necessary, in order to save the agriculturists. Now, let us see what it will lead to if we adopt this principle. Perhaps we can get at it better by taking an illustration. Take the case of the agriculturist. He finds a little stream, large enough to irrigate 160 acres of land. He takes up that water right, being the first man there. He certainly under all laws of nature would be entitled to it, because he is the first man there, and so far by our laws he would be entitled to it. He builds his home, improves his farm; perhaps after he gets everything in a perfect state of cultivation half a dozen people come along and start a town above him —and that strikes my friend over in the corner (MR. ALLEN)—and they want that water for domestic purposes. Now, I ask whether it is just that this little town shall undertake to deprive the agriculturist of all his water, break up his home, destroy the fruit of his

labor for years, perhaps, kill out the orchard my friend speaks of, destroy all he has simply for the benefit of this little town. Your answer is this: Is it not better half a dozen people in town shall be benefited rather than one man on the farm? Perhaps so, but if so, I say, let those people in the town buy the water right. If it is a great benefit to them, let them buy it from the farmer, who has taken up his water right there. He was there in time and has built up his home, everything is based upon that right. Now, let the people who want to start a town buy his water right and not take it by force. You attempt to say here, gentlemen, simply this, that if the farmer locates a farm, and builds it up for years, half a dozen other men can come in ten years afterwards, start a little village and take his water right away from him. That is it precisely; you can't dodge it; my friend to the right, Mr. Poe, says he is not in favor of it, and yet he is in favor of leaving the section in, and the reason he gives me privately is this, that it is of no account if you put it in, that it is all bosh.

Mr. POE. No sir, I take this position, and I think the gentleman misunderstood me, that the man who appropriates water for manufacturing purposes, having established that right by prior appropriation, obtains a vested right for that use. Whenever he undertakes to change that use and use it for any other purpose than that for which it was originally taken, then parties, coming subject to his original location, but prior to the time that he undertakes to appropriate it for this other use, have a prior right to him. That is the position I take. In other words, that he has only the right to the use of that water for that particular purpose, and as long as he uses it for that purpose he is entitled to it and nobody could divest him of it.

Mr. BEATTY. And this section provides just to the contrary of what my friend states that he wants done. In other words, it provides that if a manufacturer has established his works, gone there and worked

ten years, half a dozen farmers can come in (or half a dozen people) and establish a town—or a hundred people, for that matter—and take that water right away from the manufacturer. That is just exactly what it provides.

Mr. McCONNELL. Let us see if it does; I cannot see that it does.

Mr. BEATTY. "Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes."

Mr. McCONNELL. Does it say anything about any restrictions or regulations?

Mr. BEATTY. You cannot make a law in conflict with this. You provide "subject to such limitations as may be prescribed by law," but you cannot make a law that is contrary to the provisions of this section.

Mr. COSTON. Will the gentleman allow me to interrupt him? Is there anything in this section that is retroactive or assumes to give any right as affecting vested rights?

Mr. BEATTY. Yes. I will tell you where I think it assumes to go back of a man's rights. If a farmer has taken up his water right, established his home, there is nothing in this section that prevents people coming in and using that water ten years afterwards for domestic purposes, and absolutely taking it away from him. I tried to illustrate the case by supposing a stream just large enough to water 160 acres of land. Let me make this clear if I can. Here is your stream just large enough to water 160 acres of land. You go and take possession of it and develop your farm. Now,

will you tell me what there is in this section that would prevent half a dozen people from coming in afterwards and starting a little village above you and claiming that they wanted that water for domestic purposes?

Mr. MOSS. What right would those half dozen people have to take any of this water that is already appropriated?

Mr. BEATTY. They ought to have no right, but you propose by this section to give them that right because they are going to use the water for domestic purposes. These people that come and start the town propose to use it for domestic purposes, and that, you say, by this section, shall be a superior right to that of the farmer who took it up for agricultural purposes.

Mr. HASBROUCK. That is only in time of scarcity.

Mr. BEATTY. It matters not whether it is in time of scarcity or not. Why should you, because water is scarce, take it away from the man who was first entitled to it, in times of scarcity or any other time?

Mr. ALLEN. I think the gentleman forgets that this priority has already been provided as a fundamental principle. He forgets that fact and argues from a premise that does not naturally follow. The committee took all that into consideration.

Mr. BEATTY. The committee made a great mistake in putting in the words it has and giving it a different meaning. I will go back to them: "Priority of appropriation shall give the better right as between those using the water for the same purpose." And then you go on and say "but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same" as used for those different purposes, domestic, agricultural or manufacturing purposes, then in that case, regardless of the priority, certain parties shall have the preference. That is exactly what this is, and you cannot make it mean anything else. You first provide all right for the

"priority of appropriation;" that is the principle you start on, but you say that when this same water is used for those different purposes, then certain parties shall have the preference in the use of it regardless of the right of priority.

Mr. COSTON. Subject to such limitations as may be prescribed by law.

Mr. BEATTY. That is true, but you cannot make a provision contrary to this, can you? Can you say in your constitution that a party who is using it for domestic purposes shall have the preference, and then by law undertake to say that he shall not have it, but that priority shall govern? Of course you cannot; you cannot contradict yourself.

Mr. McCONNELL. We can say if they have priority subject to such regulations as the law may determine, we can regulate as to what amount they shall take and what they shall pay for it.

Mr. BEATTY. But that does not change the provisions of this law. You establish the absolute right here of one party over another, regardless of when the water may have been taken up. That is just exactly what you do by that provision. I submit it to any lawyer if that is not the only construction that can be placed on that provision.

Mr. GRAY. Let me ask you one question. What I mean is this: With equal rights, as I understand it, the agriculturist shall have the preference.

Mr. BEATTY. What do you mean by equal rights?

Mr. GRAY. This: Suppose there may be upon the stream farmers and manufacturers, and in ordinary years there is water for them all, but in some years there is not. Then I want the farmer to have it, because his are the products I live on; I can't live on cotton or wool or anything of that kind; I want something to eat, and my idea is that——(Laughter. The gavel falls).

Mr. HAMPTON. I desire to ask for information if the amendment offered by Mr. Beatty was not with-

drawn. I understand the discussion has been on that amendment for the last half hour, and I understand it was withdrawn.

The CHAIR. You are discussing the amendment offered by the gentleman from Boise. The amendment submitted by Mr. Wilson was withdrawn.

Mr. WILSON. One of them, and another one put in.

Mr. BEATTY. In my opinion it is impossible to discuss these amendments one by one because they all strike at substantially the same thing.

The CHAIR. Yes.

Mr. TAYLOR. I don't understand this section gives anybody any right to appropriate any water that has already been appropriated.

Mr. BEATTY. No, but it applies in the future just the same. As to rights that have already accrued, it cannot affect those further than this.

Mr. TAYLOR. But you say that a village might form and take a man's water right away from him for domestic purposes. I do not understand that anybody can appropriate any water that has been appropriated. "The right to appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied."

Mr. BEATTY. Very well, let us take that proposition now, "the unappropriated waters."

Mr. TAYLOR. Any further than the right to——

Mr. BEATTY. Very well, Mr. Taylor, I will illustrate that. You see it refers to "waters unappropriated." Now here is a stream half a mile out here that is unappropriated, never has been taken up at all. Tomorrow you go there, take up that water and use it for farming purposes; you build up your farm, grow your orchards and make a home. In five years thereafter I and half a dozen other men come along and start a little village above you there, and step down and tell you, "Mr. Taylor, we have started a little village and we want this water for domestic purposes," and the

section which we are acting upon provides that we can drive you out if we want the water for domestic purposes.

Mr. TAYLOR. I don't think so.

Mr. BEATTY. That is exactly what it says. And this same rule applies to manufacturing. There is a stream out here large enough to start a manufacturing business. My friend over there says that the way to meet that is this: That the manufacturer can start some other power than water power. Why, that is not the only use that water is used for in manufacturing. Many manufacturing establishments require water for other purposes of manufacturing than for producing power, and need the water in the various processes of manufacturing, and you propose to shut them down. After he has started his establishment you propose to shut him down, and the agriculturist can come in and take it away from him, or a little town start up above him and cut out fifty or one hundred families.

Mr. McCONNELL. Do you claim that if a manufacturing establishment started, the farmer can come along and take it away from him?

Mr. BEATTY. Yes.

Mr. McCONNELL. Read the clause.

Mr. BEATTY. It is plain enough, and I fear a great many men are acting upon this with the wrong idea of the result of it. That is why I say we ought to be careful about adopting this. We are doing something in the dark, something that we do not know just what the effect will be. I will answer the gentleman's question now: "Priority of appropriation shall give the better right as between those using the water for the same purpose." Now if you stopped there that would give the man who first takes possession the right of the water. That would be right. But let us go on and see. "But when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be

prescribed by law) have the preference." Now, take the case of the farmer and the party using water for domestic purposes. The farmer locates his ranch and has taken up a water right. Then these parties come in subsequently and want that water for domestic purposes. Now, the farmer has the priority——

Mr. McCONNELL. The amount of water he would cook with and drink, but not for all manufacturing.

Mr. BEATTY. But the farmer has the prior right to the use of the water.

Mr. McCONNELL. Oh, yes, if he could use enough for cooking and drinking to stop the mill.

Mr. BEATTY. And then you go on and say when some other party wants it for domestic purposes they shall have the preference regardless of priority. That is the difficulty with your law. It pays no attention whatever to priority, but gives absolute right, first, to those using it for domestic purposes; second, to the farmer; and lastly, to the manufacturer.

Mr. GRAY. Let me ask the gentleman one question.

Mr. AINSLIE. I want to offer an amendment and see if it meets with the objections of the gentleman from Alturas.

Mr. GRAY. I want to ask a question, if a man can get a vested right by——

The CHAIR. The time is up.

SECRETARY reads: Continue Section 3 as follows: "but the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use as referred to in Section 14 of Article 1 of this constitution. Ainslie.

Mr. AINSLIE. I will explain that, Mr. Chairman, that in the Bill of Rights the other day in regard to private property and prior appropriation of water, is inserted private property for public as well as private uses, but private use is denominated a public use in

Article 14. The article was amended so that I have not got the full text of it.

If we recognize the principle of priority of rights, which is practically the law, and not only the law, but common sense also, and if we can by this provision of the irrigation law provide that persons may have prior right to the use of water for agricultural purposes, notwithstanding the prior appropriation by persons who want the same for manufacturing purposes, if the manufacturer has the prior right he ought to receive compensation for the use of his water by agriculturists under Article 14 of the Bill of Rights. And that would go to the question of taking private property and giving it to another without giving anything for it. By protecting the prior appropriator and recognizing his right, he would be entitled to compensation if he was shut down in order to allow the agriculturists to cultivate their farms. Let them pay the manufacturer for the use of the water.

Mr. ALLEN. I will say that the committee accepted that very view in conference with the committee on Mines and Mining, and the committee on Irrigation and the committee on Bill of Rights, where that same question came up, accepted that very view. It is subordinate to that proposition in the Bill of Rights, and that is the theory we are working upon. "Subject," as it is said in this clause preceding, "to the limitations prescribed by law;" and also subject to and in perfect harmony with the very theory presented by this committee.

Mr. AINSLIE. But this is an article of the organic law.

Mr. ALLEN. Certainly; but the committee accepted that act and are perfectly willing to interpret it.

Mr. AINSLIE. I desire to explain my position upon that and show the necessity of it. The question of mining is not mentioned in this section at all. The first appropriation of waters in this territory, as anybody knows who was here in the early days, or has

gotten it by tradition, was almost entirely for mining purposes; and in some sections mines are little patches of ground that can be cultivated and potatoes and sometimes fruit raised. Now, under section 3 the rights of miners in their appropriation of water are not recognized at all. There might be a conflict between the prior right to the use of the waters for mining purposes, and its use for agricultural or manufacturing purposes. The miners of this territory are willing that the right to the use of the waters for domestic purposes shall be prior to all other rights, being necessary to sustain human life and the lives of livestock, and nobody would have refused that or asked compensation for it. While we are willing to concede that, still, where our rights are taken up we do not desire that persons should come in subsequent to the miners of this country —and this country was built up by the miners, and it is the gold taken out of the ground by the miners that is building your cities and towns—we do not propose that parties shall come and take up a patch of ground 400 or 500 feet long, appropriate the water for agricultural purposes, and make our mining interests subordinate to the agricultural interests of people who come there ten or fifteen years later.

Mr. ALLEN. I will ask the gentleman if he read the section that was directory in the Bill of Rights, and to which this should be subordinate?

Mr. MAYHEW. Do you mean section 14 passed the other day?

Mr. ALLEN. Yes. I will say to the gentleman from Boise that the committee can very well adopt this language.

Mr. HEYBURN. I have an amendment which I think will cover that which I am preparing to send up now.

Mr. REID. I rise to a point of order. The hour has arrived at which the bill that was to be engrossed should be presented by the committee. I move that the committee rise for the purpose of taking up the

special order, and then we can go back to this. It is the engrossment of the bill disposed of this morning. I understand the committee is ready to report and I move that the committee rise for that purpose.

Mr. GRAY. May I ask what bill?

Mr. REID. The Suffrage bill.

Mr. GRAY. I second the motion.

Mr. MAYHEW. What advantage is there in that?

Mr. REID. It was made a special order for two o'clock, and it went over until three; and some gentlemen are going off this evening who want to vote on it. It will take but a moment to dispose of it. But I will yield to have the amendment reported that was offered by Mr. Heyburn.

SECRETARY reads: Amend section 3 by adding after the last word "in any organized mining district those using the water for mining purposes or for milling purposes connected with mining shall have preference over those using the same for manufacturing or agricultural purposes."

Mr. MAYHEW. I second the adoption of that amendment.

The CHAIR. The question is, shall the committee rise with permission to sit again? (Vote and carried.)

CONVENTION IN SESSION.

Mr. MORGAN. The committee of the Whole have had under consideration the report of the committee on Agriculture and Irrigation, and have come to no conclusion, and have risen and asked leave to sit again.

The CHAIR. Without objection that will be so ordered.

Mr. HASBROUCK. Mr. President, your committee on Engrossment is ready to report.

The CHAIR. The clerk will read the report.

FINAL READING ARTICLE VI.,—ELECTIONS AND SUFFRAGE.

SECRETARY reads: Mr. President, your committee on Engrossed Articles of the constitution of the state of Idaho to whom was referred the article in re-

lation to Elections and Suffrage, have carefully examined the same and find it correctly engrossed. Hasbrouck, Chairman.

The CHAIR. Under rule 52, which reads as follows: (reading the rule which has been heretofore set out) I suppose the question now in order is upon the final reading of the bill?

Mr. BEATTY. I move we proceed to the final reading and adopting of the bill. (Seconded. Carried).

SECTION 1.

SECRETARY reads: Article —, Section 1. All elections by the people must be by ballot. 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.

The CHAIR. The rule now is, "vote therefor."

Mr. BEATTY. I would inquire whether the bill cannot be read as an entirety instead of section by section, and voted on by one vote.

The CHAIR. That cannot be done without suspension of the rules.

SUSPENSION OF THE RULES.

Mr. BEATTY. Then I move a suspension of the rules for that purpose. (Seconded.)

Mr. PEFLEY. I object.

Mr. AINSLIE. I object.

The CHAIR. Objection having been made it would require a two-thirds vote to suspend the rule.

("Question, question.")

(The vote was taken on the question to suspend the rules. The chair was in doubt. A rising vote was taken, resulting ayes 29; nays 7.)

The CHAIR. Twenty-nine having voted affirmatively and seven in the negative, the necessary two-thirds voted to suspend the rule and the rule is suspended.

SECTIONS 2, 3, 4 AND 5.

The secretary thereupon read the remaining sections, 2, 3, 4 and 5, of the article on Suffrage and Elections as the same had been amended and reported, and it was then moved and seconded that the entire article as read be adopted.

The CHAIR. The question is now upon the adoption of the article. I think it should have been read as a whole anyway, on looking at the rule. The question is now upon the final reading of this article to be incorporated into the constitution. Under the rule the vote must be taken by ayes and nays. As many as favor the proposition answer aye when their names are called, and those opposed will answer no.

The secretary proceeded to call the roll:

Mr. AINSLIE. Mr. Chairman, I desire to explain my vote , I have the right, I believe. I have stated my objections fully upon this bill, and I desire to repeat them, so that no lying correspondent can misrepresent me to the people through the Tribune. I endorse every measure here supressing the Mormons and preventing them from voting and disfranchising them, but I shall vote against this bill on account of its containing the section, for the reasons I gave in the few remarks I made last night. I want that understood, and I don't want to be misunderstood any more. I vote No.

Allen, aye; Anderson, no; Andrews, —; Armstrong, aye; Ballantine, aye; Batten, —; Beane, aye; Beatty, aye; Bevan, —; Blake, —; Brigham, aye; Campbell, aye; Cavanah, —; Chaney, aye:

Mr. CLARK. I would like to explain the reason of my vote. I cannot give the same reason my friend from Boise did in the hope of preventing misrepresentation in the newspaper press. That is something you cannot do until you are able to send mountain streams up hill. I object to that part of the act relating to disfranchising the polygamists which disfranchises them on the ground of membership simply. In my judgment per-

sons should be punished for the violation of law where the intent is clearly ascertained. Many persons are members of that organization who are ignorant of the consequences of their act, ignorant of any evil intent. I object also in regard to the scope of the passage conferring such broad powers upon the legislature. My experience with legislative bodies is such that I think constitutions ought to be authoritative; if I believed with the majority, that the legislature should have the powers which that section confers, then I should think that no constitutions were necessary. But if there is any need of a constitution it is in the protection of those who exercise the right of suffrage. I therefore vote no.

The roll call continued: Coston, aye; Crook, —; Crutcher, aye; Glidden, aye; Gray, aye; Hagan, —; Hasbrouck, aye; Hays, aye; Hendryx, —; Heyburn, aye; Hogan, aye; Howe, —; Jewell, aye; King, no; Kinport, —; Lamoreaux, —; Lemp, —; Lewis, aye; Maxey, aye; Mayhew, aye; McConnell, aye; McMahon, —; Melder, aye; Meyer, —; Morgan, aye; Moss, aye; Parker, "No sir"; Pefley,

Mr. PEFLEY. Mr. Chairman, as explanations appear to be in order I wish to explain my vote also. I am very sorry that the suspension of the rules was allowed. In fact, there are a great many things in that which I heartily approve of. I am very sorry to vote against the first section of that report in regard to the secret ballot. I am highly in favor of that and always have been; I think the only redemption for the American people is to have absolutely a secret ballot. But, sir, when it comes to going into the cradle, into the schools among innocent children, and into the future generations and disfranchising them, and cursing innocent persons that have never violated any law of this territory or any state, but who have their opinions and perhaps would die for them, as the martyrs of old have done, I say, so far as I am concerned, I am highly in favor

of every man in these United States exercising the rights that are guaranteed to him by the Constitution of the United States, one of which is the right to serve God according to the dictates of his own conscience, and therefore, Mr. Chairman, with some regrets, however, I have to vote against the whole bill. I vote no.

Roll call continued: Pierce, aye; Pinkham, —; Poe, aye; Pritchard, aye; Pyeatt, aye; Reid, aye; Robbins, aye; Salisbury, aye; Savidge, aye; Sinnott, aye; Shoup, aye; Standrod, —; Steunenberg:

Mr. STEUNENBERG. I am unqualifiedly in favor of sections 1, 2, 3, and 5 of this bill. I object to the power which is granted to the legislature by section 4, and therefore I vote no.

Roll call continued: Stull, —; Sweet, aye; Taylor, aye; Underwood, aye; Vineyard:

Mr. VINEYARD. Mr. Chairman, I am very sorry I am compelled to explain my vote on this article of suffrage. I am aware it takes a good deal of nerve to vote against this article as an entirety; and as has been well expressed by Mr. Steunenberg, who preceded me, and voted no, upon this article, I heartily approve and would give my hearty support, if it were not for the section which I regard as un-American; so undemocratic in every sense that I am compelled, on account of that section, to vote against this article as a whole. The debate on yesterday fully disclosed the reasons of the minority upon this subject; it is unnecessary to go over them now. Sections 1, 2, 3 and 5 meet my hearty approval, and would meet my hearty approval if I was permitted to vote for those sections as they stand in the article; but inasmuch as I have to vote upon all these various sections in this article, if I have got to take all, I hold that this section 4 so overrides and outweighs everything contained in the other articles that I am compelled to vote no upon the entire article.

Roll call: Whitton, —; Wilson:

Mr. WILSON. I vote aye, because I think this

article provides the best way of crushing the Mormon hierarchy.

Roll call: Woods, —; Mr. President, ——

The CHAIR. The vote for the adoption of the article is ayes 39, nays 8. The ayes have it, and the article is adopted.

Under the rule the article now goes to the committee on Revision to be incorporated in the constitution in its proper place. I will state to the gentleman that the chair did not want a precedent established. After looking carefully at rule 55 I do not think it was necessary to call the ayes and nays on each separate section. I think the words "proposition" on the final vote, "and upon the agreement to the instrument as a whole" mean each article, and I will hold, on looking at it more carefully, that it was not necessary. There was no necessity to suspend the rules. I say this in order that that may not be made a precedent. I think after it has been considered in the committee of the Whole, gone back to the convention, then this final vote is taken on the "proposition as a whole" and the ayes and nays called upon it, and then the adoption of the entire constitution is finally taken on the ayes and nays, that the words, "the entire instrument" means the constitution. What is the pleasure of the convention?

Mr. BEATTY. I move that the vote by which this article was adopted be now reconsidered, and that that motion be laid upon the table. (Seconded.)

Mr. MAYHEW. I rise to enquire what is the purpose and object of such a motion as that?

Mr. GRAY. That is what I want to know.

Mr. BEATTY. The simple purpose is to prevent any further reconsideration of the matter, and finally settle it.

The CHAIR. That is what the chair so understands.

Mr. REID. A motion of this sort, as in the House or Representatives, finally disposes of that article and it cannot be reconsidered again at this session of the convention.

Mr. MAYHEW. I am aware that would be the explanation, and I cannot see the necessity, when this convention with such a large majority has adopted it; for it would never permit this to be again introduced in the convention. I think it is encumbering the record for a useless purpose entirely.

The CHAIR. The question is upon the adoption of the motion. (Vote and carried.)

Mr. BEATTY. I would like, Mr. President, to be excused now; I was excused this morning.

The CHAIR. Without objection, the gentleman is excused.

Mr. McCONNELL. I now move that we resolve ourselves into committee of the Whole for further consideration of the report on Irrigation. (Seconded.) (Vote and carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. Morgan in the chair.

Mr. PARKER. I move we take a recess until 9 o'clock tonight.

The CHAIR. The chair is of the opinion that the motion is out of order. The question under consideration is section 3 of the report of the committee on Water Rights and Irrigation.

ARTICLE XV.—SECTION 3.

Mr. ALLEN. Mr. Chairman, when we closed our discussion on this question a few moments ago, substitutes for section 14 were referred to. I now read the substitute in the Bill of Rights, and there is one clause —I will read 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 the 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 public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."

And I say with reference to the amendment offered by Mr. Ainslie, the committee has no objections to that clause being added so far as it corresponds.

The CHAIR. The question is on the amendment offered by the gentleman from Boise, to strike out the words "for the same purpose" in line 3.

Mr. HAMPTON. Mr. Chairman, I desire to say a word upon that. I believe those words are right and should be left there. I call the attention of the gentleman from Boise to certain statements in the supreme court of California, which perhaps used the same language, and they were applied to cases like this. Where persons have appropriated water for milling purposes, for instance, not continuously, but for one or two days in a week, or where they have appropriated water for mining purposes perhaps one or two days in the week, or perhaps certain hours of the day, it has been held there, and in this same language, that the parties who appropriated the water in the first place for mining purposes, if they had only appropriated it for two days in the week, they had no right to take it the remainder of the time. Now, these words will exactly cover that ground and make the whole section harmonious and carry out the idea. I believe those words are the same as they have in California, or similar, and it seems to me they are necessary, or if not necessary, really proper and ought to be in there, and I am in favor of their remaining. I can't see that they can hurt anything.

Mr. ALLEN. I wish to correct an error. I understood the gentleman from Boise had withdrawn that portion of the amendment. It was the amendment Mr. Heyburn offered that I had in mind with reference to the use for mining purposes.

Mr. AINSLIE. This is to the same effect as the first amendment I offered about an hour ago. When the question came up between agricultural and mining interests I drew that amendment which you are willing to accept. Upon mining purposes Mr. Heyburn offered one which I did not hear read.

Mr. ALLEN. This is the amendment I had reference to. I don't want to be understood as agreeing to the amendment first proposed.

The CHAIR. There are four amendments before the committee now. Which one will you have read?

Mr. AINSLIE. I would like to hear Mr. Heyburn's amendment read for information.

Mr. HEYBURN. It is not very plainly written, and if the page will hand it to me I will read it. (Reads:) Amend section 3 by adding after the last word, "And in any organized mining district those using the water for mining purposes or for milling purposes connected with mining shall have preference over those using the same for manufacturing and agricultural purposes." That applied to organized mining districts.

The CHAIR. The question is upon the amendment offered by the gentleman from Boise to strike out the words "for the same purpose."

Mr. AINSLIE. The gentleman from Cassia county, as I understand, says the supreme court of California refers to that matter. I never knew a decision in the supreme court of California or any other mining state or territory that refers to any such thing as that. All statements go to the proposition that priority of appropriation of water for any beneficial purpose whatever gives the best right. That principle is recognized by the supreme court of every mining state and territory of the United States. Now, sir, the reason I want to strike out "for the same purpose" is this: that there may be a conflict of the right to the water between manufacturing and agricultural purposes and for mining purposes. And I say that we are going to sustain the doctrine of he who is first in point of time is

stronger than he who is best in right. That is the only correct doctrine that can be maintained. If a person owns water for mining purposes, and only uses it for three or four hours of the day, *if he is not using that water*, anybody in God's world has the right to use it when he is not using it. Nobody contradicts that right, and that has nothing to do with striking out "for the same purpose;" but that confines it to three of four purposes. If a person takes water for mining purposes upon the same stream that is already appropriated, then the prior appropriator has priority over the subsequent appropriator for the same purpose. And if a person takes it out for mining purposes, and another person comes and takes it for mining or for agricultural purposes, subsequent to that time, there is a conflict at once between those two parties, and if you strike out those four words, "for the same purpose," it places them all upon the same level with the qualifying words following. "But when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have preference over those claiming for any other purpose." That does not conflict by striking those four words out; nor does it conflict by giving the agriculturalist priority over the manufacturer. But it recognizes to the fullest extent the priority of appropriation by any person who has taken the water; and that I believe is the true doctrine in these mining countries and all countries on the Pacific Coast. That is the reason I ask to have those four words struck out. It does not affect the matter at all, except the way it is there now it confines priority of appropriation between persons of the same class; priority between men who have appropriated for mining purposes, and priority between men who appropriated for agriculture, but does not give priority of appropriation by the miner any preference over priority of appropriation for manufacturing or agricultural purposes, and that is what I insist on, no matter what the rights are if the use is for a beneficial purpose.

Mr. GRAY. I must retort that I am for prior appropriation; first in time, first in right; I care not for what purpose.

("Question, question.")

The vote was taken upon the question of the amendment offered by Mr. Ainslie to strike out the words "for the same purpose" in the third line.

(Division demanded. On the rising vote, ayes 18, nays 11, and the amendment was carried.)

Mr. HEYBURN. I do not know, Mr. Chairman, whether there are any amendments prior to the one I sent up.

The CHAIR. Yes, three or four.

Mr. HEYBURN. Let us have them read in order.

SECRETARY reads: Strike out all of section 3 after the word "denied" in the second line, and insert "and those prior in time shall be superior in right."

Mr. MAXEY. I would like to enquire if 18 and 11 is a quorum?

Mr. HEYBURN. That question cannot be raised in committee of the Whole.

The CHAIR. The inquiry is not in order.

Mr. CLAGGETT. I would suggest to my colleague that that matter is passed upon already. The very sentence says: "Priority of appropriation shall give the better right as between those using the water." By striking out "for the same purpose" it leaves it just the same.

("Question, question.")

The vote was taken on the adoption of the amendment. Lost.

SECRETARY reads: Insert the words "power or motor" after the words "manufacturing" in line 8, section 3. (Vote.)

A division was demanded. On the rising vote ayes 4, and the amendment was lost.

SECRETARY reads: Add in line 8 after the word "purposes" the following: "But no appropriator shall defeat the right to a reasonable use for irrigation, of

the said water by a riparian owner of the land through which said water may run."

Mr. VINEYARD. Mr. Chairman, I desire to make a statement about this proposed amendment. I do not desire the members of this convention to understand that this amendment shall defeat the right of any ditch owner through whose land the ditch runs, because the owner of the land would not be a riparian owner, and that would not be a natural stream. But I desire it to be understood that it is purely and simply for the purpose of protecting the riparian owner of the land through which the water runs. That is to say, that all the waters of a stream could not be diverted to the exclusion of him who owns the land.

Mr. CLAGGETT. That is all covered thoroughly by a following section.

Mr. VINEYARD. I believe upon examining the section as it now stands, that that right is already guaranteed outside of it; but I put it in there for the purpose of putting it beyond any question in the courts as to whether the rights of a riparian owner were saved by this section. I believe they are; that is my opinion; but in order to save any question upon that subject I have inserted this amendment. I am aware that all prior water rights are respected, nor does this interfere with any prior water rights. But the right of the parties to the stream for a reasonable use, which has been interpreted by the courts in California upon this subject, is for domestic and irrigating purposes, the reasonable use and circumstances of each particular case governing what a reasonable use was. Now, under the act of congress of 1866 all water rights located upon the public domain are protected, and all patents now issued by the government of the United States to the patentee state that fact. But I do not desire the members of this convention to misapprehend what that means as I understand it. I don't know whether you all understand it as I do or not. A prior right that is respected by that act is the right, is the easement over

the lands that have been acquired by appropriation. That is respected and no more. It never was the intention, as I understand it, by the act of 1866,[1] to take the waters all and entirely from their riparian owner; but simply the easement that had been acquired by an appropriator through his land prior to his settlement upon it, was the only thing that is reserved in the patents, and water rights acquired in that way are protected by this act of congress and are secured to the appropriator, and no more. This question was very ably determined and settled in a celebrated case in California long since the adoption of the new constitution; I refer to the celebrated case of *Lux versus Haggin,* reported in 69 Cal. 255, upon this subject. As between appropriators, Mr. Chairman, prior in time, prior in right, that is the doctrine, and I am not here contending against any such doctrine as that. That rule only applies as between appropriators; but where a man locates upon the soil and acquires a patent from the government of the United States, the stream running through the land in its natural channel as defined by nature, the reasonable use to that water is absolute, and I say that it will be beyond the province of this convention to attempt to take that away from the locator, which is secured and guaranteed to him by the law of congress; and I have simply added this amendment for the purpose of securing beyond any question that right. Although I believe upon examination and looking at this section again that that right is not interfered with; that the doctrine of appropriation is a doctrine inferior, so to speak, to that of the riparian owner, to that of the man who owns the land, who owns the soil through which the water runs. And I understand that nobody can take that absolutely away from the man who owns the soil, provided he turns it into the channel below so others can use it as it flows over his estate. Nobody by act could do that; it would

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[1]—14 Stat. at L., 253.

amount to confiscation of his estate if it could be done.

Mr. GRAY. Just one word. If I go upon a stream I have a right to that unappropriated water; if I find water there I have a right to it, a right which attaches to the land which I take. But if I find it all taken from there by prior appropriators, I do not claim that I can go below them and settle down, and when I saw at the very time I located my land the conditions existing there, I cannot go up there and make them cut their dam or ditch and run the water down below to me. I say, the prior appropriator has the right; first in time, first in right.

Mr. CLAGGETT. That same doctrine of priority protects the riparian owner, provided he takes up his land first; and as said by the gentleman from Ada, if all the water is taken out and applied upon their land, then when a man comes and takes up the land and finds that the water is all gone, he takes the land subject to the other man's rights.

Mr. GRAY. He takes it as he finds it.

Mr. CLAGGETT. Certainly.

The CHAIR. The question is on the amendment offered by the gentleman from Alturas. (Vote and lost.)

SECRETARY reads: Continue section 3 as follows: "But the usage by subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public or private use, as referred to in section 14, Article I., of this constitution."

Mr. AINSLIE. I would like to have the committee on Irrigation and Mining accept that amendment.

Mr. ALLEN. That chairman is not present, but for one, so far as the idea corresponds with that in the Bill of Rights, I think there would be no objections.

Mr. AINSLIE. That would secure all their constitutional rights, and I move the adoption of it.

Mr. GRAY. Wouldn't it be proper to be in the next section?

Mr. CLAGGETT. So far as that matter is concerned, I think that whole subject is covered by sections

5 and 6, so far as it ought to be covered. I don't believe there should be absolute priority in irrigation by any claimants, but let that right be limited as it is here, and in the other sections, so that when the first man comes in and takes up the water he is not going to be allowed to play the dog-in-the-manger policy. There may be in ordinary years enough water to supply all of the people that settle along a ditch or canal, which is being distributed, but when there comes a dry season, is one-half of the farms to be absolutely destroyed because the other man has an absolute priority, or is there to be an equitable distribution under such rules and regulations as may be provided by law? And sections 5 and 6 deal specifically with that question.

Mr. GRAY. I say, Mr. Chairman, that the man first in time is first in right. If he was there first, and the water is short, it is his. If there is more than he wants, he shall not be allowed to play the dog-in-the-manger policy. That is, if he does not need the water, as a matter of course, the general law will keep him from doing that; but if he was there first, he shall be first served, and when he has supplied his needs, then his neighbors below him can be supplied, and so on down.

Mr. AINSLIE. I have read these sections carefully, and it is not provided for in any other section; but if you contemplate making the agricultural interests of the territory superior to the manufacturing interests, as proposed in the section as it stands, without this amendment, then any person, who has appropriated water for manufacturing purposes alone, and is using it for that, and during a dry season the water becomes scarce, the farmers below the line of that ditch, if they have built another ditch appropriating those same waters, could deprive the manufacturer of his prior right to that water, deprive him of a prior appropriation without compensation. I go this far in a conservative way, and say while we may give them a prior right to use the water if there is not enough for the agriculturalist and the manufacturer both, give the

agriculturalist a prior right to the use of the water, but include in section 14 of your Bill of Rights that he shall pay the manufacturer for its use.

("Question, question.")

Vote on the question of the amendment offered by the gentleman from Boise. Division. On the rising vote, ayes 13, nays 12. And the amendment was adopted.

Mr. CLAGGETT. Mr. Chairman, I was not here when these amendments were adopted, but I call the attention of the gentleman from Boise to this fact, that his amendment is not applicable to the condition of things as he thought it was. It does not say that this question of preference is an absolute one at all; "but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes." Where there is a stream of water or large canal furnishing power in a given year for manufacturing purposes, and is also supplying water for the purposes of irrigation, then it comes along to a dry season when there is not water enough to supply them all, and then the power is required to give way to irrigation. Now, I don't believe this convention understood this proposition.

Mr. AINSLIE. Give way on just compensation.

Mr. CLAGGETT. For what?

Mr. AINSLIE. For the prior appropriator of the water. If there is not water enough for manufacturing and agricultural purposes both, preference is given to agriculture so far ts the use of the water is concerned, but makes the agriculturalist pay the manufacturer, who is the prior appropriator, for the use of that water.

Mr. CLAGGETT. Well, I would support any such amendment as that, if the section was a case for dimi-

nution of anything, but it is not. The language of this section you have amended does not propose to take away the prior right of the manufacturer at all. It simply says that when there is a scarcity of water for those desiring to make use of it in that shape, as in the case of a dry year, then for that year the power shall yield to the interest of agriculture. If you were to stop right in the middle of the season, when the whole thing would be over in two months, to condemn under the provisions of the Bill of Rights the right to the use of the water for that season——

Mr. POE. (Interrupting.) Let me ask you a question.

The CHAIR. There is nothing before the committee.

Mr. POE. Then I don't see why the gentleman is occupying the floor, if there is nothing before the committee. I hope the chair will see that there is something before it, before it permits anybody to talk.

SECRETARY reads: Amend section 3 by adding after the last word, "and in any organized mining district those using the water for mining purposes, or for milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes."

Mr. HEYBURN. Mr. Chairman, it seems that this is an absolutely necessary provision. Perhaps there may be some persons in this convention who are not familiar with the necessities of mining and mining districts; but in the absence of such a provision as that, those little Italian ranchers, who settle along our mining streams to raise their truck, without professing to have any title to the land at all, would take preference over the miners who have appropriated the water for their use, because that is agriculture, notwithstanding it is done in a small way. We do not want any such class of people to acquire a prior right to the use of our streams in the mountains, which we need for the primary industry of the country, which is mining. And in the absence of some such provision as that, those

men, being agriculturalists, when the water runs low in the summer time would shut up our mines, which would not do; and I therefore offer that amendment.

The CHAIR. I would inquire of the gentleman if the amendment he proposes would not be directly opposed to the provisions of this section.

Mr. HEYBURN. It is an exception from the rule specified or laid down in that section. Making it applicable to organized mining districts alone, it does not apply anywhere except in organized mining districts, and mining districts are seldom organized except where there is some mining industry and where it predominates. It would not apply outside of that.

Mr. GRAY. I have one word to say. I shall stick to my principle, first in time, first in right. The man that is there first and gets the water first, I don't care what its purpose is if it is a legitimate purpose, I want him to have it. I think the principle is as clear as can be, whether he is a farmer or a miner or whatever he may be. Although, as a matter of course, I would prefer that the agriculturalist should have it ahead of the manufacturer; but mining is just as much an industry as raising wheat, and brings more money to us, a great deal.

Mr. HEYBURN. Mr. Chairman, I want to call the attention of the gentlemen having this matter in charge to the fact that I do not find anywhere any provision that a person appropriating water must be a citizen or have declared his intention. It was called to my mind that the majority of these Italian farmers are neither; and I do not know whether the gentlemen intended in that first section to provide for that or not. It seems to me there ought to be some such provision.

Mr. CLAGGETT. I think the amendment offered by my colleague is a beneficial one. The idea of that section was to give the preferred use to irrigation and agriculture in agricultural districts, without affecting in any way the question of priority of appropriation in other districts.

The CHAIR. The question is on the amendment offered by the gentleman from Shoshone.

Mr. STANDROD. I would like to have the amendment read.

SECRETARY reads Mr. Heyburn's amendment.

("Question, question.")

Rising vote taken; ayes 21, nays 6; and the amendment was adopted.

ADDITIONAL SECTION PROPOSED.

Mr. HEYBURN. Mr. Chairman, I desire to propose, following that, a new section.

SECRETARY reads: Where land has been located along or covering any natural stream for any purpose, which contemplates the use of the water of such stream, then no person shall be permitted to take the water from said stream at a point above the land so located to the exclusion of such locator after such location.

The CHAIR. It is the opinion of the chair that we ought to proceed with the adoption of the article.

Mr. HEYBURN. It should follow the mining section because it is intended to apply to this.

The CHAIR. It can be considered now if it is desired by the convention. No objection heard, and it will be considered.

Mr. HEYBURN. Mr. Chairman, I will explain the object of the section. When a party goes upon a natural stream and makes location of a mining claim he does not immediately commence to use that water for any beneficial purpose perhaps, because the mining law gives him a certain length of time in which to do his assessment work, so that he may not be said to have appropriated that water by the mere fact that he has located a mining claim across the stream. Yet, if a man located a placer mining claim covering a stream with a view to working that placer mining claim with that stream, he should not be required to divert the water from the stream in order to give him title to it; but should be allowed to leave it in its natural channel until he is ready to use it for the purpose of working

that mine; and in the meantime no man should have the right to go above him in the gulch and take out a ditch for the express purpose of embarrassing that man in his future operations. We see that thing applied sometimes, and that thing done by men who can go above a mining claim when they know that eventually the miner is going to require that water to work his claim, and they locate a ditch right for the express purpose of compelling the miner to buy the water of them to his exclusion, and they set up the defense that he was not using the water, that he had not appropriated it, that the only act he had done had been simply to locate a mining claim on the gulch. And for the protection of that class of claims it is necessary to have some provision in this constitution, because the law of the United States gives a man a certain length of time in which to do his work, and this constitution should not abridge that by indirectly legislating that unless he did actually use that water he could have no title to it and that another man could acquire title to his exclusion.

Mr. GRAY. I will ask the gentleman if that is not the law anywhere as it stands?

Mr. HEYBURN. It will be the law unless we enact something to change it; it is the law now and I want it to remain the law in the organic law of this territory.

Mr. GRAY. Why put it in here then?

Mr. HEYBURN. The fact that it is the law now does not promise it will be the law after this constitutional convention gets through with its work. If we say without any qualification that prior appropriation or diversion of water, etc., I presume we will mean just that thing, and we don't want to leave that a thing of construction for the courts. The object of our action here is to establish these fundamental principles of law, and in this bill already we say that prior appropriation shall give a prior right, and that has been the battle cry of the gentleman from Ada throughout the consideration of this section. I simply want this con-

vention to say that the location of a mining claim or of a piece of property, which from the very nature of it contemplates the use of this water, shall be a prior appropriation. That is the object of the section.

Mr. GRAY. I don't see how we are defending the law.

Mr. HEYBURN. It is a declaration of a right.

Mr. GRAY. As I said before, we will have this constitution bigger than the Bible before we get through. It is just and clear, and a principle that has been decided before you and I were born, I expect—not before I was, but before you were—that a man cannot take and hold water without he does it for a useful purpose. He cannot hold it just because he has taken it; that does not give him a right; it does not give the factory a right, and if he is not using it, it must go below to the neighbor. It is not a *property,* it is only a *use,* that we have in this water, and I do think that we are lumbering up what we call a constitution with all these proceedings over a matter connected with it which should be for the statutes if we desire it at all.

Mr. HEYBURN. I would like to ask the gentleman a question. Does the gentleman understand me to take the position that a man acquires title to the water itself by reason of this section?

Mr. GRAY. That is the way I understand your contention.

Mr. HEYBURN. Then the gentleman fails to comprehend the meaning of the section. I am probably as familiar with the fact as the gentleman is that the courts have universally held that the title is not to the water itself, but to the use of it; it is not a principle that is peculiarly within the knowledge of the gentleman, notwithstanding his venerable age. The doctrine that the title is in the use of the water has nothing to do with the principle that is behind this section. This section is to protect the land owner in the right to use that water when he may see fit to use it, and when he is not using it it is open to the whole world to use it.

If there is an hour or a day or a month of any year that he is not using that water, it is subject to the rights of any other man who will comply with the provisions of the law as to the use of it; but when he is using it or has use for it in order to make the property he has selected with a view to using it valuable, he has the right to use it.

Mr. GRAY. That is the law, I say; I don't see any point in the amendment.

Mr. CLAGGETT. I do. I see a multitude of points that do not lie in the bill, they lie on the outside. We have sacrificed the doctrine of riparian ownership to the doctrine of appropriation for agricultural purposes. That is to say, that when a man takes up a piece of land over which a natural stream was running, and does run when it is not stopped, that the prior appropriator of that water may go above, take the water out and apply it for agricultural purposes upon his land. We have done that by the consent of the entire convention. Now what does my friend want? He wants to reserve and preserve the doctrine of riparian ownership as to mining claims, and cut off the right of anybody to go above and take out the water and leave the first locator of the mining claim, who has never dug a ditch for the use of a single foot of water, who has staid there for fifteen or twenty years, and when somebody has come along and taken the water to some beneficial use in the matter of mining, then by reason of the right of riparian ownership this original claim owner can demand that that water be turned on to him at any time. Now, I say that the doctrine of priority appropriation should govern in all particulars which are absolutely necessary and which we have provided for here. That is precisely what his amendment amounts to. Let us illustrate. On Pritchard gulch in Shoshone county, Mr. Pritchard came in there and located all those claims in twenty acre tracts, 40 rods wide and 80 rods long; in other words, each one of them a quarter of a mile in length. They never did anything about the water; if

they took any water out at all—there was quite a large stream—they were just taking out a sluice-head, and so they went along working in that way. Other men came to work and took out ditches to cover the hill ground, which cost thousands and thousands of dollars to construct, and after they had spent all this money, years afterwards this first appropriator concludes that he will use his ground in the same way, and he puts in a bed rock flume close in by those people to turn the water down to him. Now, I say the true rule with regard to the appropriation of water for mining purposes is this: that the man does not get title to the water by simply locating a mining claim over which the water runs; and every miner who has ever undertaken to do anything of the kind has generally got the worst of it, except up there in Shoshone county under the ruling of the distinguished jurist who presided over us, Judge Buck, who had quit and has left the territory since then. Now, what I say is this: when a man locates a mining claim over which water runs he should be allowed a reasonable length of time to go ahead and appropriate that water for mining purposes, and if he only appropriates a small quantity, then that the surplus should be left to be appropriated by somebody else on hill ground, and the original locator should be confined to the amount he has appropriated and used up to the time the other man takes the water out. It is to preserve that principle, which has been the theory of mining companies from the beginning, that I oppose the amendment offered by my friend from Shoshone.

Mr. AINSLIE. I have examined this section since it was read by the gentleman from Shoshone, and I view it in the same light that Mr. Claggett does, only it goes farther and says: 'locates upon a stream for any purpose;" it doesn't say mining purposes; it might be a ship canal or anything else. And in my opinion it is reintroducing this old claim of riparian proprietorship that is dead on the Pacific Coast and always will be. It does not limit the time; it says locate for any

purpose on any stream through which water runs, that no person can go up above him and take the water away if he wants to use it. It does not say when he wants to use it, whether he locates there today with the intention of using this water; doesn't say whether he uses it or shall use it, and his intention may last to eternity and he may never appropriate the water, and yet prevent anybody from using the water above him and appropriating it to a useful or beneficial purpose, such as mining or agricultural purposes. A man might say under that section, "I came here five or six years ago, and I am entitled to that water." I am opposed to an amendment of that character.

Mr. HEYBURN. I am willing to leave it to the legislature if we do not lock the door against the legislature, because I am satisfied that the legislature would deal with this matter better than this convention could. Its powers are of a rather different character, more in detail. But I do not want to see the door shut, and my object in introducing this section was that the convention's attention should be called to that effect, and the door not entirely shut against the legislature providing for these matters. I am just as well aware of the possibility of working an injustice in this section, perhaps, as the gentlemen who have so plainly and specifically stated such possibilities. A man might do a great many unjust things if he is clothed with this right, and if the right is absolutely taken away from him he might be deprived of a great many very plain and just rights. I am not going to bring the case of Mr. Pritchard and his mining claims into this convention. It has been brought into almost every other body that has assembled in North Idaho. It makes no difference what he did or did not do. And inasmuch as the only right such a locator could acquire under the provisions of that proposed section is the right to use the water, if he does not use it then there is no harm done to anyone else; anyone else might take it, divert it and use it. It only preserves to him the right to use it, not to use it simply

for the purpose of using it, but to use it for some useful purpose necessary to the enjoyment of the right to his claim by virtue of location of the land, that is all; to preserve that right to him. The first thing the modern prospector, a certain class of prospectors, does when he goes into the mountains is to acquire all the water in the canyons, and when he has got it the gulches are worth nothing for mining purposes; but it is an evil that has grown up in the mining camps of the northern part of the territory so that the location of water rights is a profession. Walking up and down those streams you will find every few rods a location notice of a water right, upon which they had predicated nothing except to blackmail the owners of mining claims on the gulch. That is what it amounts to. I had occasion on one stream less than six miles in length to investigate the problem of water, and I found thirty-two locations inside of ten miles, and there wasn't a ditch in connection with one of them, and they were all posted and recorded in that county. Now, instead of a locator in this mining district staking out his claim and putting up four posts and a notice, which implies considerable work, he does that which is much easier, he nails up a notice of water location on the tract and then he has located every claim on that gulch to all intents and purposes, because he has placed every other man at his mercy. He will go to a large stream and locate it, and then go down until he thinks the accumulation of water justifies him sufficiently to make another location, and so he will go on down that stream to the mouth of it; and when that water locator gets through the country is not worth prospecting, because if you find gold at any place on bed rock you could not pan it without the consent and assistance of this man who owns the water which you need to wash it out. That is what I am aiming to strike at by this provision, and aside from any particular case, because I had none in view when I made this proposition to the convention. It is one that has a very considerable amount of merit in it and ought

not lightly to be passed over, in view of the fact that it is so much less work to locate a water right than it is to locate a mining claim.

Mr. ALLEN. I certainly shall oppose this amendment. It seems that the entire agricultural interests are to be sacrificed or made subordinate to every mining gulch in the Coeur d'Alenes, and this is not the first instance in which we find a majority of the material interests of the territory are to be subordinated, and by a pretentious introduction of an amendment or section the whole fundamental principle and theory of the irrigation system of the government has been struck out and cast aside, or such is the intention, as I understand it. I certainly should oppose that amendment or the section being added at this time.

Mr. SWEET. One question I want to ask.

The CHAIR. The gentleman has taken his seat.

Mr. SWEET. I see he has. I would just as soon ask him when he is sitting down. About this additional section. I want to know if this is the condition meant: that if A locates a placer mining claim in a gulch, and, after doing perhaps a little assessment work year after year, and holds it, say five years, on such assessment work; and then B comes along and locates a claim farther up the gulch and proposes using water to the extent that if A should desire to work his mine he can make B yield the water; whether or not he can do that?

Mr. CLAGGETT. Certainly.

Mr. HEYBURN. Under no circumstances, for the simple reason that all the appropriator has to do is to return the water to this man's property, to its original channel. Persons above this claim are not interfering with the use of this water then, from the fact that it must be returned to its natural channel, because that is the rule prevalent in every mining camp, that after you use the water you must return it before it reaches the proprietor next below you. That is equitable, and it protects the proprietor above from any injury at the hands of the proprietor below. But the suggestion of

Mr. Allen of Logan county, that we attempt to subordinate the agricultural interests to mining interests seems to be a rather wild proposition, with due deference to the gentleman's intelligence. If it affects the agricultural interests, I have confidence enough in the gentleman's ability to protect them, and I will accept an amendment simply to except agricultural claims from the operation of this section, because I am not here in the interest of agriculture, and I do not want to see any clash between mining and agriculture. Whenever you raise these questions in these new states then you have the old question of the miners against the cow counties and resulting in the lines being very strictly drawn between parties. If the gentleman thinks the agricultural interests of that new county are going to be affected, just except them out of it.

Mr. ALLEN. It was the general interest I had reference to. I say that is one of a number of amendments which have that object; and the gentleman already admits that the same principle is embodied in our wisest statutes, and for that purpose—

Mr. HEYBURN. Oh, no, I do not admit it at all.

Mr. ALLEN. I understood the gentleman to say a short while ago that the amendment proposed was already provided for.

Mr. HEYBURN. It is in the laws of the United States.

Mr. ALLEN. Then the legislature has the power to regulate these details, and that is why I object.

Mr. CLAGGETT. I respectfully submit that my colleague has not answered the real question which was in the amendment offered by the gentleman from Latah. If A should locate a claim on a gulch, and anyone should go above that claim in the gulch and improve it, and the man down below should not appropriate the water or use it in any shape or form, of course the upper man could go ahead and use it and let it go down stream. But suppose the upper man finds claim diggings up on the hillside, and takes the water out of the gulch

so that when he releases it it does not go back to the first claim located. Then the man who locates the first mining claim can stay there and do a little trifling work from year to year forever, and if he gets his claim located at the right place he can exercise a blackmail power over the entire gulch in the use of the water, because he had it in his power, if those mines pay, to say at any time to any person, who is taking the water out of the natural channel and diverting it on to the hill land, "you must turn this water down to me, because I am now ready to use it." That is the construction of the amendment. I do not mean to say that up in the virtuous regions of the Coeur d'Alene country any of those kind of people live, but still at the same time I have a little sort of suspicion that I have seen the shadow of three or four of them in that section of the country.

Now, Mr. Chairman, with regard to this other proposition of my colleague, of men going and monopolizing water by sticking up location notices, that is something new. No man ever got title to any water in the wide world by sticking up a notice. He may stick up his notices, but inside of sixty days, within a reasonable time, according to the decisions of the courts, he has got to begin the construction of that ditch, and he has got to push that construction on with all reasonable diligence until it is completed; and then he has got to turn the water through it and then he has got to use it. Then, for the first time he gets title, and his title dates back to the date of the notice. I know that men are sticking up notices all over the streams; but what do they amount to? A man finds a quartz lead and there is a stream adjacent to it. He does not know what the value of the lead it. In order to guard against somebody coming in against him and taking up the water he posts notices on the stream and then goes to work on his lead. If he finds his claim is not good for anything, he lets his water right lapse at the end of thirty days, and there is no trouble about it at all to the sub-

sequent locator except a little labor to hunt up the records.

Mr. SWEET. I do not see my way clear to support the additional section offered by Mr. Heyburn, because I do not see that the person who takes up the land is compelled to use it. I do not believe in any law that permits a man to appropriate a stream of water or a mining claim or anything else and do nothing with it, and at the same time prevent other people from using their property adjoining it by simply appropriating the land or the water or anything else. Perhaps that might be treated by the legislature in such a way that if a person were to take up a tract of land as suggested by Mr. Heyburn, and did not utilize the water within a certain time he should lose it. But on the broad proposition that he can take this land and hold it as long as he pleases and practically, if not absolutely, prevent men from making improvements farther up the gulch, it strikes me as bad policy.

("Question, question.")

The vote was taken on Mr. Heyburn's proposed section and the motion was lost.

Mr. CLAGGETT. I move the adoption of Section 3 as amended. (Seconded. Vote and carried).

SECTION STRICKEN OUT.

Section 4 was read, and it was moved and seconded that it be adopted.

Mr. CLAGGETT. I move to strike it out for the reason that it is all embodied in the Bill of Rights which we had up the other day. It is a duplication. (Seconded.)

Mr. STANDROD. I will state further that the section in the Bill of Rights, the gentleman will remember, was prepared as a substitute and offered after these reports had been prepared by the joint committee on Agriculture and Mining. ("Question.") (Vote.)

The CHAIR. The chair is in doubt. (On the rising vote, ayes 24, nays 3; and Section 4 is stricken out).

SECTION. 4.

Section 5 (4) was read.

Mr. CLAGGETT. Mr. Chairman, in the fourth line there is a typographical error. Strike out the word "have" and insert the word "once."

The CHAIR. If there is no objection it will be done. It is so ordered.

Mr. HAMPTON. I have an amendment, Mr. Chairman. If amended it will read like this: "Whenever any waters have been or shall be used for agricultural purposes, under an appropriation, sale, rental, or distribution thereof, such appropriation, sale, rental or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors or assigns shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law." It will be seen that the rights granted in the latter part of the section, do not appear to read, as it appears, to apply to appropriations, but only to such rights as may be granted or sold.

Mr. GRAY. Mr. Chairman, I cannot see that it should be a dedication to such use. Suppose I hire water for a year. Is that a dedication to that use? I cannot understand this.

SECRETARY reads: I move to amend section 3 by striking out the words "appropriated or" in the first line, and by inserting after the word "under" in the second line the words "an appropriation" and after the word "such" in the second line the word "appropriation." Hampton.

Mr. GRAY. Then shall it be deemed an exclusive dedication to such use. If I have a ditch I may sell it to a man for a year, and if he doesn't want it any longer, I won't sell it to him; but it seems by this it would make it a dedication for that particular use. Perhaps somebody can explain it to me.

Mr. CLAGGETT. It is easy enough explained.

Mr. GRAY. Thank you.

Mr CLAGGETT. I will state to the committee that the heart of this bill lies in sections 5 (4) and 6 (5) as a practical measure. This portion of section 5 (4) amounts to this: that whenever these canal owners—if the gentleman will see "for agricultural purposes under a sale, rental or distribution thereof"—whenever one of these large canals is taken out for the purpose of selling, renting or distributing water, or the appropriation is made hereafter for that purpose, and that after that has once been done, inasmuch as priorities will immediately spring up along the line of that canal, even before the canal is located; for instance, if a company should start in here to take a large quantity of water out to supply a given section of country, and should appropriate or give notice to the world that they were appropriating it for agricultural purposes "under a sale, rental or distribution thereof," then immediately, just as soon as the ditch was surveyed, people would come in and begin to locate farms and improve them right along the line of the ditch; and therefore it is necessary in order to protect them, inasmuch as they have spent this money in settling there under a promise, which was made by the company that the water should be used for agricultural purposes—that the water should not be allowed to be diverted from that purpose and applied to the running of manufactories or anything else of that sort.

Mr. GRAY. Suppose he won't pay for it.

Mr CLAGGETT. It is dedicated to the use, and when it has once been sold to any one particular party

in one year, then he shall have the right to demand it annually thereafter upon paying for it.

Mr. GRAY. Put that in.

Mr. CLAGGETT. It is in. You don't suppose the committee was going to give a man the right to take water from a canal without paying therefor? "Upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law."

("Question, question.")

The chair put the question upon the adoption of the amendment offered by Mr. Hampton. (Vote and lost.)

Mr. GRAY. I move that the section be stricken out.

Mr. POE. I move to amend that by adopting the section as it is.

The CHAIR. The motion to strike out met with no second.

Mr. CLAGETT. I move the adoption of the section.

The chair put the question on the adoption of section 5 (4). (Vote and carried.)

Mr. SWEET. I would like to ask if that word "have" in the fourth line is changed?

Mr. CLAGGETT. That is corrected to the word "once."

Section 5.

Section 6 (5) was read.

Moved and seconded that Section 6 (5) be adopted.

Mr. ALLEN. I call attention to a clerical error; the word "proceeding" in line 3 should be "preceding."

Mr. GRAY. (After reading the section.) I have a farm away down here; I sell water when I have a plenty, but I want to use it if I need it all. Now, what effect does this have on it? In the event I have more than I need for my own use I sell it. Have I got to sell it all the time? What is the view of this committee on that? This bill is a puzzling bill, I will admit that right here, and it will puzzle both the legislatures and the people after they have got it into practical use.

I believe the statute as it now stands should be corrected; that is, if a ditch is built for the purpose of selling water, that they should have it from the head down that you could not cross a man's land without giving it to him; it makes no difference when his location was; and that it should be used as it comes down, the first man has the first right, provided he pays for the water. When he complies with the requirements he is the man that shall have it first; and so it shall go down, without saying any time of location of lands; I don't believe that should have anything to do with it.

Mr. CLAGGETT. Mr. Chairman, both of these sections apply to the same condition of things. Neither one of them applies to a case of a water right where a man takes water out and puts it upon his own farm. It applies to cases only as both sections specify, saying to those cases where waters are "appropriated or used for agricultural purposes under a sale, rental or distribution." The first section protects the person who comes in, by making it "an exclusive dedication" to agricultural uses after it has been so appropriated and so used. But then the question come in with regard to where there is more than one person who settles beneath the line of one of those agricultural ditches, which are constructed for the purpose of selling the water or renting it or distributing it, or which are used for that purpose, although they may not originally have been so constructed. Now, when these two or three or four or five or six or seven parties come in, what are you going to do? Are you going to give the first man the right to the water? Suppose the first man comes along and the first year he breaks up and calls for water for twenty acres of land. The next year he calls for water for forty acres, and the next year for sixty acres, and the next year for two or three hundred acres, enough to practically exhaust it. Anyone can see that by recognizing absolute priority of right in that way, that the first person settling under the line of the ditch would have the first call on the water to the extent that he

might be able to go ahead and improve the land afterwards. This thing has got to be regulated by statute, and the constitution proposes simply to point out the line of the principles within which legislation must be carried on; that is to say, to recognize the right of priority in the order of time of settlement or improvement, as the case may be; and then when the water runs short or anything of that kind, it has got to be regulated from time to time and from year to year as the legislatures meet, and as experience shall suggest, in such manner as to promote the greatest good to the greatest number, bearing in mind constantly the fact of the prior right of the first man as well as the necessities of the second, and you cannot get it any closer than that.

("Question, question.")

The question was put upon the adoption of section 6 (5). Vote and carried.

SECTION 6.

Section 7 (6) was read.

Mr. SHOUP. Mr. Chairman, I would like to call attention to section 4, if it is in order, which was stricken out, and which I have been reading again. When the article on Bill of Rights was under discussion you yourself called the attention of the committee in regard to a single person owning a piece of land below everybody else, and asked, "Do you think it is true as to its giving him the right to bring water across to his land?" It was then stated that this section 4 covered that, and now, in committee of the Whole it was agreed it should be adopted. But now this very section has been stricken out.

Mr. MORGAN. It appeared so to me at the time. I thought this section was necessary, as also the section in the Bill of Rights.

Mr. AINSLIE. Well, I think the section was read awhile ago from the Bill of Rights that covers what is in this section.

Mr. CLAGGETT. Well, we must be very careful that it does.

Mr. AINSLIE. I will call for the reading of section 14 in the Bill of Rights.

Mr. CLAGGETT. The inquiry of the gentleman from Custer is with regard to an individual having the right to go across another's land?

Mr. SHOUP. Yes, the right of way across a farm above him.

Mr. CLAGGETT. I am satisfied that is broad enough to cover it in the Bill of Rights. "Any useful or beneficial purpose."

SECRETARY reads section 14 of the Bill of Rights.

Mr. CLAGGETT. That clearly covers it. There is no limit on the character of ditches or the number of people who may have them dug.

The CHAIR. (Mr. Morgan.) It occurs to me it could only come in that section by inference or implication. It certainly does not mean that one person shall take the property of another for the purpose of constructing his ditch over the land.

Mr. STANDROD. It certainly provides a right of way for an individual or number of persons or corporations. It is a broad clause. It does not confine it to an individual or any number of persons; it is intended to cover the whole ground, and I think it does.

Mr. CLAGGETT. (After reading section 14 as amended.) It is as broad as the English language can be made, and covers every case that the legislature does not see fit to except; or rather, it covers every case the legislature might see fit to embrace.

SECRETARY again reads section 7 (6).

Moved and seconded that section 7 (6) be adopted. Vote and carried.

Mr. AINSLIE. I move that the article as amended now be adopted. (Seconded. Vote and carried).

The CHAIR. What is the pleasure of the committee?

Mr. McCONNELL. I move the committee now rise, report progress and recommend the adoption of the

article as adopted by committee of the Whole. (Seconded. Vote and carried).

CONVENTION IN SESSION.

Mr. McConnell in the chair.

Mr. MORGAN. Mr. President, your committee of the Whole House having under consideration the report of the committee on Manufactures, Agriculture and Irrigation, have adopted and recommend for adoption sections 1 and 2 and 4, as amended in committee of the Whole, and recommend the adoption of the article as amended.

The CHAIR. The question is now upon the adoption of the article as amended. The secretary will read it as amended, section by section.

Mr. AINSLIE. I move that it lay on the table and that the convention now adjourn until tomorrow morning at nine o'clock.

Mr. CLAGGETT. I would like to suggest to the gentleman from Boise that I do not think it will take very long to get through with this. We have an engrossing clerk, and it is a good deal of work to do it, and if we pass this now in ten or fifteen minutes, she can do the work in the meantime.

Mr. AINSLIE. Very well, I will withdraw my motion.

SECTION 1.

Section 1 was read, and it was moved and seconded that it be adopted. (Vote and carried.)

SECTION 2.

Section 2 was read, and it was moved and seconded that it be adopted. (Vote and carried.)

SECTION 3.

Section 3 was read by the secretary as amended. Moved and seconded that section 3 as amended be adopted. (Vote and carried.)

SECTION STRICKEN OUT.

Section 4 was read by the secretary.

Mr. HASBROUCK. That section was stricken out.

Mr. SHOUP. I understand that has been stricken out, but I am not satisfied with it. The provision in the Bill of Rights reads that "private property may be taken for public use, but not until a just compensation," etc., and then goes on and says what a public use is. Now, I don't understand that that can be construed that one may use all the water belonging to one man for a public use; and therefore I think it is necessary to have section 4 in the constitution in order to give an individual the right to use the water. I think it is important that that section should be in the constitution. I move that section 4 be adopted. (Seconded.)

Mr. AINSLIE. Mr. President, I do not see any use of repeating in this constitution the same thing twice. That article in the Bill of Rights, section 14, as the president says, is as broad as the English language can put it, and I do not see that we can put it any stronger, and it would be foolish to repeat the same thing in these articles of the constitution. I think it is strong enough for any use on earth, and I do not see any need of repeating it.

("Question, question.")

The question was put upon the adoption of section 4 heretofore stricken out in committee of the Whole.

Vote and lost, and Section 4 is stricken out in convention.

SECTION 4.

Section 5 (4) was read, and it was moved and seconded that Section 5 (4) be adopted. Vote and carried.

SECTION 5.

Section 6 (5) was read, and it was moved and seconded that Section 6 (5) be adopted. Vote and carried.

SECTION 6.

Section 7 (6) was read and it was moved and seconded that Section 7 (6) be adopted. Vote and carried.

The CHAIR. What is now the pleasure of this convention with regard to this matter?

ARTICLE XV. ADOPTED.

Mr. HEYBURN. I move that we adopt the entire article. (Motion seconded. Vote and carried).

Mr. HEYBURN. I move that the article be engrossed, passed to third reading and set for tomorrow at 2 o'clock. (Seconded. Vote and carried).

Mr. HEYBURN. Mr. President, I move now that we go into committee of the Whole for the further consideration of the report of the committee on Public and Private Corporations. We have but one section left, and I think we can dispose of it and have it engrossed.

The CHAIR. I will swear in the young lady who was elected as engrossing clerk.

The motion was then put that the convention resolve itself into committee of the Whole for further consideration of the report of the committee on Public and Private Corporations. (Vote and carried.)

COMMITTEE OF THE WHOLE IN SESSION.

Mr. McConnell in the chair.

ARTICLE XI., SECTION 18.— PUBLIC AND PRIVATE CORPORATIONS.

The CHAIR. Gentlemen of the committee, the subject of your consideration is section 21 (18) of the report of the committee on Public and Private Corporations.

Mr. REID. Mr. Chairman, who offered this amendment?

Mr. MORGAN. Mr. Mayhew presented it.

Mr. REID. I would ask unanimous consent that the matter go over until he can be present.

Mr. WILSON. Judge Mayhew went out of town about an hour ago.

Mr. HEYBURN. I think we had better proceed. I call for the reading of the section.

SECTION 18.

Section 21 (18) was read by the secretary.

Mr. REID. I move its adoption. (Seconded.)

Mr. CLAGGETT. I understand this language is aimed at what are called trusts. The legislature will have absolute and complete control over that question of trusts without any provision being incorporated in the constitution. This whole matter has been brought up here so recently, and the operation of these "trusts," as they are called, ramify into so large a section of the matters which relate to the ordinary affairs of life, that for us to put it in the constitution before the matter has really got to be understood thoroughly by the people (for I confess I do not understand it), seems to me to be bad policy. If this were an old matter, if it was a matter that had been up for a long time it would be different; but it is only the last few months that it has come up at all. And to what extent these trusts affect the interests of the country injuriously, or to what extent they ought to be restrained, is a question which up to date we know nothing or very little about. Any action taken on this provision of the constitution will necessarily have to be taken by the legislature anyway, and as the legislature has complete control independent of this section, it seems to me we ought not to act hastily in putting it in the constitution. It is a matter that ought to be debated in the legislature a long time, and the practical effect of the law which might be passed considered in every view. It frequently happens that you can get up nice theories, and everything of the kind, but they will not work out in practical legislation. Right up here in our county lead ore or lead is an article of commerce, and it might be necessary for those producers in the mining regions and also in Wood

River to enter into some sort of combination to stop production for the time being when the price gets to such a point that the whole or a large share of the profits are eaten up by the railroad corporations. It might be necessary in a good many ways to form combinations for the protection of legitimate industries, and I don't think we ought to put this thing in the constitution. I am not opposed to the theory, neither am I in favor of the theory, because as yet I have not the necessary amount of knowledge to pass upon it intelligently. If the legislature did not have the power unless it gave them the power, it might be another question, but the legislature has the power.

Mr. HEYBURN. Mr. Chairman, that is just the working of this exactly. It is very probable that within a reasonable length of time it will be necessary for mining companies to make some arrangement or agreement among themselves by which they will agree that they will ship only a certain amount of their product; and the railroad companies would naturally resist any such combination as that because it would decrease the tonnage that would be shipped out of those camps. It is very probable that is just about where this will strike. I suppose it is a proper thing to attack trusts, perfectly safe, because we haven't any in the territory, and in the absence of them we can attack them with impunity.

Mr. REID. I move the matter be not disposed of until after the gentleman who offered the amendment can be in the hall.

Mr. CLAGGETT. I think that is fair, too.

Mr. REID. I have no doubt he has studied the matter pretty thoroughly. As the gentleman from Shoshone suggests, it is a new question, but it is a very important one in the east, and as all other evils reach us in time, this will come on. I have no doubt he had the importance of this matter in view when he drew an additional section. He left the building thinking this other matter would take until evening. It is nearly adjourning time, and I move the committee rise, report progress and ask to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. President in the chair.

Mr McCONNELL. Mr. President, your committee of the Whole having under consideration the report of the committee on Public and Private Corporations, desire to report that they have come to no conclusion and ask leave to sit again.

The CHAIR. The report of the committee will be received and lie on the table. What is your pleasure?

Mr. REID. I move that we take a recess until 8 o'clock this evening.

Mr. AINSLIE. I move to amend, and that we adjourn until 9 o'clock tomorrow morning. This matter of holding three sessions a day and tiring the members all out, will have the result of having no quorum in one more day. I swear I will not come here for anybody and work at night.

The question was put upon the motion to amend the original motion to adjourn until 9 o'clock A. M.. (Vote. Division demanded. Rising vote taken, resulting, ayes 20, nays 13.)

Whereupon the convention adjourned until 9 o'clock A. M., Saturday, July 27, 1889.

TWENTIETH DAY.

SATURDAY, *July 27th, 1889,* 9 O'CLOCK A. M.

Convention called to order by the president.

Prayer by the chaplain.

Roll call.

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Poe, Pyeatt, Reid, Robbins, Shoup, Standrod, Underwood, Vineyard, Whitton.

Absent: Andrews, Batten, Beane, Beatty, Cavanah, Crook, Hagan, Hammell, Hendryx, Howe, Kinport, Lemp, McConnell,

McMahon, Pefley, Pritchard, Salisbury, Savidge, Sinnott, Steunenberg, Stull, Sweet, Taylor, Wilson, Woods, Mr. President.

Journal read, and approved.

LEAVES OF ABSENCE.

Mr. ROBBINS. I ask indefinite leave of absence for the reason that I have received word from home that requires my attention. I will come back as soon as I can.

The CHAIR. If there are no objections it will be granted.

Mr. MORGAN. I am compelled to ask leave of absence for Monday and Tuesday next, on account of business engagements.

The CHAIR. If there are no objections the request will be granted.

Mr. MOSS. I would like to ask leave of absence for Monday and Tuesday on account of imperative business. I will return, if possible, Monday night, but not later than Tuesday.

The CHAIR. If there be no objections, leave will be granted.

Presentation of petitions and memorials. None.

Reports of standing committees. None.

Reports of select committees. None.

Mr. MORGAN. I move the convention take up the report of the Legislative Department, which was passed in committee of the Whole, and was ordered printed, and which is returned and is on the desks of the members.

The CHAIR. Would it not be well to dispose of that section 21 (18), which was left in the unfinished business?

Mr. MAYHEW. Mr. Chairman, as far as the action of the committee of the Whole is concerned on this section 21 (18), I don't believe it is necessary to go into the committee of the Whole upon this again. We can take it up and consider it in the convention.

The CHAIR. Very well.

Mr. HARKNESS. I move to amend, that we take up the report on Livestock.

The CHAIR. Will the gentleman yield putting his motion until after this section 21 (18) is disposed of in convention by unanimous consent? or if the gentleman desires to make his motion as an independent one, the chair will entertain it.

Mr. HARKNESS. I will withdraw it.

ARTICLE XI., SECTION 18.— PUBLIC AND PRIVATE CORPORATIONS.

The CHAIR. The gentleman from Shoshone asks unanimous consent to take up section 21 (18) in the convention and dispose of it, to save time. If there is no objection it will be so ordered. It is so ordered. The question now is, consideration of the amendment to the report of the committee on Public and Private Corporations to be numbered section 21 (18).

Mr. MAYHEW. Well, I made this motion in order that it should be taken up in committee of the Whole so that the gentleman's motion might prevail on the other question.

The CHAIR. The chair understood that we would consider it in convention the same as in committee of the Whole.

Mr. MAYHEW. When we reached it.

Mr. HEYBURN. We might as well take it up now.

Mr. MAYHEW. Very well. Do we take up the entire bill and consider it now, or just this section?

The CHAIR. The whole bill was disposed of, and on motion this was postponed until the gentleman could be present.

Mr. MAYHEW. In convention?

The CHAIR. No, sir, in committee of the Whole, and the report held back for your action on this.

Mr. MAYHEW. Very well, we take it up in convention then. Now, I desire to say this in relation to this section. I drafted this section at the suggestion of some of the committee and submitted it to the committee on Public and Private Corporations. It seems to be the

opinion of the committee that there should be something placed in this constitution in relation to the combinations of companies and persons to prevent them from creating trusts upon the products of the country and regulating the prices thereof, as you will see by this article. It met with the approbation of the committee on Corporations, and with the approbation of quite a number of the members of this convention that I thought it was prudent to submit it to; and every one, with the exception of one or two that have looked at it, expressed the opinion that it was necessary that such a section as this should be placed in the constitution. I will say, Mr. President, that while this section as it stands perhaps is not perfect in its nature and character and could be improved on (if some gentleman thinks it is necessary I have no objections), but I do think, Mr. President, that there should be something in the constitution to reach this subject, to prevent these trusts as they have been carried on in different sections of the Union, in different states, to the detriment of the people at large. That is all I desire to say upon the subject.

The CHAIR. Does the gentleman move the adoption of the section?

Mr. MAYHEW. Yes, I do.

The motion was seconded and the chair put the question. Upon the rising vote, ayes 31, nays 7; and the motion to adopt the section was carried.

The CHAIR. The question is now upon the adoption of the report as amended.

Mr. HEYBURN. Mr. Chairman, there was another section, and that is withdrawn; but it seems to me that is not the proper action now because we are not in committe of the Whole.

The CHAIR. The point is well taken. This disposes of the section for which we got unanimous consent to consider. We are now in convention. What is the pleasure of the convention?

Mr. MORGAN. I move we take up the report on Legislative Department, which has been reported back

from the committee of the Whole for consideration by the convention.

Mr. HARKNESS. I move an amendment to that motion to take up the report on Livestock.

Mr. MORGAN. We will take that up right after this.

Mr. HARKNESS. Very well.

The motion to amend having been waived by the mover, the motion to take up the report of the committee on Legislative Department was voted upon and carried.

The CHAIR. The chair will announce to members that we have been running overtime in speaking, and unless there is objection or desire to the contrary, the chair will hold the time according to the rule.

ARTICLE III., SECTION 1.—LEGISLATIVE DEPARTMENT.

Section 1 of Legislative Department was read, and it was moved and seconded that it be adopted. Vote and carried.

SECTION 2.

Section 2 was read, and it was moved and seconded that it be adopted. Vote and carried.

SECTION 3.

Section 3 was read, and it was moved and seconded that it be adopted.

Mr. HEYBURN. Mr. Chairman, I have an amendment.

Mr. HARRIS. I have an amendment.

SECRETARY reads: Amend section 3 by striking out the word "two" and insert the word "four" and add after the last word "one-half of whom shall be elected every two years." Heyburn.

I move to amend by inserting in line 1, after the word "senators" the words "and representatives," and strike out the words following "years" in the same line down to the word "from" in line 2. Harris.

Mr. HEYBURN. I do not desire to speak at length on this subject, but it seems to me we acted hastily the

other day in changing the terms of senators from four years to two years. The object of the senate is that it shall be a worthy body and shall not be subject to those repeated and constant changes that prevail in the other body of the legislature, and I think in order to secure that, the terms of senators should be four years.

Mr. MORGAN. I wish to suggest to the gentleman from Shoshone that if this is done we had better adopt section 3 as it was originally reported.

Mr. HEYBURN. Yes, I would be in favor of adopting the section. If the gentleman has section 3 I will accept that as a substitute; if he has it at hand.

Mr. MORGAN. I hand the gentleman section 3.

Mr. HEYBURN. I will change the form of my motion, Mr. President. Section 3, as originally reported, provided for that, and I will move in place of the amendment I sent up, to substitute section 3 as originally reported for section 3 as amended.

The secretary reads the substitute for section 3.[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 in 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.

1—From Convention Journal, p. 202.

Mr. SHOUP. Mr. President, if section 24 of this bill be stricken out I would have no objections to that amendment; but if it remains in there as it is now, I certainly will object to it.

Mr. GRAY. I oppose the amendment. The executive bill gives the governor two years and these senators four years. I cannot understand it. A good many of them who are elected senators will want to get rid of it as soon at possible if they are good ones, and if they are not good ones, we will want to shut them out as fast as we can; so I am opposed to it, especially when the principal officers of the state are to be elected for only two years.

Mr. SHOUP. How about the judges of the supreme court?

Mr. GRAY. I look at the judiciary different from what I do this. It has generally been the case that we want to get rid of them as soon as possible. Their heads grow so rapidly we want to shut them out as soon as possible.

Mr. MAYHEW. I am satisfied the gentleman at some period in his life has been in the legislature.

Mr. GRAY. I have. (Laughter.)

Mr. MAYHEW. I am not surprised then at the gentleman's argument. Now, I think it is best this amendment should be adopted. I don't care about any other of the offices. We can have the governor elected for four years if we desire, but for the reason given by Mr. Heyburn, and for the reason given in this section, it is best to have it, as being a conservative body, that the members of the senate should be elected for four years. We cannot always say that we are going to have good representatives in the legislature, either in the senate or in the house. Good men, I trust, will get there. I have not lost my confidence in the legislature in twenty-four hours as my distinguished friend has. Yesterday and a day or two ago he had extreme regard for and faith in the legislature; this morning he hasn't got so much; and I conclude the reason of it is that he

came to think about the time he was in the legislature and that it was necessary for him to get out.

Mr. GRAY. Yes, my people wanted me out.

Mr. MAYHEW. I have no doubt, from all accounts, that they did. I hope the substitute will be adopted.

Mr. AINSLIE. Mr. President, this matter was discussed at great length in committee of the Whole before, and after full discussion of the question as to whether it was proper, the committee voted by a large majority to adopt it. I don't think senators should hold any longer than representatives, especially where the state officers hold only two years. If you put in a senate to hold for four years, as proposed by the gentleman from Shoshone, the state officers, if we shall adopt the plan proposed, including that the supreme judges shall be nominated by the governor and confirmed by the senate alone, but not by the two houses, the senate will be more powerful than the governor. They can confirm or not confirm and dictate almost the appointments of the executive. But when you make senators hold only two years as the balance of the state officers hold, there is no balance of power in either department of the state government. After this question was fully discussed in committee of the Whole I believe it was concurred in by nearly two-thirds of the members of this body, that it was an improper measure to insert in the constitution that senators should hold for four years. Talk about having experienced members on the floor is all bosh; that doesn't amount to anything. If we are going to keep amending this bill and go back to it as it was originally reported, you might as well throw aside the whole bill and go back to the original one, because you will have to amend it all the way through. I don't believe in this thing of allowing senators to hold office any longer than others, and I agree with the gentleman from Ada.

Mr. PIERCE. Mr. Chairman, I desire to oppose this amendment too. In the original bill the senate was presumed to be a conservative body; it was intended

to be equally divided between the counties and it was suggested that the terms should then be four years; and it is now a representative body the same as the house, and the shifting population of the territory makes it unjust to give a longer term than two years. Kootenai county, in the argument the other day, it was stated, only had a small number of votes at the last election, and their representation would be based upon those votes; while now they are almost entitled to one-eighteenth of the senators; consequently I think it would be unjust to that county, for one, especially, and so I oppose the amendment.

Mr. POE. Mr. Chairman, we have acted upon this bill and upon this matter, and when we acted upon it there was a pretty full representation of this body, and I think it met with a pretty fair majority at the time of the adoption of it, to the effect that senators should hold their office for the same length of time as the representatives. There is at least forty less in this convention today than there was at the time we adopted this in committee of the Whole, and I don't think it is hardly right for us now, with barely a quorum in this convention, to change the action of the committee of the Whole. It is true we have a right to do so; but I don't think as a matter of policy that it is best for us to exercise that right. This matter was fully discussed at the time it was before the committee of the Whole, and I think the convention voted intelligently upon that matter, and in their wisdom they saw proper to decide that senators and representatives should have the same tenure of office, and I am opposed to making any alteration. I see no reason why a man who is elected to the senate of the state should hold his office any longer than that of the representative. As far as retaining someone endowed with legislative lore in the halls, that is all bosh, all nonsense. The people are the persons to choose their representatives, and they can choose, if they want legislators imbued with legislative knowledge and wisdom, such men and send them to the senate.

But I don't see any reason why we should elect them four years and the representatives for only two years. Let them come fresh from the people, and if they do anything wrong when they are in the legislative halls as senators, let the people put their condemnation upon their acts the same as they do upon the acts of the representatives. Let them stand in the same responsibility before the people, and let them hold their tenure of office subject to the will of the people immediately after their acts in the legislative halls. I think it is right, I think it is just, that they should hold their office for the same length of time, and I shall opose the amendment.

Mr. HASBROUCK. Mr. President, unfortunately, I hail from a county where my constituents are in such a minority that we shall only get an occasional senator under the apportionment, and that being the case, I want a chance occasionally, and so do my constituents, to vote for a man that is nominated from our own county; and I do not see any other way of getting it than to have them elected every two years. If, however, it should prove that we have an excellent man from another county that is joined with us, we can return him; there is no provision here against their serving more than two years. Therefore I shall oppose this amendment.

Mr. MAYHEW. As a matter of information I desire to ask Mr. Pierce a question. Do you understand that Kootenai county has the smallest vote among all the counties in this territory?

Mr. PIERCE. I understood it was at the last election.

Mr. MAYHEW. Well, the gentleman has not observed the votes. In this last election there were five counties in this territory that voted a smaller vote than Kootenai county. You never were entitled to more than one representative last fall. Some counties in this territory hardly cast 400 votes, while Kootenai county voted last fall some 600 and some odd, or 700 and some odd, a long ways ahead of Oneida county, Cassia county,

Bear Lake county and also Idaho county. Kootenai county polled more votes than any one of those four, and I think more than some other county. Now the discussion the other day, as the gentleman will observe, was by my colleague from Shoshone county, who made a comparison between the county he represents now and Kootenai county as to their votes, and said Kootenai county then would have just as much representation in the senate as Shoshone county. That was his reason. He did not refer to other counties, because there are four or five other counties in the territory that had a much less vote than Kootenai county.

Mr. PIERCE. I did not have any reference to the votes particularly of those southern counties, those Mormon counties, because I did not think they were entitled to any representation.

Mr. MELDER. I am opposed to the amendment. If each county had been allowed a representative or a senator it would not be so much; but Kootenai county has today as large a population as Shoshone. If we make the apportionment according to the vote cast at the last election, it will do our county an injustice, for the reason that since the election last fall there have been two very promising towns built up in the mining district. The Northern Pacific Railway division has been changed from Montana into Kootenai county; the Northern Pacific Company has erected a round-house and machine shops, and already there is a population of 400 people, besides the families to be supported by the railway employes. Mills and factories are building up and there are thirty or forty houses in construction. Those people will all be disfranchised if the apportionment is based on the vote of last fall. It would not be just to place senators in office for four years while we have no representation. For that reason I shall oppose the amendment. I am sorry my colleague could not be here to bear me out in this fact. If we gain in population in the future as fast as we have in the last four months, we will certainly be a very populous county.

We have all the elements for making rapid growth. It has not been settled heretofore as rapidly as it should on account of the public survey not extending to the county; and settlers, in attempting to take up government land, come in conflict with large railroad corporations. We have a valley there forty miles long and eight or ten miles wide, diversified by timber and prairie; but not settled for the reason that the government has not surveyed that land. The mining outlook is just as good for Kootenai county as for Shoshone; it has a large area, it has mountains and mineral, but a large portion is yet unsettled. I shall therefore oppose the substitute.

Mr. MAYHEW. I am opposed to this bill as a whole as amended. If it had been passed as reported Kootenai county would have been placed on an equality with the other counties. The gentleman is opposed to that. Now, he has gotten up here and asked the convention to have some record made of what Kootenai county will be in the future. I am in favor of Kootenai county being as fully represented now as it will be four years hence. I am in favor of its having a representative now, but the gentleman from Kootenai county was opposed to that.

Mr. MELDER. Well, I did not understand the vote.

Mr. MAYHEW. I am sorry you did not understand it, because it was by your vote and one or two others that we could not have it given representation.

Mr. HASBROUCK. I did understand the bill, and I voted to have a senator from each county and I would vote that way now. I think each one ought to be represented.

The CHAIR. The right to call the ayes and nays on that amendment was reserved in committee of the Whole.

Mr. MAYHEW. Yes, I made the motion, or you did.

Mr. STANDROD. I think it is better, if it is intended that a substitute be offered, that we shall vote on the substitute before taking up section 2, because

if the substitute is carried there would be no opposition, I suppose, to senators holding office four years.

The CHAIR. The question now before the convention is —

Mr. STANDROD. (Interrupting) Well, I understand the gentleman from Boise is going to offer a substitute for section 2.

Mr. AINSLIE. I shall offer it at the end of section 4.

Mr. STANDROD. Well, I presume we will have to take a vote on this then.

Mr. HARRIS. I would not object to the substitute, should the amendment that the gentleman from Boise proposes to introduce carry. But the way it is likely to stand, that we be made into senatorial districts of two or three small counties put together, then by having these hold-over senators, some are liable to lie four or maybe eight years without a senator; while were each one to have a senator, then I would support the amendment of the gentleman from Shoshone.

Mr. AINSLIE. I would suggest to the friends of that measure that by voting down the amendment of the gentleman from Shoshone, if we succeed in amending section 4 by striking out the word "representative" and inserting "senator" we can move to reconsider the vote by which it was adopted, and then pass on to section 4.

A MEMBER. Will the gentleman please state his suggestion again; I did not understand him.

Mr. AINSLIE. By voting down the amendment offered by the gentleman from Shoshone and then passing on to section 4, if we succeed in amending section 4 by striking out "representative" and inserting "senator" we can reconsider the vote by which the gentleman's amendment was defeated and move its adoption, which will make the bill proper in every respect.

Mr. GRAY. I cannot for my life see the consistency of giving senators four years when the other officers of the state are for only two years. The gentleman from

Shoshone will be elected again and the political complexion of the house won't be affected during his term, they will elect him again sure. I think there is no reason in electing senators four years when the principal officers of the state have only two years. I want them all to stand upon the same footing. I might do it in case the governor was elected for four years. As it is now, I shall oppose it.

("Question, question.")

The CHAIR. The question is upon the adoption of the substitute for section 3 offered by the gentleman from Shoshone. Shall the substitute be adopted? (Vote and lost.) The substitute is not adopted. The question now recurs upon the amendment of the gentleman from Washington, (MR. HARRIS).

SECRETARY reads the amendment: Move to amend by inserting in line 1 after the word "senators" the words "and representatives" and strike out the words following "years" in the same line down to the word "from" in line 2.

The CHAIR. It just changes the phraseology, but not the sense.

Mr. HARRIS. Yes.

SECRETARY reads the section as it would be if amended: "The senators and representatives shall be elected for the term of two years, from and after the first day of December next following the general election."

Mr. GRAY. I would like to know what good it does; we can understand it as it is.

("Question.")

The question was put and vote taken. Division was called for. On the rising vote, ayes 21, nays 16. And the amendment was adopted.

Mr. MORGAN. I move the adoption of the section as amended. (Seconded. Vote and carried).

SECTION 4.

SECRETARY reads section 4, and it is moved and seconded that it be adopted.

Mr. AINSLIE. I offer an amendment.

SECRETARY reads: Add after "representative" in line 4 "and one senator" so that it will read "*Provided*, each county shall be entitled to one representative and one senator."

Mr. MORGAN. If that amendment is adopted there are three or four other sections that must be changed in order to make the bill harmonious. It was first drafted with the intention of giving each county one senator. The committee did not approve of that, and provided that each county should have at least one representative. The bill was then changed all the way through in order to make it correspond to that, and there are two or three other sections that will have to be changed if the amendment is adopted. As each county is given one representative, I do not see the necessity for the change now, and I am therefore opposed to it.

Mr. HEYBURN. I have an objection to it that is not based upon the amount of trouble that will be put upon the convention, but upon this principle, that I am opposed to confining the members of the senate to the counties without regard to size or voting population of the counties. I am opposed to Bear Lake county, with its legitimate votes of less than a hundred or two, having the same representation in the senate of the state as the counties of Ada or Shoshone or Bingham or any other of the populous counties. It is manifestly a violation of every rule of representation based upon the people and the voting strength of the people. I can see no argument in favor of it except it will give those counties down here that have a very small legal vote the same representation it will give the large counties of the state. There is manifest injustice in it, which seems to be almost outside the pale of argument. This is a representative government. Its legislature is supposed to represent the people in proportion to the number of the people or number of legal voters of the state accordingly as you may base the apportion-

ment. If you give those counties with one or two or three or four or five hundred votes the same representation upon the floor of the senate, the same right, that you give the large counties, you exhaust the number of senators, of which there are only eighteen members in the state, so that you have no surplus members to add to or apportion among the large counties. The rule of basing the house of representatives by giving that one member for each county is not so objectionable, because that left a surplus of eighteen members to be divided among the large counties. So that in the end the apportionment could be fairly dealt out among the counties. It was agreed the other day in committee of the Whole that this rule should prevail, and it was accepted by the then majority of this convention. I do not know how this convention stands now in that matter, but it would be manifestly unfair to change the rule at this time.

Mr. AINSLIE. Mr. President, by reading this bill carefully, the members will see for themselves that this giving each county a senator will take effect at the first session of the state legislature, which will be the most important session of that body probably that will ever be held during the existence of Idaho as a state. In carrying into effect the machinery of the state government, and passing upon the governor's appointments, I think it is nothing more than fair and right that each county should have a voice in the permanent selection of the nominees of the governor. After the first session of the legislature the senate will consist of twenty-four members; giving each county one, the other senators can be divided among the larger counties, which will no doubt be the action of the legislature in distributing them. It is the same rule as applies to the senate of the United States, wherein each state is represented by two senators, no matter if it is the little insignificant state of Delaware in comparison with the great state of New York, or the state of Pennsylvania, which has ten times or a hundred times the population of some of the smaller states. And that system has never been

attempted to be changed by any proposed amendment to the Constitution of the United States. I say that where the governor of the territory or of a state has a right to make appointments subject to the confirmation by the senatorial department, you may disbar half a dozen smaller counties of this territory from having any voice whatever in the confirmation of those appointments. The big fish always eat up the little fish, we know that. And when these large counties have a little county tacked onto them for senatorial purposes, the smaller counties in this territory, which may be one-third and probably nearly one-half of them, will have no voice whatever in the senate of this state if that principle is adhered to of apportioning the senators according to population. I believe in apportioning the lower branch of the legislature like the popular branch of congress among the people of the United States, according to voting population or according to inhabitants. That is very proper. If we give each county a senator, we have an equal voice in the upper branch of the legislature with the large counties, and by apportioning the lower branch, which may come to be sixty members of the legislature, according to population, the larger counties will get their full share of representation in the lower house which will have an equalizing tendency to check any evil result arising from it. But after the first session of the legislature these larger counties will get the additional apportionment coming out of the six additional senators the constitution provides for; and I think it is nothing but justice to the smaller counties, because when it is confined to the senatorial district by the policy of attaching the smaller counties, probably two or three, to one big county, or one big county having two or three senators, the evil cannot and never would be corrected. When the senators are altogether in control of the big counties, there never can be any correction of that evil whatever under the amendments proposed in this reprinted bill. I believe where the governor has so many appointments to be

confirmed by the senate, that the people throughout the whole state represented by the smaller counties have an equal interest and should have an equal voice in their confirmation, and I hope the measure will be adopted.

Mr. CLARK. Mr. Chairman, I merely want to correct one statement, not very important, but it has been cited that the injustice of this provision for one senator in each county will result in giving Bear Lake county, which has only about one hundred legal voters, a senator. We might as well be accurate. The gentleman probably had in his mind the returns of two or three years ago. At that time there were in business in Montpelier about 350 inhabitants, nearly all Mormons. At the present time the railroad has made a division headquarters there, the railroad shops are there and the increase of the anti-Mormon population is very great. At the election last fall there were 601 votes cast, of which number the Mormon candidate received 159 votes and the balance of the votes, in number 442, were divided between the gentile democratic candidate and the republican candidate. This 442 represents the legal voters, and the 159 probably represents the strictly Mormon vote; but a fair statement of the case would be that there are now in that county the number of votes received by the other candidates, to-wit, 442 votes. And if any gentleman will visit the town of Montpelier he will be satisfied that there is not the injustice in giving that county a senator that gentlemen generally suppose. Of course it is the smallest county, but it is not so great an injustice as gentlemen generally suppose. I think it would not be unfair to give that county a senator, in view of its rapidly growing gentile population on account of the improvement of the railroad, which carries so large a number of people there.

Mr. AINSLIE. Mr. President, I call the ayes and nays on this question.

Mr. SWEET. Mr. President, before the question is put I simply desire to enter my protest against this. I was perfectly willing, when the gentleman from Nez

Perce the other day suggested that each county ought to have one representative in this legislature to look after the interests of that county, no matter how small or how limited it might be in population; and therefore I voted that each county should have a representative upon the floor of the legislature, and I am ready to vote for it again. But I think that when it comes to giving a county with 400 votes—for if what the gentleman from Ada says is true concerning Bear Lake county, which I am not ready to accept, but even admitting that to be true, it would be giving that county an absolute representative upon the floor of the senate with but 440 votes as against our county with 1460 votes; and I say that is not a fair or a just representation, and I do not believe the people would submit to it.

Mr. SHOUP. Mr. President, I was going to make the same suggestion that has just been made by the gentleman from Latah in regard to the injustice of this provision. We were virtually promised this matter in committee of the Whole a few days ago. This question was raised then and it was then proposed to give each county a representative in lieu of a senator, which was agreed to. I voted for that myself; I was in favor of it. But now, when you come to giving them not only a representative but also a senator I think it is not just. That will only leave six senators—it will not leave any at all; there are eighteen counties and eighteen senators; there will be none to be apportioned. Take the small counties of Cassia, Oneida, Owyhee, Bear Lake—the southern tier of counties, all of them small, some of them have not polled as high as 400 votes—are we going to give them the same representation in the senate that we give the county of Ada that polled nearly 1700 votes, or the county of Shoshone that polled over 1800 votes, or the county of Latah that polled about 1500 votes, and the county of Bingham with its 1500 votes? Are they entitled to any such representation, after we have gone so far as to give each one of them a member of the lower house? Is there any justice in that? I demand a call of the convention.

Mr. CHANEY. Mr. President—

Mr. GRAY. There is a call of the house demanded.

The CHAIR. The motion now before the house is on the adoption of this amendment, upon which the ayes and nays have been demanded.

Mr. GRAY. And we make a call of the house. (Seconded.)

The CHAIR. The gentleman from Latah now has the floor.

Mr. CHANEY. Mr. President, the legislature last winter, of which I had the honor of being a member, seated a gentleman from Bear Lake county with 90 votes. Now, I am called upon to sacrifice 1500 loyal votes of Latah county for (as it may happen again as it happened last winter) ninety votes from Bear Lake county, or in other words, the 1500 loyal voters of Latah county only have the same representation that ninety voters of Bear Lake county may have. I think that is unjust. I think it is simply a question between the large counties and the small counties; not a political question, and it ought not be considered as such. It is a question between right and wrong, and we should consider it as such, and if it is right for the 1500 legal loyal voters of Latah county to have only the same representation in our state senate as the ninety voters in Bear Lake county have who demand the right to elect a man to come here and represent them, we can only secure an equal representation with fifteen members. The proposition is unjust and I cannot support it.

Mr. MAYHEW. I do not desire to discuss this question any further than this. I am aware that the legislature last winter did seat a man in the house of representatives that only had ninety votes. Because that legislature did that, it does not argue at all to me that there should not be a senator from each county. I am decidedly in favor of it. While the gentleman who was seated here had ninety votes, the gentleman who was unseated had, I think, about 300 votes.

Mr. CLARK. He had 353 votes.

Mr. MAYHEW. 353? I don't think the legislature last winter acted correctly, unless they were imbued so strongly with that anti-Mormon idea that they thought he was tainted with Mormonism, notwithstanding he got 350 votes, because ten or eleven Mormons voted for him; and then they put a man in his seat that received nearly an equal number of Mormon votes, but nowhere near the number of 350. I don't think that is any argument in this matter at all.

Mr. CLARK. Allow me to make a correction. The Mormon vote cast for the Mormon candidate was 159 votes.

The CHAIR. I would state to the gentleman from Ada that his call is out of order under the 32nd rule. The question being under debate, the call would not be in order. The question now before the convention is the adoption of this amendment, upon which the ayes and nays have been demanded.

Mr. GRAY. Do I understand the president to say that a call of the house is not now in order?

The CHAIR. I do so rule, and if the gentleman will refer to rule 32 he will find the rule on which the ruling is based. "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."

Mr. GRAY. Rule 18 provides: "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."

The CHAIR. Does the gentleman appeal to the convention?

Mr. GRAY. I do.

The CHAIR. The chair has ruled that under rule 32 a call is out of order, from which the gentleman appeals to the convention. All who sustain the decision of the chair—

Mr. SHOUP. I will withdraw the call.

Mr. GRAY. I consent.

The CHAIR. I prefer the gentlemen appeal if they are not satisfied.

Mr. SHOUP. No, I will withdraw it.

The CHAIR. The question then recurs upon the amendment of the gentleman from Boise upon which he has demanded the ayes and nays, which has been sustained. All that favor the amendment—

Mr. McCONNELL. May I ask whether we are in committee of the Whole or in convention?

The CHAIR. In convention. And the motion is to add to line 4, section 4, after "representative" "and one senator."

Mr. McCONNELL. Is the proposition to have a representative from each county?

The CHAIR. Yes.

Mr. McCONNELL. Regardless of population?

Mr. MAYHEW. I call for the reading of it.

SECRETARY reads: To amend section 4 as follows: add after "representative" in line 4 "and one senator."

Mr. McCONNELL. May I have an opportunity to say a word? We have had that kind of representation in congress a good while regardless of population. But I did not suppose there would be any such measure proposed in this convention, or that any county in Idaho would have the gall to come here and say they should have a senator and representative in the legislature of this coming state regardless of the population they had. That is all I have to say.

The CHAIR. Is the convention ready for the question?

("Question.")

Roll call:

Ayes: Ainslie, Anderson, Bevan, Clark, Coston, Crutcher, Harris, Hasbrouck, Hagan, Jewell, King, Lamoreaux, Mayhew, Melder, Parker, Poe, Reid, Standrod, Vineyard, Whitton, Underwood—21.

Nays: Allen, Armstrong, Ballentine, Blake, Brigham, Campbell, Chaney, Glidden, Gray, Hampton, Harkness, Hays, Heyburn, Lemp, Lewis, McConnell, Morgan, Moss, Pierce, Pinkham, Pritchard, Pyeatt, Robbins, Shoup, Sweet, Mr. President—26.

And the amendment was lost.

The CHAIR. The question now recurs upon the adoption of the section.

Mr. AINSLIE. I now move to amend section 4 by striking out the last word "representative" and insert "senator," and upon that I ask the previous question.

Mr. MAYHEW. I second the motion.

SECRETARY reads: Amend section 4 as follows: strike out "representative" in line 4 and insert "senator," so that it will read, "*provided,* Each county shall be entitled to one senator."

The CHAIR. The question is upon the amendment, and upon that is demanded the previous question. The question now before the convention is, shall the previous question be now ordered? (Vote and carried.)

Mr. AINSLIE. I call for the ayes and nays. (Seconded.)

Mr. ALLEN. I call for the stated question.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Boise, to strike out the last word "representative" and insert "senator" so it will read "*provided* each county shall be entitled to one senator."

Roll call:

Ayes: Ainslie, Anderson, Bevan, Clark, Coston, Crutcher, Harris, Hasbrouck, Hagan, Jewell, King, Lamoreaux, Mayhew, Melder, Parker, Pierce, Poe, Reid, Standrod, Underwood, Vineyard, Whitton—22.

Nays: Allen, Armstrong, Ballentine, Blake, Brigham, Campbell, Chaney, Glidden, Gray, Hampton, Harkness, Hays, Heyburn,

Lemp, Lewis, Maxey, Mayhew, McConnell, Morgan, Moss, Pinkham, Pritchard, Pyeatt, Robbins, Shoup, Sweet, Mr. President—27.

And the amendment was lost.

The question now recurs upon the adoption of the section.

Mr. GRAY. I move the adoption of the section. (Seconded. Vote and carried).

SECTION 5.

Section 5 was read, and it was moved and seconded that it be adopted. Vote and carried.

SECTION 6.

Section 6 was read.

Mr. HEYBURN. Mr. President, I offer an amendment.

SECRETARY reads: Amend Section 6 by striking out after the word "senator" in the fourth line the words "and representative," and after the last word in said section add "and representatives shall be at least twenty-one years old." (Vote).

The CHAIR. The chair is in doubt.

Mr. BRIGHAM. What is the question?

SECRETARY reads: Amend Section 6 by striking out after the word "senator" in the fourth line the words "and representative," and after the last word in the section add "and representatives shall be at least twenty-one years old."

Mr. CLARK. Mr. President, it is shown where it says in the previous clause that he must be an elector.

Mr. SHOUP. I offer an amendment to the amendment; strike out the word "twenty-one" and insert the word "twenty-two."

Mr. HEYBURN. If the gentleman does that with the idea that there is very much in the proposition that that would preclude men from being elected when they were only twenty-one, I think he does it under a mistaken impression. If he is a citizen of the United States and has just attained twenty-one years of age, the pre-

vious portion of that section would not preclude him from being elected to this office. I think that will be conceded. I offered this amendment in the interest of young men. We have shut every other door in the state government against them. In every other provision we have precluded young men, by fixing the age, and there should be some avenue open to their ability and ambition.

Mr. GRAY. I shall oppose the amendment. Most young men don't know any too much when they are twenty-five years of age. When we come to make laws, for boys as old as we are, we are not making a very good job of it. We had better be a little careful. If you don't you will get a boy with a head that will have to have a bushel basket for a hat; and I am opposed to the amendment.

The CHAIR. The question is upon the adoption of the amendment. (The chair being in doubt, asked for a division. On the rising vote there were twenty-eight ayes and sixteen nays, and the amendment was adopted.)

The CHAIR. The question now recurs upon the adoption of the amendment as amended.

Mr. CLAGGETT. I move to strike out all of the section after the word chosen in the fourth line. It is perfectly ridiculous to be putting in a proposition of that kind. (Seconded.)

Mr. CLAGGETT. I think it is perfectly ridiculous to put in the constitution that a person who under the law has just got the right to make a contract—for until he is twenty-one years old he is an infant, cannot even make a contract for necessaries, except under certain circumstances, cannot bind himself to anything, held by the law to be utterly incapable of attending to business—may be elected to the legislature. To put that in here in that kind of shape makes the constitution look ridiculous. In other words, in the light of the last vote, allowing a man to be a member of the legislature when he is twenty-one years of age—why, it seems to

me we ought to strike it all out and let the voters send whoever they please.

Mr. POE. Let me ask you a question; it may be impertinent, but let me ask you how much over twenty-one years old you were when you first went to the legislature?

Mr. CLAGGETT. Well, sir, I was fully twenty-one. So the gentleman need not worry himself; and I don't think now that I had sense enough then to properly represent my constituents. (Laughter.)

Mr. SHOUP. A member of the legislature must be one year an elector before he is eligible to the office.

Mr. HASBROUCK. I would like to have the section read with that amendment incorporated in it, the amendment before.

The CHAIR. That strikes out the amendment.

SECRETARY reads: "No person shall be a senator or representative, who, at the time of his election, is not a citizen of the United States and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

Mr. GRAY. Mr. President, I shall favor the amendment. I am willing to leave it to the people. As for making it a provision that he may be sent there at twenty-one years of age, I say I know when I was twenty-one years old I would not have been fit to represent anything in a legislative body, and I was an average boy too. But, as I said before, it spoils a boy.

Mr. SWEET. I would like to know at what age all these distinguished men mature in mind?

Mr HASBROUCK. I am in favor of letting the people be the judge as to whether a party knows enough to represent them in the legislature or not. I can remember that John Randolph was elected to congress before he was of age, before he was of the requisite age required by the constitution of the United States, and he was admitted too.

Mr. GRAY. John Randolphs don't grow in this country though.

Mr. HASBROUCK. I don't know whether he knew as much as my friend from Ada or not.

Mr. AINSLIE. I think the amendment we have adopted is correct. Since the gentleman from Washington has seen fit to refer to Mr. Randolph, I think when the question came up as to whether he was twenty-one years of age or not, he told them to ask his constituents, and that ended it. I think that when the law says a man is capable of attending to his own business at twenty-one years of age, he is capable of attending to the business of others in a legislative capacity.

Mr. MAXEY. Mr. President, considerable has been said in regard to our legislature and the actions of our legislatures and the folly of a legislature. I think members of our legislatures should be men of ripe years, men of experience, men of knowledge; and when we submit this constitution to the people, let them say that we intended that the work here shall be perfect.

Mr. HASBROUCK. I will say in answer to the gentleman that I was here in the legislature before the last one, and the biggest cranks in the legislature were the oldest men. (Laughter and applause.)

Mr. MAYHEW. That is the case here.

The chair put the question upon the amendment of the gentleman from Shoshone to strike out all of the section after the word "chosen" in the fourth line. (Vote.)

The CHAIR. The chair is in doubt. (On the rising vote there were, ayes twenty-nine, nays ten, and the amendment was adopted.)

The question then recurred upon the adoption of the amendment as amended. Vote and carried.

SECTION 7.

Section 7 read, and it is moved and seconded that it be adopted. Vote and carried.

The CHAIR. Under the rule it is not necessary to

make a motion to adopt the section. It is if it is amended. But the motion is considered as made by the chairman of the committee.

SECTION 8.

Section 8 read, and it is moved and seconded that it be adopted. Vote and carried.

SECTION 9.

Section 9 read, and it is moved and seconded that it be adopted. Vote and carried.

SECTION 10.

Section 10 read, and it is moved and seconded that it be adopted. Vote and carried.

SECTION 11.

Section 11 read, and it is moved and seconded that it be adopted.

Mr. SHOUP. I move to strike out that section. (Seconded.)

Mr. CHANEY. I don't know that I have anything to say. My objections to that section were based upon the two-thirds; that it provides that two-thirds of the house of representatives may expel a member without any cause. I object to that part of it.

Mr. MORGAN. I would suggest to the gentleman from Custer that probably the only objectionable part of this section is that part of it inserted after the word "members" in the second line.

Mr. SHOUP. I will explain to the gentleman why I think it ought to be struck out. We did have on our statute books provisions very similar to this, and I don't know but what exactly the same. These laws will be carried forward until the legislature enacts new laws; and it is a very long section, and I think it should not be in the constitution, but ought to be left to the legislature.

Mr. MORGAN. I am in favor of striking out all after the word "member" in the second line, and if the house desires to strike out the whole of it I have no objection.

Mr. SHOUP. I will change the motion then to strike out all after the word "member" where it occurs the first time in the second line.

Mr. GRAY. I am glad the gentlemen have come to their senses and concluded to leave something to the legislature.

Mr. MORGAN. I objected to this amendment in committee of the Whole, Mr. Gray. Mr. Beatty introduced this amendment.

Mr. GRAY. I am speaking about this gentleman behind me here (MR. SHOUP).

("Question, question.")

The CHAIR. The question is on the amendment offered by the gentleman from Custer to strike out all except the first sentence leaving it to read as follows: "Each house may, for good cause shown, with the concurrence of two-thirds of all the members, expel a member. (Vote. Carried, and the amendment was adopted.)

The CHAIR. The question now recurs upon the question of the adoption of the section as amended. (Vote and carried.)

SECTION 12.

Section 12 was read.

Mr. PARKER. Mr. President, when this report was up the other day I submitted an amendment to section 12 requiring open sessions of the legislature. If my recollection is correct that amendment was passed; but I see it is printed as originally reported. Now, I am opposed to dark lantern or star chamber proceedings, and with the powers entrusted to this legislature I want this section changed. I want the electric light of publicity turned upon everything the legislature has to do in our halls. The legislature has our lives, liberties and

happiness in its hands, and I want the electric light of publicity turned upon every act they do. Can I submit the amendment now?

The CHAIR. Yes, the clerk is looking up the amendments now.

Mr. STANDROD. I move to strike out all after the word "open" in line two, which will leave the section to read, "the doors in each house and in committee of the whole shall be kept open."

SECRETARY reads Mr. Parker's amendment: Amend section 12 by striking out all after the word "open" in line two, and insert "at all hours when the legislature is in session."

Mr. GRAY. If I understand it, on confirmations and matters of that kind, they generally have secret sessions. In the enactment of laws, if it does not cover that, I would be in favor of the amendment; if it does, I don't think we ought to have it.

Mr. SHOUP. I think confirmations should be in open session. This question was discussed in the last senate, whether hereafter confirmations, or when the senate went into executive session, should not be with open doors; and many senators held it should be open, and the doors never closed. When a member is elected to the legislature or to the United States senate, either one, he should say nothing nor cast any vote but what everybody and especially all of his constituents should know just how he voted, and every word he said. He is a public officer, and everything he does in his official duties should be public.

Mr. BRIGHAM. I am opposed to any change whatever in this section. I do not see how anyone who has ever been in a legislature could place this restriction upon the senate, especially in its executive session, so that anyone would be permited to come in and listen to all proceedings. There are times when the names of individuals may be sent in for confirmation, when perhaps their reputation and ability should be discussed,

and I believe the senate should have the privilege of doing it in secret session if it sees fit.

Mr. HASBROUCK. I shall support this amendment. I do not believe there is any more necessity of anything being secret in a legislature than there is in a court; and there is nothing in a court that I know of, except in some divorce cases, that is ever secret; and I see that in section 19 the legislature is prohibited from having anything to do with divorces. I think it should be just as open as the court, and with no more secrecy.

Mr. WILSON. I hope the amendment will prevail also. I think that more abuses have grown up under this rule of a secret session in the matter of confirmations than any other matter that comes before a legislative body. I think here in Idaho we have had some evidence of it. I think there is more dirt done in the matter of confirmations in secret session than on any other subject that comes before the legislature. I think more men do that which they would not do if they were compelled to go on record in doing it; and that is why I believe, as my friend from Idaho county says, the electric light should be thrown right square on it; let everybody see.

Mr. MAYHEW. I am in favor of the amendment. I believe that in truth and in reason there is no occasion for any executive session in the senate of the state. I believe that it is proper and important that the views as to any confirmations that may be sent in by the governor should be discussed in open session with open doors. As to my friend saying that sometimes it is necessary to discuss the reputation and character of an appointee, and that the legislature should necessarily have closed doors, I think not. I don't think the executive of the territory would ever send a person's name in whose reputation and character could be questioned. Sometimes members of the legislature have reasons which they do not desire to disclose to the public why they will vote against a confirmation, and that is all there is of it. And if a member of the legislature has

any political reason or any other reason against a man he should be compelled to expose that reason in public, that it may be known by his constituents and every one else. I don't believe any man, honest and honorable, in the legislature will trade and swap his vote either in executive session or in open session; and while it seems to be the desire of members to strike out this section they struck out, preventing members of the legislature from bartering among one another, I think that should have remained in there. But I am opposed to having any secret executive session of the legislature of the state.

Mr. BRIGHAM. It seems to me if this should be adopted, it would prevent either of the legislative bodies from ever closing the doors against any rabble or anything of that character that might come there to disturb the peace and deliberations of the assembly. There are times in great public excitement when perhaps it is necessary that the galleries should be cleared and the doors closed, in order that peace might be preserved in that body itself. I do not see why or where or how any individual could swap or trade his influence in executive session. It is the last place in the world I should expect anything of that character.

Mr. MAYHEW. There is no doubt but a legislative body by its rules can always declare the gallery to be cleared, if they come in there for the purpose of disturbing the deliberations of that body. It can always order it cleared; that is a universal principle everywhere under the rules.

Mr. AINSLIE. That secret session matter was originally adopted in the Constitution of the United States, where it is absolutely necessary that treaties with foreign nations should be considered in secret session, and it is understood among representatives of different nations that those matters should be kept secret until the matter is ratified by both parties. Now, we haven't any foreign treaties in a state or territory, and I believe the people have a right to know everything their representa-

tives are doing in the legislature, and I am in favor of having all such matters above board, and not allowing secret sessions to stab a man in his back by saying something that one would not dare say to his face.

"Question, question."

Mr. GRAY. All I want to say is this: I believe in the secret ballot and I might vote for the gentleman from Shoshone, if we had a secret ballot, but now I don't believe I would.

Mr. MAYHEW. I will relieve the gentleman of any embarrassment of that kind. I am satisfied no governor will ever appoint me to any position, and I won't have it.

"Question, question."

Mr. CLAGGETT. Mr. President, I think this amendment is to require all sessions of the senate to be open. The objection to that is this: It very frequently happens that the characters of individuals have to be inquired into. If you desire to preserve the power of the senate as a co-ordinate body in the matter of appointments you must necessarily allow their sessions to be held secretly; that is to say, with closed doors. The reason for it is this: The governor, I will assume, has been misled and appointed a man who is really unfit for the position, and yet his unfitness will not be and usually is not generally known. Some member of the senate may know something with regard to it; nevertheless, he will not feel like getting up in open session and calling attention to it, and it very frequently happens by that means that an improper nomination goes through. And in another way, again, if you vote in open session there might be a good many statements made with regard to the character of the nominee or something of that kind, that renders him unfit for office, which subsequent investigations prove to be unfounded. Nevertheless, in order to have careful scrutiny of the character of appointees it should be discussed, and even though found to be unfounded, the person, even if he should be confirmed, would go into office with a cloud,

as it were, fixed upon him in that way. It seems to me that the wisdom which has dictated this matter so frequently everywhere in all the states and in the constitution of the United States, indicates that there are some reasons for it. I do not agree with my friend from Boise county when he says it was on account of the senate being called upon to confirm foreign treaties. That is only one thing. If it had been the intention of those who drafted the federal constitution to allow the senate to sit in secret session in the confirmation of treaties, they would have so said; but they have not so said. They have allowed it on appointments also; and there is sound substantial reason for it. Otherwise you will have your liberty of the senate, which is called upon to perform such a delicate duty as to inquire into the fitness of this or the other applicant for office, made a target of by the people whose characters or reputations the senate may be compelled to attack. I don't think we ought to make the change.

Mr. POE. I don't think the objection given by the gentleman from Shoshone has any force or weight whatever, for the reason that if any man's character is so checkered that he is afraid to have it anaylzed and presented before the world in all its hideousness, let him not seek a position where he will be subject to having it revealed to the world. He and he alone will be to blame if his life has been of such character that when he seeks a public office, when he is nominated by the governor for a position under the laws of his state, that it will not meet with the approval of the public. If that is so, then let him be condemned; and if he does not wish this publicity to be given, let him stay away from the senate that has the investigation of that matter. I say that to have a session, an open session, of all the proceedings of the legislature is highly important; for if that is the only reason, that the character of a man will be investigated, and therefore it might injure his reputation, let him keep his character so that it cannot be brought before the world, and then he will

suffer no wrong and no injury thereby. There isn't a man who runs for public office from the governor down but whose character, whenever he comes before the people, is laid open for criticism. Then let the man, who presents his name to the senate for confirmation, share the same fate as the rest of the men who ask for office at the hands of the public. Let his character be analyzed before he takes the position.

Mr. PARKER. This constitution has much to answer for, Mr. President. We have given all our powers and rights to the legislature, and if you give the legislature the power to transact its business in secret, the last vestige of representative government has departed from the people. Mr. President, I am opposed to dark lantern matters, I am opposed to star chambers or Jack Shepard methods of doing business at all. I am in favor of turning the electric light of publicity upon every act of the legislature, and when I vote for a senator or a representative to come here and make laws for me, I have a right to know every word that he utters and every official act of his when he is transacting his business in the manner contemplated by this article. It has been stated here, Mr. President, that there is danger of private character being injured in considering executive nominations; but, Mr. President, any man——

"Question, question."

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Oneida.

Mr. CLAGGETT. Mr. President, I don't know where this came in. As it comes in here in Section 12, to strike out the words, I am heartily in favor of the amendment. I thought it was a proposition to require confirmation matters, while the senate was engaged in executive session, to be held with open doors. I want to retain the other, to allow the senate to sit in secret session.

The CHAIR. The question is upon the amendment offered by the gentleman from Oneida, Mr. Stand-

rod. The clerk may read that section as it will read after amended.

SECRETARY reads: Strike out all after the word "open" in the second line which makes it read: "The doors of each house and the committee of the whole shall be kept open."

The CHAIR. Now read the amendment offered by Mr. Parker.

SECRETARY reads: The doors of each house and of the committee of the whole shall be kept open at all hours when the legislature is in session.

The CHAIR. The question is first upon the adoption of the amendment offered by the gentleman from Oneida, (STANDROD). (Vote).

The CHAIR. The chair is in doubt.

Upon the rising vote there were ayes 30, nays 7, and the amendment was adopted.

Mr. CLAGGETT. I now offer the following amendment at the end of the section as it stands.

SECRETARY reads: *Provided,* That the senate may sit in secret session while acting upon any nomination for office made by the governor.

Mr. GRAY. I second the motion.

The CHAIR. The question is first upon the adoption of the amendment offered by the gentleman from Idaho.

SECRETARY reads: Strike out all after the word "open" in line 2 and insert "at all hours when the legislature is in session."

The question upon the last amendment was put by the chair. Vote and lost.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Shoshone.

SECRETARY reads: *Provided,* That the senate may sit in secret session while acting upon any nomination for office made by the governor.

Mr. WILSON. I hope that amendment will not prevail, because that is just exactly what we have been striking out and have been making speeches on. We

all know that whoever desires to run for office must expect to have his character anaylzed. Our opponents spread them broadcast, and everything we have ever done in the past is brought to the light and discussed. When a man seeks an appointment his character ought to be analyzed in the senate just the same as when he seeks an election before the people; and I am opposed to secret sessions and opposed to executive sessions, and that is why I supported the motion to strike out the last part as it is. I think the argument made by my colleague really is in favor of an open session. He says that if you have open sessions the characters of appointees cannot be analyzed, and that men will hesitate to speak their true feeling on that matter. I say that will have tendency to make the appointing power appoint men whose character can bear the sunlight of day. I think that is the ultimate result of it.

Mr. GRAY. The result will be party lines all the time.

Mr. HASBROUCK. I cannot for the life of me see why, if a man is to procure his office by appointment, he shall object or be less criticized than the man who procures it by election. When he procures it by election all the batteries of free speech and free press are turned loose upon him, and in this case these appointees are not to be investigated in that manner whatever. Their investigation must be in secret by a few men who represent only a portion of the people really, and therefore I shall oppose it.

Mr. GRAY. As I said before, it will just have this tendency, that party lines are not always opposed in an appointive office; but I understand clearly the result will be that it will be made a party matter in the confirmation or ratification of nominations of the governor. When, under other circumstances with a secret ballot I may be in favor of a man, I may vote for him, can vote as I see fit; it will let me vote for the best man; but so many men are so tenacious and so anxious to make a political record that they will be forced under the cir-

cumstances of an open session to vote for their party man rather than for the best man.

Mr. AINSLIE. I would answer the gentleman from Ada that that does not necessarily require a man to vote by ayes and nays in voting upon a confirmation of an appointee in the senate. They can vote by ballot, and I believe it has been always done. It was when I was in the council of the territory upon whether they would confirm or reject, and nobody knows the votes for or against, and if he gets a majority vote he is confirmed.

Mr. GRAY. What good is there then, in this, if you want the open door, if you allow a vote by ballot so that it is not known how any one votes?

Mr. MORGAN. This question has been discussed for some time, and I think we are spending too much time over it, unless the gentleman from Shoshone desires the floor to speak to his amendment.

Mr. CLAGGETT. I just want a moment; I don't want to take up any time. I was opposed to the section as it was because it left it in the power of either house to sit in secret session upon public measures, and for that reason I voted to strike out the latter part of the section. But the theory upon which we are proceeding in the matter of appointments is, that the power of appointing shall be equally divided between the governor who nominates and the senate which confirms, and I do not wish the senate to be hampered so that it will not have the power in confirmation inferior to the power of the governor, in nominations. That is the point. The governor can go and make secret inquiries everywhere. When he sends in his name of the nominee he is not required to give any reason why he appoints. If you take away the power of the senate to have the same power which the governor has to inquire into all those matters in any way, secretly or otherwise, relating to the propriety of that nomination, the effect of it will be to put the whole executive power of the state, so far as the governor is concerned, almost unchecked in his hands,

and I am not in favor of it. I want the senate to have the same power to inquire into the reasons for confirmation that the governor has secretly to inquire into the reasons for the nomination; and I do not want this matter to be brought up necessarily in open session, and the amendment I offered does not require that it shall be done secretly, but to say that they may do it if they see fit to do it. Because otherwise your governor will make a nomination, the nomination will come before the senate, senators will have to sit there or else make targets of themselves, perhaps at the instance of powerful corporations and combinations who may be behind the nomination of the governor; and there is many and many a man, who, rather than to make an open assault upon the propriety of a nomination, although secretly opposed to it for good reasons, will quietly allow the nomination to slip through without being carefully scanned and considered. And I desire to retain the functions of the senate in confirmation as fully and completely as the power of the governor in making the nomination.

Mr. POE. Mr. Chairman, the argument of the gentleman from Shoshone has no foundation in fact. He says that it would prevent those senators from making this secret investigation as to the character of the party whom the governor had nominated for an office. Now, I would ask how it prevents senators from going around and making inquiry as to the honesty and competency of the nominee? All we strike out and all we propose is this: That when they do sit upon that matter of the confirmation or rejection of that appointment, they shall do it openly before the world. If any senator desires to make any address, why he opposes that nomination and gives his reasons therefor, he shall not do it under closed doors, but he shall do it openly. If he does not desire to speak and wishes to vote without speaking, he can do so, and as Mr. Ainslie says, he need not have the eagle eye of a corporation upon him, or the eyes of the friends of the nominee whom he does

not wish to offend. He may, though that argument as to qualification may be made publicly, when he comes to deposit his vote yea or nay on the confirmation, do it secretly with the secret ballot. Once dropped in the ballot box no living human being except himself and his God may know whether he voted for confirmation or rejection.

Mr. MORGAN. I call for the previous question. (Seconded).

The CHAIR. The question is, the demand made by the chairman of the committee for the previous question. Shall it be sustained? (Vote and carried).

The CHAIR. The question is sustained. The question now recurs upon the amendment of the gentleman from Shoshone. The clerk will read it.

SECRETARY reads: Add to the end of Section 12 as amended, "provided, that the senate may sit in secret session when acting upon nominations that have been made by the governor." (Vote).

The CHAIR. The chair is in doubt.

Upon the rising vote there were ayes 20, nays 24, and the amendment was lost.

The CHAIR. The question now recurs upon the adoption of the section as originally amended.

Moved and seconded that the same be adopted.

Vote and carried.[1]

Sections 13, 14, 15, 16, 17 and 18.

Sections 13, 14, 15, 16, 17 and 18 were read, voted on separately, and each adopted without debate or amendment.

Section 19

Section 19 was read.

Mr. CLAGGETT. Mr. Chairman, I offer the following amendment.

SECRETARY reads: Amend Section 19 by adding

1—A substitute for this section was adopted later on.

after the word "seats" in line 28, "unless the law authorizing the change shall require that three-fifths of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed."

The CHAIR. I would say to the gentleman that the committee on County Government has provided for that.

Mr. CLAGGETT. Do I understand the chair to say they have incorporated in the constitution a method for changing county seats?

The CHAIR. No Sir, but have incorporated how counties may be divided and organized, and determine the subject.

Mr. CLAGGETT. Then I move to strike out line 28.

The CHAIR. I would state for information of the convention that everything of that kind comes up under that head, and if this line 28 were stricken out you would have the whole question brought up again in the report on County Government.

Mr. CLAGGETT. I withdraw my amendment then and move to strike out line 28.

Mr. MORGAN. I have no objection to striking it out.

Mr. MAXEY. I would like a little information with reference to line 9, "changing the names of persons or places." In case a man wants his name changed, or people want the name of a town changed, who shall do it?

Mr. MORGAN. The legislature shall provide by a general law for the changes the gentleman speaks of; either changing the names of persons or the names of places. It is done in court now.

Mr. POE. I would understand then that if a man by the name of Smith wants his name changed it would affect every man in the state whose name is Smith; it would have to reach all the Smiths.

Mr. MORGAN. It seems to me strange that gentlemen do not understand this section. That same proposition has been presented to me two or three

times. The only thing this section means is, that the legislature shall provide by a general law for the application to the court for a change of name, if any person desires his name changed. We have a law upon the statute books now which authorized the district court to change the name of any person who makes application.[1]

Mr. SHOUP. The delegate having this bill in charge, as I understand, consents to have line 28 stricken out in regard to changing county seats. Now, as I understand it, this prohibits the legislature from making special acts for one particular county, giving that county alone the power to change the county seat. The law in the bill as reported by yourself, is a general law for all the counties; and as I understand it, that would not prevent the legislature making a special act for some particular county if this line is struck out.

The CHAIR. I would state for the information of the gentleman from Custer that we stated in our report (I do not remember the verbatim language) that no county shall be divided *unless,* and no county seat removed, *unless.* So that it would prevent the legislature from passing any special or general law either except as provided in that clause.

Mr. MAYHEW. Do I understand, Mr. President, that the committee on Counties has incorporated a provision by which the legislature shall be governed in relation to county seats?

The CHAIR. Yes.

Mr. MAYHEW. If that is the case then I must support the motion of my friend Mr. Claggett to have line 28 struck out.

Mr. SHOUP. That report has not been adopted, and if we strike this line out, for all we know the other may be changed. I think we better leave it in so that the legislature cannot make any special laws in regard to counties.

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[1]—Secs. 5245-5248, Rev. Stat. 1887.

Mr. MAYHEW. I am opposed to this provision anyhow.

Mr. WILSON. I would like to have the secretary read the report of the committee on Counties and Boundaries.

The CHAIR. I think it is in the hands of the printer.

Mr. WILSON. I think I saw that report, and my understanding of it is that it would not prohibit a special act changing a county seat if that report is adopted by the convention.

The CHAIR. I drafted the report and the language is, "no county seat shall be removed unless upon a petition of a majority of the citizens and a vote of two-thirds."

Mr. WILSON. But your report does not say by general law.

The CHAIR. No, it says "no county seat."

Mr. WILSON. Then the legislature might enact that the county seat of Ada county may be changed in accordance with that report, if it is adopted by this convention.

The CHAIR. Under a vote of the people, under the constitution, if the report is incorporated.

Mr. WILSON. But that would not prohibit a special law, and I don't think this ought to be stricken out.

Mr. SHOUP. I think this line ought to be left in here.

Mr. MORGAN. Those words may seem to be in conflict with the proposition that is proposed to be adopted, that is mentioned by the president, but they can do no harm by remaining in the section, and therefore I think they better remain, and I will withdraw my consent.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone to strike out line 28.

Vote and lost.

The CHAIR. The question now recurs upon the adoption of Section 19.

Vote and carried, and Section 19 was adopted.

SECTION 15.

Mr. McCONNELL. I move to reconsider the vote by which Section 15 was adopted.

Mr. WILSON. I rise to a point of order, that it is not necessary to make a motion to reconsider.

The CHAIR. I do not think it is necessary.

Mr. HEYBURN. We are not in committee of the Whole now.

The CHAIR. We are in convention, I am reminded. The gentleman from Latah moves to reconsider the vote by which Section 15 was adopted. (Seconded).

Mr. McCONNELL. I make this motion for the purpose of offering an amendment. We acted rather hastily on this. There is one provision here which is quite customary to constitutions, I think, that after a certain date, in the legislature it will require a two-thirds vote to bring up any question, and any member who is familiar with legislation knows that under that rule necessary laws are often defeated. You take large corporations which are beginning to rule our country; they have attorneys in every legislative body in the country, I think, and it is their business to defeat legislation which will react against those corporations; and to do so all they have to do is to get a bill referred to a committee, which will delay its report, and thus require a two-thirds vote of the house to get the bill through. I think where a majority of the members of either house see the necessity for the passage of a bill, they ought, in a case of emergency, to have the right to take that bill up. It is not confined entirely to corporations. Localities sometimes prevent the enactment of laws. I saw a very unjust and unparliamentary thing once in the Oregon legislature, where the members from the city of Portland proposed to defeat an act providing for the building of an insane asylum. The insane of Oregon had been leased out to certain parties to board

them, and the people of the state were clamorous for the building of an insane asylum. The members of the city of Portland, thinking it would injure their town to have the insane moved to an asylum, went to work and delayed this legislation to the hour when it required a two-thirds vote to take it up. Upon motion it was clearly out of order, and the chair so decided. They appealed from the decision of the chair and took it up and passed it anyway; but it was a very unparliamentary and unjust thing so far as the president of the senate was concerned. I would like to provide in this section that no such state of affairs may occur in a future legislature of this state. Where a majority of the members in the body think the bill is a necessary bill, they should have the right by a majority vote to take it up and pass it. I therefore move the reconsideration of the vote by which Section 15 was adopted.

Mr. MAYHEW. This matter of reconsideration is not debatable, but the gentleman has stated his reasons for making the motion; and I want to ask the gentleman if he intends to amend the section for that purpose.

Mr. McCONNELL. Yes, I desire to offer an amendment.

Mr. MAYHEW. Then I support the motion.

Mr. MORGAN. It seems to me the argument offered in favor of reconsideration has not very much force.

Mr. MAYHEW. Mr. President, is this a debatable question?

The CHAIR. The point of order is well taken; it is not debatable. The question is shall the vote by which Section 15 was adopted, be reconsidered.

Vote and lost.

SECTION 19.

Mr. CLAGGETT. Mr. Chairman, I now renew my amendment to Section 19, to add after the word "seats" in line 28 the following: "unless the law authorizing the change shall require that three-fifths of the legal

votes cast at a general or special election shall designate the place to which the county seat shall be changed."

Mr. MAYHEW. That section has been disposed of.

Mr. CLAGGETT. I beg the gentleman's pardon. On the statement made by the chair that it was covered by another bill I withdrew the amendment and moved to strike out line 28. The vote was taken on the motion to strike and voted down, and I now renew my amendment.

The CHAIR. The section has been adopted.

Mr. MAYHEW. That is what I say; I call your attention to the fact that we had voted down your amendment and adopted the section.

The CHAIR. Your motion must be to reconsider.

Mr. CLAGGETT. Mr. Chairman, I did not know that the section was adopted at all. I move to reconsider. It is a very important matter. Leaving the thing in the shape it is now is costing our county $15,000 a year unnecessarily. All the population and wealth of the county away, and we have to pass over two ranges of mountains to get to the county seat and are being bankrupted by this proposition.

Mr. MAYHEW. I voted against the motion, and I cannot make a motion to reconsider. If some person that voted in the affirmative will make the motion——

Mr. MORGAN. Will the gentleman explain the reason why he desires it?

Mr. CLAGGETT. I will do so. There is no possible objection to passing a special law for the removal of a county seat, provided it is required in the law to be submitted to the vote of the people in the county, and three-fifths of the voters are required to vote in favor of the change. The trouble with regard to leaving the matter to the general law is, that I am fearful if this provision to which the chair has referred in another article does not execute itself, and leaves anything to the legislature to be passed in the shape of a general law, that there never will be a general law passed in the next ten years, and these counties will be ever-

lastingly destroyed and eaten up with expenses. As we know, for the last four years two whole sessions of the legislature have been taken up to get rid of this restriction contained in the Symms Bill passed in congress,[1] and after working at it two whole sessions of the legislature, the last one and two years ago, it was found to be utterly impossible to pass a general law. Now, I don't want to have this thing coming up here forever.

Mr. MAYHEW. Not last winter?

Mr. CLAGGETT. There was a bill introduced and fought on; I read the bill myself.

Mr. MAYHEW. We had no debate on it last year, because we had no power to do it.

Mr. CLAGGETT. To pass a general law?

Mr. MAYHEW. Yes.

Mr. CLAGGETT. Why no; the Symms Bill provided that no territory should pass a special law; but authorized the passing of a general law, and this was a general law.

Mr. MAYHEW. Let me correct the gentleman. It was this way. In the house there was a general law introduced making county seats removable—a county seat here one year and somewhere else next year, and that did not create any delay in the legislature over two days. But two years ago the house consumed about three weeks discussing the change of county seat and dividing the county of Alturas.

Mr. CLAGGETT. I am talking about the passage of a general law for the removal of county seats.

Mr. MAYHEW. Well, I will say that he was right; I was not in the legislature; I have forgotten about that.

Mr. CLAGGETT. I know two years ago it was up, and last winter I know the bill was introduced, for I read the bill.

Mr. MAYHEW. I sent it to you for that purpose.

Mr. CLAGGETT. Well, I will ask the gentleman

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[1]—Act of July 30, 1886; 24 Stat. L. 170; 1 Rev. Codes Ida. p. 45.

as to whether any general law was passed last winter on the subject.

Mr. MAYHEW. There was not.

Mr. CLAGGETT. I will ask you whether there was not one introduced and considered.

Mr. MAYHEW. I just told you there was one in the house and considered by the committee and voted down.

Mr. CLAGGETT. I understand that, and that is just what I am talking about. But I am fearful if this proposition goes in broadly, that the legislature shall under no circumstances pass a special law for the removal of a county seat, we will not be able to get a general law passed by the legislature. And therefore I think this amendment ought to be added at the end of line 28 so that the legislature may pass special laws, providing those special laws contain certain facts; that they shall not pass a special law saying that a county seat shall be changed from Smithville to Jonesville, but that it may say that it shall be changed from Smithville to Jonesville, providing that at a general or special election held under the laws of the territory three-fifths of the voters shall be in favor of it, and in that view of the case there is no conceivable objection to the passage of special laws by a legislature to remove a county seat.

Mr. WILSON. Make it three-fourths.

Mr. CLAGGETT. No Sir, I will not.

Mr. POE. I rise to a point of order, to inquire what is before the house.

The CHAIR. The question before the house is the motion of the gentleman from Shoshone to reconsider Section 19, and the gentleman by consent is explaining his reasons for making the motion. The question is not subject to debate.

Mr. SHOUP. I don't think the rights of your committee should be evaded while you are in the chair and unable to defend it. I think in the article on Counties and Boundaries is the proper place for this provision which the gentleman from Shoshone desires to have in

the constitution, and that is where it should be. It is not here.

The CHAIR. I will state to the gentleman that the committee on Boundaries has provided that no county seat shall be moved unless three-fifths of the voters of the county have agreed to it, and it must be voted upon on a petition of the majority of the voters. But the point made by the gentleman is that a general law will be inoperative without some provision to be provided for here that the legislature can pass special laws with those inhibitions that we have already included in the county report.

Mr. GRAY. I think it is very proper, too, if you want to give any force to the portion of the bill on Counties and Boundaries.

The CHAIR. Which will not interfere with the provisions at all.

Mr. GRAY. Well, when you say by special law you shall not change it, would not that be in conflict with the provision that it——

Mr. MAYHEW. I call the gentleman to order. This is not a debatable question.

The CHAIR. The point is well taken; it is not debatable. The debate was proceeding by general consent. The question is, shall Section 19 be reconsidered?

The question was put.

The CHAIR. The chair is in doubt.

On the rising vote, ayes 28, nays 1.

Mr. MAYHEW. I now move that the convention take a recess until two o'clock. (Seconded).

LEAVES OF ABSENCE.

Mr. Parker was, without objection, excused until Tuesday morning next.

Mr. Pritchard was granted indefinite leave of absence on account of important business.

The motion to take a recess until two o'clock was carried.

AFTERNOON SESSION.

Convention called to order by the vice-president.

The CHAIR. The question before the convention at this hour is the report of the committee on Engrossment on the bill entitled "Legislative Department."

Mr. HASBROUCK. Mr. President, your committee on Engrossment is ready to report.

The CHAIR. Gentlemen, I will have to state to the convention that when there is so much noise and confusion in the rear of the hall the reporters cannot catch what is going on. I will have to ask the convention to bear in mind this fact so that we can try to keep a perfect record, that everything may be taken down by the reporters.

ARTICLE XV.— IRRIGATION.

The secretary reads the report of the committee on Engrossment on the article, Agriculture and Irrigation.

The CHAIR. The committee having reported that the bill is correctly engrossed, the question is now on final reading.

Mr. WILSON. I move that we proceed to consider that bill now.

Mr. CLAGGETT. I thought that was covered by the motion of Mr. Heyburn yesterday, that final reading was set for two o'clock today.

The CHAIR. Yes, so it was. The clerk will read the article.

The clerk reads the article as engrossed.

Mr. AINSLIE. I move the adoption of the article.

Mr. GRAY. If I understand the reading of this bill, it stands just in this position, that the man who locates the land first is entitled to the first water. If such be the case I shall oppose it, for this reason: That is, I do not know whether a man located with the idea that he is to have the water, but it would appear from this bill that he shall be the first man served, though it

may be ten miles from the head of the ditch; and I do not care how many farms intervene, double the amount required to irrigate his farm is wasted in getting it to him. Another thing: It would appear from this bill, as I understand it—and I mean eventually to use all that water myself, but that I have land that is not in a condition at that time to use the water—that I should be deprived of it because I have let a man have it a year or two or three or four or five years, just as the circumstances might be. Now, I want to understand this. I don't want to restrict anybody, and my idea is that the law as it stands now in relation to this water is that the first man as you come from the head of the ditch should be served, and any which should pass his land or any man's land that is willing or able to pay for the water, should go to the next below. But I don't believe in running it by anyone, but let it be used from the head of the ditch as far as there is a sufficiency of water to be sold. But don't deprive me of it because I sold it for a few years; don't say therefore that I must be deprived of it for years thereafter. It would seem to me that that would be the understanding of this bill. I say the first man should have the use. If he does not use the waste water before it gets to the land lower down on the ditch, let the first man below have a right to its use when he is willing to pay for it. That I believe is the only correct principle as it now stands in our state.

"Question, question."

The CHAIR. The question before the convention, as several members have come in, is the article on Manufacturing, Agriculture and Irrigation. It has been reported correctly engrossed by the Committee on Engrossment, and is now on its final reading. As many as are in favor of the adoption of this article as engrossed will, when their names are called, say aye; those opposed say no.

Roll call:

Ayes: Allen, Armstrong, Ainslie, Anderson, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Coston, Crook, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Meyer, Pierce, Poe, Pyeatt, Reid, Robbins, Sweet, Underwood, Vineyard, Mr. President—36.

Nays: Glidden, Lemp, Morgan, Pinkham, Shoup, Wilson—6.

The CHAIR. Under the rule it goes to the committee on Revision, to become one of the articles in the constitution.

ARTICLE III., SECTION 19.

The unfinished business under consideration at the hour of recess was reconsideration of Section 19 of the report of the committee on Legislative Department. Section 19 is now up for consideration. What is your pleasure?

Mr. CLAGGETT. I will offer an amendment.

SECRETARY reads: Amend Section 19 by adding after the word "seats" in line 28 the following: "unless the law authorizing the change shall require that three-fifths of the legal votes cast at a special or general election shall designate the place to which the county seat shall be changed. (Seconded).

Mr. SHOUP. Mr. President, as I understand this motion, the legislature at any time can provide that any one county can hold a county seat election; then it will require three-fifths to change the county seat. If that is correct, I am opposed to it.

Mr. CLAGGETT. The object of the amendment, Mr. President, is to enable the legislature to pass, if it sees fit, a special law, subject to certain restrictions as to any one given county. Those restrictions are the same restrictions, as I am informed by the chair, as the convention was informed, rather, as were provided for to be embraced in a general law which is provided for in the article relating to county organization, and are to be embraced in any general law that may be passed on

the subject. The reason why it is necessary to put this language in here, inasmuch as the convention has refused to strike out the line prohibiting the passage of special laws, is to guard against the possibility—it is more than a possibility, it is a probability—that the legislature will never be able to agree upon a general law. And if the legislature does not agree upon a general law containing these provisions, which I have embraced here, and it is prohibited from passing a special law, the action of the convention by retaining this last line as it is now will operate to put in the constitution a provision that the county seats of this state shall never be changed. That is about what it comes to.

Mr. SHOUP. If the legislature will not agree upon a general law, is it probable they can agree upon any act for any one particular county?

Mr. CLAGGETT. Yes, the reason why they cannot agree upon a general law is because the general law has to be uniform in its operation in all counties, and in one county the terms of your general law may be all right, but in another county the people may not want it. The entire people of the county may want a change of the county seat, and yet they may not agree to the terms of the general law. In another county still your general law will be objectionable to the representatives, and the consequence is when you take into consideration all the various interests represented in the various counties it will not be possible to agree upon a general law. Then we have put in the constitution that you can never change a county seat by retaining this proposition forbidding special legislation. As I said this morning, there is no conceivable objection to allowing the legislature to pass a special law relating to the removal of county seats, provided that special law is so governed by necessary limitations as to the number of votes to be cast as to make it unobjectionable. The fact of the matter is, I am not in favor of so hampering the freedom of the legislatures as is provided in this bill. But I only make an objection to this one particular thing;

and what we have got to guard against is tying the legislature up in such manner that it cannot properly perform the functions allotted to it. And it does seem to me that this great multiplication of cases in which they cannot pass any special law at all is liable to fasten a condition of things upon the state, which we will be sorry to see in a very short time.

Mr. WILSON. I sincerely hope that amendment will not prevail. If it does, it is virtually striking out of this article this subdivision, line 28, changing county seats; because it means that a special law can be passed at any time, providing the conditions of that law are that before the county seat shall be changed three-fifths of the legal voters in the county shall vote therefor. In other words, if Alturas county wants to change her county seat, and the legislature passes an act authorizing it to be submitted to a vote of the people of Alturas county, and three-fifths of the voters of that county so decide, the county seat is changed. I think it would be a very detrimental section to put in here. Three-fifths is only a little more than a majority, especially where we have so small a vote. Most of the counties do not poll a thousand votes; three-fifths would be 600 votes. In other words, if 600 votes out of 1,000 choose to change a county seat, they can do it. And it is a well known fact in all legislative bodies in Idaho territory where a solid delegation asks for a measure affecting their county only, it is almost universally conceded to them, so if three-fifths of the voters of any one county want to change the county seat it would then follow that they will elect their delegation to the legislature, and then it follows that the delegation will have what legislation they want affecting particularly their county. In other words, they will have a bill passed authorizing their county to submit to the people of that county the question of changing the county seat, and 600 votes out of 1,000 can change it. This question of changing county seats is one of the most vexing questions that ever disturbed this or any other people. It

has caused more trouble in new countries than any other question that has come before the people; and in some of the western states, notably in Kansas, the question has led to insurrections, to little rebellions, small civil wars between two rival towns, and public records and books of the county seats have been taken away from one town by armed men by force, and bloodshed resulted therefrom. I don't think it would be a wise plan to leave it to three-fifths. I suggested to the gentleman that he make it three-fourths of the voters, but I would not insist on three-fourths, because that is such a majority that it is almost unanimous consent; but three-fifths amounts to very little more than a majority, 600 out of 1,000, if you please.

Mr. CLAGGETT. Make it two-thirds and I will accept the amendment; I want a decent majority.

Mr. WILSON. I think that question will always be before us. I think if it is left to the legislature, there will not be more than two or three counties in the state that will not want to change the county seats.

Mr. MAYHEW. I understand the gentleman makes no objection to the amendment if it was three-fourths. I am glad to have the gentleman pleased to accept that. I just desire to say this: While I am somewhat opposed to the legislature having the right to pass special acts for the removal of county seats, yet there are instances in this territory, as has been before pointed out, where it is absolutely necessary that there should be some special act authorizing the removal of a county seat to some other place in the county which is more the center of population. The county seat should be where it is accessible, and, in fact, in the center of population. For instance, I can give you an illustration. If the county seat in Shoshone county had not been removed from Pierce City to Murray or Eagle City at the time it was done, the great majority of the people in our county—in fact, all the people in our county with the exception of about 50 or 60 persons—would have been required to go over a country that was really not accessible,

involving a great many hundred miles' travel around to the county seat by way of Lewiston, in order to get to Pierce City. Now you can see that in one period of the history of Shoshone county it was necessary that the county seat should be at Pierce City, because that was the only place where any people lived. Now conditions have changed, and so it is with us. The majority of the people in our county desire that the county seat may be changed in our county, because it is about twenty miles from the railroad, and the principal part of the business of our county, so far as it relates to business that must be done at the county seat, must be done at a place where you have got to pass over two mountain ranges. A small minority only would have to go over those ranges to get to the county seat if it was on the railroad; but as it is I believe now that more than three-fourths of the people in our county have to cross over that stretch of country. More than that, Mr. President, when a person has a suit in our courts he is required of necessity to take his witnesses to the county seat and keep them there a week or ten days at a heavy cost. So that the cost of litigation in our county in that respect is enormous. If the county seat was somewhere on the railroad, the witnesses could all be got along the line of the road running up the south fork at any time on five or six hours' notice, saving litigants a large amount of money. But as it is, in our county where a case comes up between parties living on the south of it, in order to get there they must have their witnesses there and keep them there day in and day out, because many cases pass off by demurrer, some continued, and a case is liable to come on for trial when your witnesses are not there, unless they are held continuously. It now costs men having litigation in our county a large amount of money, and I hope some method will be reached which will authorize the legislature in certain cases to pass special acts. I am not in favor of special legislation, I admit, but there should be something done to meet these cases of emer-

gency which the people in these different counties demand. I think it can be reached by this amendment of Mr. Claggett's, and if that does not, some other amendment can be introduced.

Mr. MORGAN. I cannot see the force of the argument of the gentleman from Shoshone, for this reason. This law is not intended to prevent the changing of county seats by any means. There is nothing in this bill as it stands that will prevent changing the county seats as soon as you can hold an election after the meeting of the legislature. I suppose there are half a dozen counties situated like Shoshone county, or the counties the gentleman speaks of, in this territory today. Every one of them, if the law is changed in the manner in which this amendment seeks to change it, must come to the legislature when it meets, and lobby through a special law for the purpose of changing the county seat in those different counties. Now suppose they all unite and succeed in getting a general law passed; they certainly could get a general law passed for changing all county seats at certain times much easier than they could get special election provisions for each county. At the first legislature there should be a law passed authorizing under certain circumstances the changing of county seats by a three-fourths or three-fifths vote, or whatever vote the people see fit to make necessary. Then they can go to work and change their county seat. The objection to having special legislation for changing county seats is this: That after the passage of the law authorizing the changing of county seats in any particular county or counties and the people vote to change it, at the next session of the legislature the people opposed to that change in a county seat come to the legislature and ask to have a law passed asking the right to vote upon this question again. For instance, take these two new counties; it is possible there may be a struggle between the different towns in the counties for the county seats, Rocky Bar and Mountain Home. You pass a general law allowing the people of Elmore county by a three-fourths

vote to change the county seat, if they can pass that law, it then goes to Mountain Home or some other town. In the next two years Rocky Bar men will come back and ask for another law which will give them permission to vote upon it. There should be a general law enacted allowing a three-fourths majority to change county seats, and then providing that this vote should not be taken again for five years. Then this question would be at rest for a time. If you keep these counties forever pulling and hauling between county seats or between one place and another, you will forever be having elections at great expense and bitter feeling. As was well said by Mr. Wilson, they are the bitterest fights that occur in any country, and lead to blood-shed in the older states and communities. So it should be provided by general law that they could not keep coming to the legislature and asking for bills to change county seats every two years. If the general law makes provision for it, you can all vote for a change in the county seat of every county in this territory, if you see fit to. But having been settled, it remains settled for five years under that general law, and then they can vote again if they want to, or put in a longer limit, ten years or three years or four, but prevent this continual voting for a change of county seats.

"Question, question."

Mr. HARRIS. I have an amendment.

SECRETARY reads: I move to amend the amendment by striking out the words "three-fifths" and inserting in lieu thereof "two-thirds."

Mr. CLAGGETT. I will accept that amendment. Now, Mr. President, just one word. I want to ask the gentleman from Ada this question: Does he claim that two-thirds of the voters of the county shall not be permitted to have their way with a matter that affects their interests, that affects the question of taxation, that affects their conventions and the holding of their courts and the administration of justice?

Mr. WILSON. Because I think it would injure them to change the county seat.

Mr. CLAGGETT. It is not for the gentleman to say whether it would injure them or not. That is a question that belongs to the primary parliament of the people, and no member of a convention and no member of a legislature has any right to deny to the people an opportunity of passing upon matters of great public concern. It is a usurpation of the rights of the people. I am willing to and do concede that these elections in behalf of the removal of a county seat should not be allowed to come on too frequently, and I am willing to and do concede that the majority should be placed at a figure sufficiently high to prevent some sudden transport of passion or anything of that kind from carrying by a bare majority. But I wish this convention to bear in mind that every proposition for the change of a county seat necessarily involves a considerable degree of expense. Taxpayers who are voting in favor of the change will not vote to create this expense unless there is some grave public necessity for the making of the change, and that certainly is a sufficient protection against any too sudden, violent or unnecessary change in a county seat. And I don't think it is becoming for this convention to put in the organic law a proposition to deprive the people of that which they have a right to, namely, the right to vote upon public questions of grave public concern.

Mr. MORGAN. May I ask the gentleman a question?

Mr. CLAGGETT. Certainly.

Mr. MORGAN. If I understand your argument then, you are not in favor of allowing the people to take a vote too frequently?

Mr. CLAGGETT. Certainly; I do not think they ought to do it; I think this matter of changing the county seats should be subject to certain healthy restrictions. I suggested that, but the way you have it now, in case the legislature shall fail to pass a general law, you fasten these county seats where they are forever; and I say it is a doubtful proposition as to whether the legislature will pass that law.

Mr. WILSON. I want to answer the gentleman. I am in favor of a general law affecting this matter, and then I would be in favor, if the legislature saw fit, of passing a law that a bare majority of the voters in any county in this territory shall change a county seat. I am in favor of a general law, not a special law, and if it comes to a special law I ask that three-fourths of them vote to carry it. I will concede special legislation to affect one town, provided three-fourths of them want it so; but when it comes to a general law, then I say let a majority of the voters decide it.

"Question, question."

The CHAIR. The question is upon the adoption of the amendment proposed by the gentleman from Shoshone. (Vote). The chair is in doubt.

A rising vote was taken, resulting ayes 28, nays 12; and the amendment was carried.

Mr. CLAGGETT. Now I wish to offer another amendment which I think is a proper restriction in the the business. I want to have it appear in this way: That in case the legislature passes a general law upon this subject, that then the power to pass special laws shall cease. And I want to put in here giving them the power to pass special laws if they do not pass general laws; but if they do pass a general law, then the power to pass special laws shall be at an end.

Mr. GRAY. If I understand the gentleman, it is this, that he wants to legislate for Shoshone county.

Mr. CLAGGETT. No sir, I am not doing that.

Mr. GRAY. And if they cannot get a general law that hits, then he wants a special law.

Mr. CLAGGETT. No sir, I offer it in favor of the interests of the gentlemen who have voted against the original amendment. If they object to it I will withdraw it.

Mr. GRAY. I object to it all.

The CHAIR. I think we ought not to pass over these with such haste. If there is no objection we will informally pass over this section while the gentleman

is preparing a substitute for the line, and take up Section 20. Is there any objection? The chair hears none. The secretary will read.

SECTION 20

SECRETARY reads Section 20.

Mr. AINSLIE. I desire to move to strike out a few words in that section. Strike out "game of chance," in line 1, Section 20. Under the present laws of Idaho Territory, games of chance, such as what they call banking games, are licensed under the territorial law, and I think in my county alone probably $2,000 is derived from that fund alone that goes to the school fund of the county. Now, then, we do not believe in a lottery or gift enterprise, but you cannot smother them by law any more than you can legislate religion or politics into a person. They will play those games of chance. The Chinese particularly. In my county, I do not know how many Chinese games there are, but they are licensed and pay $50 a quarter and every dollar of that I think goes into the school fund. We are enabled in those mining counties, where a large proportion of the Chinese population lives, to support the schools longer during the year, probably half as much longer, by reason of the revenue derived from those games of chance that are played by the Chinese, and you cannot stop it, and I do not see why we should not derive the benefit of it to the rising generation. Therefore, I move to strike out those three words.

Mr. MAYHEW. I would like to have some member who had that incorporated tell me what a game of chance is. There is no such thing as a game of chance in gambling; it is all on one side (laughter). There is no chance about it. If a man puts down $5.00 on a faro game, ten chances to one—and that is no chance at all—he loses it. I know very well there is no such a thing as a game of chance. I am like my friend; I want to have it stricken out; it is a game of skill.

Mr. GRAY. I am in favor of the section as it stands.

If the gentleman from Boise wants to send men out to steal to raise money for the school fund, let them do it according to the methods of the road, not by law.

Mr. MAYHEW. If a man is fool enough to take the chances in gambling, he ought to lose his money.

The chair put the question. The vote was taken and a division called for. On the rising vote there were 31 ayes and 12 nays.

Mr. GRAY. I move to strike the section out.

Mr. MAYHEW. I move to lay the motion on the table. (Seconded. Vote and carried).

The question was then upon the adoption of Section 20 as amended. Vote and carried.

SECTION 21.

Section 21 read, and it is moved and seconded that it be adopted. Vote and carried.

SECTION 19.

Mr. CLAGGETT. Mr. Chairman, I now beg leave to offer this as a substitute to line 28 as amended.

The CHAIR. Without objection, we will return to Section 19.

SECRETARY reads: Changing county seats, unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed, *Provided,* That the power to pass a special law shall cease as long as the legislature shall provide for such removals by general law.

The CHAIR. The amendment is offered as a substitute for line 28.

Mr. AINSLIE. I understand this is not to strike out the line, but to follow the word "seats."

Mr. CLAGGETT. It is a substitute for that line; I have incorporated that line in the substitute. It is a substitute for the whole section. It provides that whenever the legislature shall provide a general law, the power to pass a special law ceases.

The secretary, upon request, reads the entire substitute again as above.

Mr. HEYBURN. I have an amendment which I ask the mover of the substitute to accept: "Provided that no special law shall be passed for any one county oftener than once in five years." There should be some limit to the number of times an application can be made. I offer that as an amendment.

The CHAIR. Mr. Claggett offers a substitute for line 28 which you have heard read. The question is first upon the substitute.

The vote was taken upon the question; the chair was in doubt; a rising vote was taken which resulted, ayes 31, nays 7. And the substitute was adopted.

The CHAIR. Will the gentleman from Shoshone now send up his amendment?

Mr. HARRIS. I will offer an amendment to the amendment and instead of five, insert six; and then it will come according to the election years, and have the vote taken at a general election, and six will coincide.

Mr. HEYBURN. I will accept that amendment.

SECRETARY reads the amendment as amended: To amend by adding, "Provided that no special law shall be passed for any one county oftener than once in six years."

(" Question, question.")

The question was put by the chair. Vote and carried.

The CHAIR. The question now recurs upon the adoption of the substitute for the original section as amended.

Question put by the chair. Vote and carried.

Mr. CLAGGETT. I would like to ask the chairman of this committee one question. I notice that in line 3, Section 19, regulating the jurisdiction and duties of justices of the peace and constables, the words "police judge" also appear. I want to know whether the committee does not think the words "police judge" ought to be stricken out, because we will have various kinds of cities and towns, and some of them will require various police

powers, and to test the matter I move to strike out the words "police judge." They are local courts, and sometimes you want special powers, and sometimes otherwise. You can regulate it by general law.

The CHAIR. In Section 19, line 3, the gentleman from Shoshone moves to strike out the words "police judge."

Mr. HEYBURN. I second the motion.

Mr. MORGAN. I have no objections.

Question put by the chair. Carried.

The question was then upon the adoption of the section as amended. Vote and carried.

SECTION 22.

Section 22 was read, and it is moved and seconded that Section 22 be adopted. Vote and carried.

SECTION 23.

Section 23 was read.

Mr. WILSON. Mr. President, I have an amendment.

Mr. HEYBURN. I have an amendment.

Mr. MORGAN. I suggest that the word "each" in the second line of that section should be stricken out; it is a repetition. I don't know whether either of the amendments offered will cover that or not. I ask to have that word "each" stricken out unless there is objection.

The CHAIR. The gentleman from Bingham asks unanimous consent to strike out the word "each " in line two. If there is no objection it will be so ordered. The chair hears no objection, and it is so ordered.

SECRETARY reads: Amend Section 23 by inserting after the word "session" in the fourth line, the following, "and shall receive the sum of 10c per mile each way by the usual traveled route," and strike out all after the word "legislature" in line seven, and all before the word "the" where the same appears the second time in the eighth line, and insert "they shall receive such mileage as is allowed for regular sessions." Heyburn.

I move to strike out the word "five" in line two, Section 23, and insert in lieu thereof the word "four"; and strike out the words "three hundred" in line three in said section, and insert in lieu thereof the words "two hundred and forty." Wilson.

Mr. WILSON. I make that motion because that conforms to the per diem allowances to members of the legislature under the act of congress; and I think it is all we can afford at this time. It is a well known fact that we must concede, if we allow members of the legislature to receive $5 per day, they will enact a law fixing it at $5 per day. And I have reduced this $1 per day; we have had excellent men in the past legislatures, some of them are in this convention, and I think we can get them again at $4 per day. And by adopting this amount we will save at one session $3,240, which is a lot of money for an impecunious state like ours.

Mr. SHOUP. I wish to offer an amendment to that amendment.

SECRETARY reads: Strike out the word "ten" in line seven and insert the word "twenty."

Mr. MORGAN. Is it intended that shall read as it does now, "20c a mile each way"?

Mr. SHOUP. Yes, the gentleman from Ada offers an amendment to reduce the per diem to $4 a day, and I offer an amendment that the mileage be increased to 20c each way, the same as it is now, instead of ten.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone.

SECRETARY reads: Amend Section 23 by inserting after the word "session" in the fourth line, "and shall receive each the sum of 10c per mile each way by the usual traveled route;" and strike out all after the word "legislature" in the seventh line, and add before the word "the" where the same appears the second time in the eighth line, "they shall receive such mileage as is allowed for regular sessions."

Mr. HEYBURN. Mr. President, I make this amendment simply that the mileage may apply to the regular

session, as well as the extra session. As it reads now, there is no provision for mileage at the regular session of the legislature. It applies only to the extra session. I believe it ought to apply to the regular session, and then say "the same mileage shall apply to the extra session."

The question was put upon the amendment last read. Vote and carried.

The question was then upon the amendment offered by the gentleman from Ada, which the secretary read.

Mr. WILSON. There is an amendment to that offered by Mr. Shoup.

The CHAIR. The question now recurs upon the amendment to the amendment by Mr. Shoup (strike out the word "ten" in line seven and insert the word "twenty"). that line has been stricken out by Mr. Heyburn's amendment. I suppose you apply it to the other part of it?

Mr. SHOUP. Yes.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Custer, changing the mileage from 10c to 20c.

Mr. HASBROUCK. That is an amendment to an amendment which is an amendment to another portion altogether. His amendment would state a different sum from what that of the gentleman from Ada does. If you vote down Mr. Shoup's amendment and then adopt Mr. Wilson's amendment you defeat just exactly what Mr. Shoup wants to do. You decrease by this much the compensation they are now allowed by congress.

Mr. SHOUP. By adopting my amendment, you pay the legislature just the same as it is now. I don't care how you put the question.

The CHAIR. The chair thinks it is an amendment to an amendment. It does not affect really the amendment of the gentleman from Ada which was as to the per diem. The amendment of Mr. Shoup is as to the mileage. The question is upon the adoption of his amendment, whether to increase the mileage from 10c to 20c.

Mr. POE. As I understand it, Mr. President, Mr. Wilson's amendment is that the word "five" be stricken out and "four" substituted in lieu of it.

The CHAIR. He then proposes to strike out "three hundred" and insert "two hundred and forty."

Mr. POE. Yes, and now Mr. Shoup comes in with an amendment to strike out "ten" and substitute "twenty." I think they are separate propositions entirely, and we should vote upon them separately, to-wit, first upon the one offered by Mr. Wilson, and then we can be better qualified to vote upon the other. It is a sort of mental journey—"go until near together, go."

The CHAIR. I understood the gentleman from Custer to waive his right, that he did not care whether they voted for it as his amendment or an independent one.

Mr. SHOUP. Yes.

The CHAIR. Then the question recurs upon the question of the amendment of the gentleman from Ada.

Mr. MAYHEW. I must say I am opposed to this amendment. I am in favor of the per diem and mileage as reported by the committee. I don't see the occasion to require the per diem and mileage of members of the legislature to be so small. I think the service of members of the legislature is certainly worth that of ordinary mechanics, and worth $5 a day. They come here from their homes, they are not surrounded by the conveniences of home; they have to sacrifice their business; and for most of the members $4 a day does not pay their expenses. A good many men will ask why, and say they can live on $2 a day. That is true; I believe some can live on $1 a day, perhaps some on less. But that is not the question at all, how cheaply can a man live or how extravagant he is. The question is about giving them a reasonable compensation in the legislature. I don't believe in requiring men who have any character at all as representative men—men who will sacrifice their business, mercantile, farming or any other business —to come away from home and live in the country in such a beautiful place as Boise is for $4 a day. When

he comes to this place his associations are such that he cannot help but drink a little whiskey when he gets acquainted with some of the members of this convention; he is bound to drink more or less, although I am opposed to a man indulging in anything of that kind. (Laughter.) I think a member of the legislature should certainly have $5 a day in consideration of the time he is from home, for it does not make any difference whether it is right in the midst of his business, whether winter, summer, spring or fall. He has got to make some sacrifices, and I believe he should get enough to justify him in coming. If my friend here lived anywhere else except in Boise where he has all the luxuries that surround him in his pleasant home, he might look at it differently; but he has to make no sacrifices while he is in the legislature. That is pleasant for him, but it is not pleasant for those who come long distances from other places. Another argument he advances is that it will save about $3,200. Well, I don't think it is economy to do it. I ask any person in the world if he does not think members of the legislature, if they are men of ordinary ability, are not worth that.

Mr. GRAY. Oh no.

Mr. MAYHEW. Well, I don't know as my friend would be. But the fact is that I see mechanics right at home getting $5 a day and they are not to any expense. But men who go to the legislature have to leave their homes, sacrifice their business, and I believe they should have as much as an ordinary mechanic earns in this town today, working but eight hours a day at that and living at home.

Mr. WILSON. I just want to answer one point Judge Mayhew raised. He said gentlemen could not afford to come here on $4 a day. I will say that they did so when whiskey was two bits a drink, and I will add that there has been a universal reduction in every saloon in town except one or two, to a bit a drink, or two drinks for two bits.

Mr. ALLEN. I think there is something more seri-

ous than a matter of buncombe. I believe the people are in earnest when they insist upon an economical constitution, and for one I shall be opposed to increasing the expense of our schedule or the expenses of a state government and going to the people on any such proposition. For instance, if this is a business proposition, there are ten or eleven gentlemen in this convention upon the basis of the mileage paid legislators heretofore who will draw $280 in mileage; and on the basis proposed by Mr. Shoup that would pay the expense of a large number of the members in addition to their per diem. That is four times the actual travelling expense over any known route, even in case they had no pass, which is sometimes granted. I believe this a pure business proposition, and for one, I propose to go to the people in adopting this state constitution, and I believe we can make a reduction of at least $6,000 instead of $3,000 as suggested by the gentleman, and I shall favor the reduction.

Mr. MAYHEW. I want to ask the gentleman one thing. When the committee reported to this convention that we were entitled to $6 a day and mileage, did you have any objection then?

Mr. ALLEN. I was not on the committee.

Mr. MAYHEW. I will ask every member in this body if he is not perfectly willing to take his $6 a day, if you can get it? The gentleman is willing to take it and so is every other member of this body.

Mr. ALLEN. I think public sentiment answers the gentleman very clearly, that the discount brings it to $4 a day.

Mr. MAYHEW. It has got to be paid out of the treasury at last at $6 a day. If I take your promissory note for $5 and I have got to discount it at some bank at 30 per cent, does that make any difference?

Mr. ALLEN. Not at all; the gentleman's proposition is very clear, that is a different question. We are going to the people on a proposition when we have an opportunity of making an economical state government; and I merely suggest that the sentiment of the people of

Idaho Territory will back the proposition to make this a reasonable expense, but not a great expense.

Mr. MAYHEW. You say the people. If that is the only point that is going to affect this constitution, Mr. President, God help this constitution. If it is upon the simple fact that this constitution adopts a section which pays the members of the legislature $5 a day, and that defeats the constitution, I am in favor of letting it be defeated. I don't think the people will stop and discuss that question. For most of the people I have talked with in every section of the state I have been in themselves think that the per diem of the members of the legislature is too small. There is no man in the world that has any price for himself or his profession or his business but what thinks $4 a day too small for any man to get away from his home, and devote his time to the public good. Sometimes it does not always result that way, but I am speaking in general terms. There is no economy in it, I hope the amendment of the gentleman from Ada will be voted down.

("Question, question.")

Mr. GRAY. I am fully convinced by the argument of the gentleman from Shoshone, and I would be in favor of having it $10 a day. You would get better men. I think $10 a day is little enough for men to have to come from their homes, it is little enough for a man to live here. My friend does not intend to go to the legislature; he wants some higher office.

Mr. SHOUP. Mr. President—

The CHAIR. I will again announce to the convention that it is impossible for the reporters to hear with conversation going on in audible tones, and also when there is confusion in the rear of the hall. They have reported that trouble, and I request members to try and keep as quiet as possible so that the reporters can catch what is said. When they lose one word in a sentence it breaks the sentence.

Mr. GRAY. There is little or no good in what is said.

Mr. SHOUP. I have no doubt but what the gentleman from Ada would be in favor of increasing the per diem, because he votes for every motion to adjourn and take a recess, and always votes against evening sessions; but when it comes to increasing the mileage, he will vote against that.

SECRETARY reads the amendment: Strike out the word "five" in line 2, Section 23, and insert in lieu thereof the word "four," and strike out the words "three hundred" in line 3, in said section, and insert in lieu there of the words "two hundred and forty."

The question was put by the chair. The chair was in doubt and a rising vote was taken, resulting, ayes 8, nays 34.

Mr. WILSON. I call for the ayes and nays.

Mr. CLAGGETT. I second the call.

The roll was called on the ayes and nays, with the following result:

Ayes: Allen, Chaney, Harris, Lewis, McConnell, Underwood, Wilson, Mr. President—8.

Nays: Ainslie, Armstrong, Anderson, Ballentine, Bevan, Brigham, Campbell, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Lemp, Maxey, Mayhew, McMahon, Melder, Myer, Moss, Pierce, Pinkham, Poe, Reid, Robbins, Sinnott, Shoup, Sweet, Vineyard, Whitton—38.

And the amendment was lost.

Mr. SHOUP. I desire to withdraw my amendment, inasmuch as the amendment offered by the gentleman did not prevail.

There being no objections the amendment was withdrawn.

Mr. CLAGGETT. I offer an amendment at the end of the section: Provided, that whenever any member of the legislature shall travel on a free pass in coming to or returning from a session of the legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member. (Seconded.)

Mr. MAYHEW. Now, Mr. Chairman, I will favor that

amendment if the gentleman can inform me how you are going to find out how many get passes.

Mr. CLAGGETT. The legislature can pass a law, and will pass a law requiring the member to swear to the number of miles he actually traveled without a pass.

Mr. MAYHEW. If the legislature is going to pass that kind of a law I am in favor of it.

Mr. SHOUP. If a member travels on foot his mileage should be doubled.

Mr. GRAY. Mr. President, I have worked for companies, and in consideration thereof I have a pass, and then I have pay besides perhaps, but that is a consideration with me in getting a pass. Now, if I am to be shut out from them, I can't see what reason there is in it. I have worked for the corporations and common carriers perhaps during my life a great deal, and I am still in the employ of some, and I don't see what reason there is that when that is a portion of the consideration for my services, that I must then give it over to some man who, because he did not happen to get my place, is mad about it and wants to shut me out.

Mr. CLAGGETT. I will say frankly right here that I figured this matter up, and I offered this amendment for the express purpose of smashing this whole system of passes to members of the legislature. It gives the member the right to make his choice, either to take his ten cents a mile, which is more than the railroad travel costs, and travel on the railroads, or take his pass and lose money by it. That is just what it comes to. Besides, I claim this idea, that when your legislature allows mileage at all it is to pay the expenses of the member getting here, and if it is not costing him anything to get here, and you go to work and give him compensation out of the public treasury, it seems to me it is taking from the taxpayer that which he has a right to insist shall remain in the treasury. You pay a man a salary for services to be rendered; and if he renders no service he ought not be entitled to any pay.

Mr. GRAY. May I ask the gentleman a question? Suppose he walks, then he should not have anything, should he?

Mr. KING. Mr. Chairman, the legislature ought to be like Caesar's wife, free from suspicion. Now, I ask you if a man can be free from suspicion, that has got $50 or $100 worth of railroad money in his pocket, if any railroad legislation comes up? There are many members that will come to this legislature that we are providing for whose fare will amount to from $50 to $75. A free pass to this man says what? I have got $50 or $75 of money in my pocket belonging to this railroad company. There is legislation coming up, and it is not in human nature to resist the influence that that $50 or $75 he has in his pocket will exert; I believe that is a good consideration. We have fixed the mileage sufficiently to far more than pay his expenses in coming here. Then why should they get double pay?

Mr. POE. It is said every man has his price. $50 may be the price of Brother King, but I doubt whether it would reach the average legislator. Mr. President, I don't think there is any reason in this proposition. I don't think there is a solitary member who ever came to this legislature that accepted a pass as a bribe that he should act as the agent or attorney of that railroad. And I don't think by reason of his accepting it that he thereby places suspicion upon himself or obligates himself to support any measure that would enure to the benefit of that railroad company. I take it this way, that if any incorporated company or any individual in their magnanimity or their generosity shall offer to give to a person a pass, who is going to the legislature to assist in making laws for the country, or see proper to assist him in getting there to perform that duty, I conceive it to be nobody's business, and it does not place him in a position which subjects him to legislative criticism for having accepted either pass or remuneration.

(" Question, question.")

The question was put by the chair upon the amend-

ment proposed by the gentleman from Custer. Vote was taken and the amendment lost.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Shoshone.

Mr. CLAGGETT. I call for the ayes and nays.

Mr. McCONNELL. I second it.

The CHAIR. The question is upon the adoption of this amendment and the secretary will call the roll.

Roll call:

Ayes: Ainslie, Anderson, Allen, Campbell, Coston, Clark, Crutcher, Hampton, Harkness, Harris, Hasbrouck, Hays, Jewell, King, Lewis, Mayhew, McConnell, Myer, Moss, Reid, Standrod, Underwood, Vineyard, Wilson, Mr. President—25.

Nays: Armstrong, Ballentine, Bevan, Blake, Chaney, Glidden, Gray, Heyburn, Hogan, Lamoreaux, Lemp, Maxey, Melder, Morgan, Pierce, Pinkham, Poe, Pyeatt, Shoup, Sweet, Whitton—23.

(Ayes 25, nays 23, and the amendment was adopted.)

The CHAIR. The question now recurs upon the adoption of the section as amended.

The question was put by the chair. Vote and carried.

SECTION STRICKEN OUT.

Section 24 was read.

Mr. AINSLIE. I move to strike that section out.

The motion was seconded, and the question put by the chair. Vote and carried.

SECTION. 25.

Section 25 was read.

Mr. HEYBURN. I move to amend by inserting after the words "judge of the supreme court" the words "or presiding officer of either house." The amendment was seconded.

Mr. MAYHEW. I suppose the idea of that is to authorize the presiding officer to administer the oath to any members that are not there at the time of the organization of the body.

Mr. HEYBURN. So that he may be able to, yes.

Mr. MAYHEW. I favor it then.

The question was put by the chair. Vote and carried, and the amendment was adopted.

The question was then put upon the adoption of Section 25 as amended. Vote and carried.

Proposed Section 26 — Stricken Out.[1]

Section 26 was read.

Mr. ALLEN. I have an amendment to offer.

SECRETARY reads: I move to amend Section 26 by inserting after the word "contract" in line 4 the words "for a term of two years," and move to strike out the words "other things being equal" in lines 5 and 6.

The amendment was seconded.

Mr. ALLEN. I just want to say one word in explanation. A number of publishers of this territory have thought it would be at least fair that this should be so amended, and I understand that the chairman of the committee is willing to accept it at their request.

Mr. MORGAN. I have no objection to the first amendment, Mr. President. I prefer to let the convention vote upon the other.

SECRETARY reads the proposed amendment again.

Mr. POE. Do I understand the gentleman, by the term of two years, that this shall only be paid "for the term of two years"?

Mr. ALLEN. The contract shall be let for the term of two years. That is the term for which the legislature is elected, and it is for the printing ordered by the legislature.

Mr. POE. The contract should each time be let for the term of two years. Now, he moves to strike out the last part, and leave those words "other things being equal, preference shall be given to a resident of the state." Now, I cannot conceive why the gentleman, being a resident of this state, should desire that clause stricken out.

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[1]—See p. 1266 for language of this section as proposed.

The CHAIR. It is the words "other things being equal."

Mr. POE. That is it; but would you not conceive or suppose by the meaning of those words that a contract for the printing was to be let and that bids were due to be received? Parties from different states or places outside of this territory might wish to make a bid to do that printing, and parties in this territory might wish to make bids. Now perhaps parties in this territory would make the same bid for doing the same work that parties outside would make. Everything being equal; that is, the bids being equal by the outside parties with the bids of parties living within the state, then, as I understand it, this section intends to give the preference to the printer who is a resident of the state. If that was the intention of the committee when they engrafted those lines in that section, I think it was the part of wisdom, and it is the part of justice. First, we should award to our own people any benefits we can give them in preference to a stranger, as long as they are willing to do the work for the same price as the stranger. That is a thing we are attempting to guard against, which has been a curse to the printing fraternity of this territory in the past. Often there have been large contracts for doing the territorial printing, and the contract would be let to some man in New York, Philadelphia or Cincinnati in preference to men who are living in our midst. All this is intended to do is to protect the printer that lives and is identified with us in this state, and if he can do the work as cheaply as those on the outside, then I want the law to say that he shall have the preference.

Mr. ALLEN. Mr. Chairman, I will try and state the position fairly as I understand it. And I desire to go on record on this proposition, and I shall ask that the other members also put themselves on record. It is well known that the expense of printing, of labor, fuel, freight on material, and everything connected with it, are at least 33 per cent higher than they are in the east; at least that much in many respects, and it is 100 per

cent in those matters I refer to; that the publishers in this territory have to pay more than those who contract for this work in New York, Washington, Omaha or St. Louis. The conditions here are different, and in behalf of those who are publishing and printing in this territory I offer this amendment.

And I will explain further, that the work which we have had, the Revised Statutes which were printed three years ago, were let to the lowest bidder. The result was that I think there were three hundred errors, it may have been thirteen hundred, but certainly over three hundred errors in that work, of such a nature that it almost invalidated the entire value of the statutes. This work, I say, should be done within the state. In Montana and in other new states it is made obligatory that the work shall be done within the limits of the state. It is for the purpose of building up facilities within the state of Idaho that we offer this amendment, that it shall give the preference, and if there is any gentleman in this convention that can explain what the result will be or what the meaning is, or what the power or intention is of "other things being equal" then I will be willing to give up. If there is a gentleman that can make that explanation I would like to hear it.

Mr. VINEYARD. I favor the amendment, particularly the latter portion, offered by the gentleman from Logan. Those words "being equal" being stricken out, it has the very effect which the gentleman from north Idaho desires. If you retain the words "being equal" it gives the legislature a chance to quibble and perchance might award this business to an outsider. But these contracts are let to the lowest responsible bidder. It leaves it beyond question, takes it beyond the power of the legislature, which I have been contending for in a number of things. It makes it absolutely obligatory upon the legislature to award these printing contracts to the lowest responsible bidder, the preference being given to residents of the state.

Mr. GRAY. All I want to say is this: I think those

words are proper there. There has been a great deal of printing done here that was not fit to be seen in any place. I want those words there, that they shall do as good work, is my understanding of them. I understand that to be what those words are put in for. Not that they should not want to give it to a man residing in the territory if he does equal work for the same price; but if he is to print it on brown paper or do it in a bungling manner, as a matter of course, we don't want that. We want he should do equally as good as is done outside. He may be lower in price, but if he does it lower and may be responsible, all right; but we want it done well. That is all there is to it.

Mr. POE. Just one moment. When I made the remarks I did I was laboring under the impression that all was struck out after the word "contract": "other things being equal, that preference should be given to residents of the state." I was not aware when I made my remarks, that only the words "other things being equal" were to be struck out leaving the words "preference being given to residents of the state," in there, or else I should not have made the remarks I did.

Mr. McCONNELL. I don't fairly understand this, Mr. President. If it is the intention of the gentleman who offers this amendment, which from his language I presume it is, to give the contracts under any circumstances to the printer in this territory, I would like to know it. He is willing to give him, according to his remarks, thirty-three and a third per cent more sooner than to give it to somebody else.

Mr. ALLEN. No, I did not say so, and no gentleman could have misunderstood me.

Mr. McCONNELL. Well, I may not be a gentleman then, because I misunderstood you, is that the inference?

Mr. ALLEN. No sir, no sir, not at all.

Mr. McCONNELL. That was the language; by referring to the reporters' notes I can have it read, that it would cost thirty-three and a third per cent more to do the printing here than in the east, and that the print-

ing has been done in the east in a very bungling and incorrect manner, and consequently the supposition was that it was better for us to allow thirty-three and a third per cent additional than to send it outside the territory. Now, that would be the result if the clause was struck out. I am in favor of a two-year contract; I am in favor of giving the printer who has a contract here an opportunity to fix his office so that he can go on and know that he has two years' work. I think that is all right, and I say, that the people of this territory shall have the preference without putting in any provision. I don't believe in it, because—

Mr. ALLEN. If the gentleman will allow me—

Mr. McCONNELL. Certainly.

Mr. ALLEN. As I understand, there is no explanation necessary except to read the exact language in that section, when it is amended, and I will read it: "The legislature shall provide by law that the printing shall be let by contract for a term of two years (which I think the law considers is proper) to the lowest responsible bidder, and in awarding such contract the preference shall be given to printers of this state." Now, it is entirely in their hands. They would certainly not try to cheat the state; they are not expected to, and I do not think it is a fair inference for anyone to suggest such a possibility.

Mr. McCONNELL. I think it is a fair inference that merchants, railroads or any other class of people will get the better of the people of this state if they can. That is an inference that is very clear to me. There are how many printing offices in this territory that have a plant to do the state printing? The way it is, they enter into a combination or make an agreement, "You tickle me and I will tickle you and we will get as many thousand dollars as we can." I can't see any reason why that should be stricken out. If everything is all fair, let it be there; what is the use of striking it out. I move, Mr. President, that Section 26 be stricken out.

Mr. CLAGGETT. I second the motion, and I think

the motion should prevail. The idea of undertaking to put in the organic law of the state a provision regulating how the journals of the house of representatives and the senate shall be printed, and whether preference shall be given to residents or nonresidents of the state, and taking the whole thing out of the hands of the legislature, it seems to me is going too far.

Mr. ALLEN. I perfectly agree with the gentlemen, but if it should be insisted upon, as has been by this committee, I insist that every man shall go on record on that proposition; but this has no place here.

Mr. CLAGGETT. I very much regret that the printers interested in this matter have not prepared this section with greater care. The last sentence says the preference shall be given to residents of the state. Nine-tenths of all contracts heretofore awarded, have been awarded to residents of this territory.

Mr. ALLEN. I will say to the gentleman that I have an amendment covering that, but thought it was not necessary to present it.

Mr. CLARK. And those residents, after receiving the contract, sent it off. It was given to the proprietor of the Statesman (not the present one), and he sent the work entirely out of the territory; so that if the section is adopted in any form it should be very essentially changed. It is extremely desirable that the work of printing should be done within this territory. I am not the owner of a printing press, I never expect to own one, but I have owned a great many. The value of having the work done in this territory and done well is for the purpose of securing accuracy. All of the printing which has been done for this territory has been very badly done, no matter how well it might appear upon the face of it, how clean or how well printed or how well the typographical work appears. It has been full of errors for the reason that the proofs could not be read in this territory by persons familiar with the matter. The late revision is full of errors, for the simple reason that it was a compilation of laws already on the statute

books, and the revisors took the printed copy, carefully collated them, and marked such sections of the printed copies as they wanted, so that the accumulations of fifteen years of errors were faithfully transmitted to the legislature for readoption; and the copyists faithfully copied every error, the errors went to the printers and the printers faithfully copied them, and they all came back here in the proof sheets to be read by the Honorable R. Z. Johnson after they were beyond redemption and could not be corrected. The whole system is bad. There ought to be a section here providing, as is provided in three-fourths of the states and ought to be in all the states, for a public printer. The work ought to be done at prices at which a man can do his work and do it well. The public printer ought to be a resident of this state, and given a contract for a sufficient time so that he can be prepared to do the work in the interests of the state. Just as well might we let out the work of the secretary of state or of the treasurer to a resident of Nebraska as to let out the printing of the state, if we are not considering the interests of the state. I think therefore the whole paragraph should be rewritten in order that the interests of the state may be subserved in the matter of printing.

Mr. GRAY. I will say to the gentleman from Ada who has just spoken that if the trouble was with the revisers of these statutes, what is the matter with the number of pages of errata there is in it? There was never a poorer job done in the territory than that one which was managed by the gentleman from Ada. It was well written and it was correct, too, and here you may turn to the first page of your errata and see whether it was our fault.

Mr. CLARK. I hope the gentleman will allow me to say there was not a single word in what I said that could be construed as a reflection upon the revisers, not one single word. These gentlemen did their work faithfully, and after the revision passed from their hands into the hands of the clerk, the gentleman will not contend that

with his hand he wrote out the sections of that revision. He will admit that he had the printed work and used it just so far as he conveniently and reasonably could, and that such sections as needed rewriting were rewritten; but a very large part, if not a majority of the work, was handed to the clerk for copying as printed matter, and he copied those errors most faithfully.

Mr. GRAY. Who was it attended to it? What clerk was it handed to?

Mr. CLARK. Mr. Henry Johnson was the first transcriber.

Mr. GRAY. It was all corrected before it went to his hands, and then recopied under the supervision of Mr. Heuschkel.

Mr. CLARK. I beg the gentleman's pardon. The work was never copied to go from this state to the territorial printer. I read that manuscript first myself and was the first to discover the errors in the manuscript. I was the first to call the attention of the committee of the legislature to the fact that the errors were there.

Mr. MORGAN. I rise to a point of order. This discussion is out of order. The question is on the striking out of the section.

The CHAIR. The point of order is well taken. The question is upon the motion of the gentleman from Shoshone to strike out Section 26.

(" Question, question.")

The question was put by the chair. Vote and carried, and Section 26 was stricken out.

The CHAIR. The question now recurs upon the adoption of the article on Legislative Department as it has been read and adopted by sections.

(" Question, question.")

Section 12.

Mr. PINKHAM. Before that vote is taken I wish to enter a motion to reconsider the vote by which Section 12 was passed this forenoon. (Seconded.)

Mr. MAYHEW. I would ask for an explanation.

Mr. PINKHAM. In the absence of Mr. McMahon from this convention, perhaps the gentleman from Shoshone will be substituted for him. I would like to have this section explained to me. I have read it carefully over and over again as it has been amended in this convention, and I can neither make reason, head, tails nor rhyme out of it.

Mr. MAYHEW. I did not ask the gentleman to comment upon the grammar of it; I asked him simply to state the reasons why he wanted it to be reconsidered, in order that I might support his motion.

The CHAIR. The gentleman's explanation is proceeding by consent. Under the rule no discussion can be had on this motion.

Mr. PINKHAM. I ask that this convention reconsider the motion by which it was passed. I will read the section as it now stands. "The doors of each house and of the committee of the Whole shall be kept open"—kept open when? Kept open during the day or during the night or on Sundays or for what purpose? I can find no sense in it at all. When you come to sift it down it does not apply to the council or the senate of that august body at all; there isn't a word in relation to it at all. It says "in the committee of the Whole and of the house." For that reason I don't see any object in having the section there at all, and for that purpose I will enter a motion to strike it out entirely.

The CHAIR. The chair will rule that that is out of order. The question is first upon the motion to reconsider.

The vote was taken viva voce and a division called for. On the rising vote the result was 23 ayes, 12 nays.

The CHAIR. The motion to reconsider prevails and Section 12 is now before the convention.

Mr. PINKHAM. I make a motion to strike out Section 12. (Seconded.)

Mr. AINSLIE. I move to amend. After the word "open" in the following line, "the doors of each house and of committee of the Whole shall be kept open," add

the following, "and the business of each house shall be openly and publicly transacted."

Mr. GRAY. Is not the motion to strike out, the first motion?

The CHAIR. Yes.

Mr. SHOUP. Was there not an amendment to that section adopted this morning?

Mr. STANDROD. I understood the following words were also adopted, "at all hours when the legislature is in session."

The CHAIR. That was Mr. Parker's amendment and it was voted down, and your amendment adopted. While the gentleman is preparing his amendment the question is on the motion to strike out the section.

The question was put and a viva voce vote taken. The chair was in doubt. On the rising vote the result was 20 ayes, 18 nays, and the section is struck out.

Mr. ALLEN. I move to adopt the article as amended.

Mr. MAYHEW. Well, I understand the gentleman wanted to offer a substitute to that section, and it is not entertained.

The CHAIR. We are now waiting for him to prepare it.

Mr. AINSLIE. I offer a substitute for Section 12. (Reads) "Section 12. The business of each house and of the committee of the Whole shall be transacted openly and not in secret sessions."

Moved and seconded that the substitute be adopted. ote and carried.

Mr. MORGAN. I now move the adoption of the article. (Vote and carried, and the article on Legislative Department was adopted.)

The CHAIR. The question now is upon ordering the article as read for engrossment and setting a time for final reading.

Mr. MORGAN. That is the motion I was preparing to make. I move the time be Monday at two o'clock.

The motion was seconded. Vote and carried.

RESOLUTIONS IN RE STATE ELECTION.

Mr. AINSLIE. Mr. President, I ask leave to offer a resolution. I thought there would be no further business, and under the rule it will lie over until Monday.

SECRETARY reads:

"*Resolved,* That it is the sense of this convention that no election for any of the officers provided in the constitution of the state of Idaho shall be held until the said constitution is approved by congress, and under the provisions of an act of congress.

"Second: *Resolved,* That no United States senators in the state of Idaho be elected until the convening of the first legislature under the provisions of the constitution adopted by this convention.

"Third: *Resolved,* That the judiciary committee be, and is hereby instructed to report a section in accordance with the foregoing resolutions to be incorporated in the constitution. Ainslie."

The CHAIR. Under the rule the resolution will lie over one day. What is the further pleasure of the convention?

REVISION COMMITTEE—CHANGE OF MEMBERS.

Mr. SHOUP. The chairman of the committee on Revision, Mr. Beatty, is absent. The next member is W. W. Hammell, who is absent. The next member, Mr. Morgan, is going away tonight. I am the next member, and consequently bills that are already engrossed have been sent to me. Now, Mr. Hammell will not be back at all, as I understand, and I therefore move that the gentleman from Latah, Mr. Sweet, be placed on this committee in lieu of Mr. Hammell. (Seconded. Vote and carried).

Mr. CLARK. Mr. Chairman, I move that the presiding officer fill up the vacancies caused by the absence of the democratic members of that committee.

The CHAIR. Suggest the president of the convention.

Mr. CLARK. All right. (Seconded).

The CHAIR. It is moved and seconded that the president of the convention fill up the other vacancies on that committee who are permanently absent.

Voted and carried.

Mr. GRAY. Mr. President, there are so many going away that I would ask that the resolution of the gentleman from Boise may lie over until Tuesday morning, or until Wednesday morning. Would that be objectionable?

Mr. AINSLIE. If it comes up Monday morning I suppose by agreement it could lie over.

Mr. GRAY. Why can't we put it over now, there are so many away.

Mr. AINSLIE. Well, I would have to consult some of my friends. You can take it up now so far as I am concerned.

Mr. GRAY. I move that it go over until Wednesday morning. (Seconded).

Mr. GRAY. The idea is this: Those are away now who want to take some part in it and will not be here Monday morning.

Mr. MAYHEW. It can be passed over.

Mr. GRAY. But it would have to be done by a vote. I cannot see why it cannot be as well passed now.

Mr. AINSLIE. I will state to the gentleman that I am in no particular hurry about the resolution, and I have no doubt it can be postponed until Wednesday or Thursday or Tuesday.

Mr. GRAY. Can't it be so ordered now?

Mr. McCONNELL. I move that the resolution be made a special order for Wednesday morning at ten o'clock.

Mr. GRAY. I second the motion.

The CHAIR. The chair will say that it has been stated and referred under the rules, and there would have to be a motion to suspend the rules.

Mr. GRAY. I move to suspend the rules for the purpose of making it a special order for Wednesday.

The CHAIR. The gentleman from Ada moves that

the resolution that has been reported by Mr. Ainslie be now taken up and made a special order for Wednesday at ten o'clock. This will require a two-thirds vote. (A *viva voce* vote was taken). The chair is in doubt. As many as are in favor of the motion rise——

Mr. SWEET. I don't understand the motion.

The CHAIR. The resolutions offered by Mr. Ainslie should under the rule lie over until Monday. The motion is that they be now taken up and made a special order for Wednesday at ten o'clock. It is moved that the rules be suspended and that order be made. It will require a two-thirds vote to suspend the rule.

A rising vote was taken, resulting ayes 20, nays 17, and the motion is lost.

Mr. WILSON. I move that the resolution be made a special order for Wednesday morning.

The CHAIR. That is the motion just made, and which was lost.

Mr. WILSON. The motion just made was that this resolution be taken up now, and be made a special order for Wednesday.

The CHAIR. The motion was to suspend the rules and take up the resolution and make it a special order for Wednesday at ten o'clock.

Mr. WILSON. As I understand the rule, it must go over one day, and if they take it up inside of one day, they must suspend the rule.

Mr. AINSLIE. There is time enough for the gentleman to make that motion on Monday morning. This motion has just been defeated, by lack of the necessary two-thirds.

The CHAIR. When a resolution of that sort is introduced, it lies over one day under the rule, and before any question can be had to take any action on it whatever, the rule must be suspended. The gentleman made a motion to suspend the rule to take such action, and that has been voted down.

Mr. CLAGGETT. Except by leave of the party offering the resolution. In other words, he has a right to insist that it shall lie over one day.

The CHAIR. Yes.

Mr. SHOUP. As I understand the rule, the gentleman offering the resolution must first give notice that he desires to speak upon it before it can be laid over. If he does not desire to discuss it, it must be taken up right away.

The CHAIR. The chair construes the rule that he gives notice that he will discuss it. The gentleman instead of giving notice that he would offer a motion on a certain subject, has offered the motion itself, which lies over under the rule. The gentleman has asked his consent to put it over, and that is declined, and then the house took a vote upon it and refused to suspend the rule to set a time.

Mr. MAYHEW. I move we adjourn until Monday morning at 9 o'clock.

The motion was seconded and a rising vote taken, which resulted, ayes 21, nays 13, and the motion to adjourn was carried.

Mr. CLAGGETT. One moment, Mr. Chairman, before the adjournment is announced, I want to give notice of the appointment of a committee, which was ordered to be made.

Gentlemen of the convention, a resolution was offered yesterday for an appointment of a special committee on revising the minutes and proceedings of this convention. I apprehend that committee will remain in session two or three weeks after the adjournment of the convention, and it is necessary that such gentlemen be put upon it as live in this town, or as close as possible, and I therefore appoint on that committee, Mr. Wilson, Mr. Moss and Mr. Clark of Ada.

Mr. HEYBURN. Mr. President, I move you that the secretary of the territory be made a member of that committee.

The motion was seconded.

Mr. AINSLIE. I don't know whether the convention can make him a member, but they can respectfully invite him to co-operate with it.

Mr. WILSON. He signified his willingness to accept.

Vote and carried.

Adjourned until Monday morning, July 29, 1889, 9 o'clock.

TWENTY-FIRST DAY.

MONDAY, *July 29, 1889, 9:00 A. M.*

Convention called to order by the President.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Coston, Crutcher, Gray, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Parker, Pefley, Pierce, Pinkham, Poe, Pyeatt, Reid, Sinnott, Shoup, Steunenberg, Sweet, Underwood, Vineyard, Wilson, Whitton, Mr. President.

Absent: Andrews, Batten, Beane, Beatty, Cavanah, Crook, Hagan, Hammell, Harkness, Hendryx, Howe, Lemp, McMahon, Morgan, Pritchard, Robbins, Salisbury, Savidge, Standrod, Stull, Taylor, Woods.

Journal read and approved.

Presentation of Petitions and Memorials: None.

Reports of Standing Committees: None.

Reports of Select Committees: None.

COMMITTEE CHANGES.

Mr. POE. I ask that Mr. Reid be placed on the committee on Apportionment in my place, and also on the committee on Schedule, in place of Mr. Howe.

The CHAIR. If there is no objection he will be placed on the committee on Schedule in place of Mr. Howe.

Mr. HEYBURN. It seems to me in making up the committees the same balance of political power should

be maintained. Mr. Howe should not be replaced by any member of the democratic party.

Mr. POE. There is no other member from our county except Mr. Reid, is the reason I requested that.

Mr. HEYBURN. He need not necessarily be from any particular county.

The CHAIR. If the gentleman from Nez Perce makes a motion to that effect we will have something before the house.

Mr. POE. I move that Mr. J. W. Reid be placed upon the committee on Schedule in place of Mr. Howe.

The CHAIR. Are you ready for the question?

Mr. HEYBURN. Do I understand that under the rules of this convention, with the appointing power of the committees vested in the president of the convention, it is competent for any member or any number of members to say who shall be placed upon any committee? I do not so understand it under the rules. Every committee might be changed.

Mr. WILSON. I move to substitute Colonel Ballentine upon that committee on Schedule in Mr. Howe's place.

Motion seconded.

The CHAIR. There seems to be a point of order raised here which I will investigate first.

Mr. CLARK. I refer you to Rule 7, page 17.

The CHAIR. "All committees shall be appointed by the president, unless it shall be otherwise directed by the convention." The chair rules it is in order.

Mr. VINEYARD. It seems to me but simply carrying out the intention of the president of this convention when these committees were formed from the various counties. I approve of the motion to appoint Mr. Reid on this committee as a member of the convention. I think it is right for the reason that the committeeman, who was regularly appointed from the county which Mr. Reid hails from is not able to be here, and will be absent probably to the end of the convention. And I think his place ought to be substituted by a gentleman from

the county he comes from. For that reason I think Mr. Reid ought to have the preference.

Mr. WILSON. There are eighteen counties in this territory, and only nine members of the committee on Schedule; so it does not follow at all that because a member from a given county leaves, that a member of the same county should be appointed on that committee. Of course, I am willing the chair should appoint this committeeman, and if the gentleman withdraws his motion, I will withdraw my substitute and leave the chair to act.

Mr. HEYBURN. I don't understand that there is a vacancy on this committee necessarily. Mr. Howe will doubtless return during the week. He is entitled to retain his place upon the committee, unless he requests to be excused from it. It is not fair to depose him in this way.

The chair put the motion to substitute Mr. Reid in place of Mr. Howe upon the committee on Schedule.

Mr. REID. Mr. Chairman, I hope my colleague will withdraw my name. It is the first time objection has been raised. Mr. Anderson was put on the same committee the other day in place of Mr. Beane, and it has been done from the beginning of the session; but I do not want to serve on any committee against the objection of anybody. Mr. Howe is away, and as the chair and members of the convention know, this is a committee that ought to be full. It has to submit to the convention this question of election, etc., but I hope my colleague will withdraw the motion, it having met with objection. The point raised has been acquiesced in since the convention met; but I do not care to serve on the committee so far as that is concerned, although it has been done repeatedly when members have gone, in order to keep the committees full. I suppose every county ought to be represented in the matter of apportionment. The purpose is so evident that——

The CHAIR. Does the gentleman from Nez Perce withdraw his motion?

Mr. POE. I can see no reason why I should withdraw that motion. I see no reasons for any objections being interposed to the appointment of Mr. Reid upon that committee. I don't think any legitimate reason could be given, and therefore I shall not withdraw it.

The CHAIR. It is moved and seconded that Mr. Reid be placed upon the committee on Schedule in place of Mr. Howe. To that an amendment is offered by the gentleman from Ada that Mr. Ballentine be placed on said committee in place of Mr. Howe. (Vote). The noes seem to have it; the amendment is lost. The question recurs upon the motion to place Mr. Reid upon the committee in place of Mr. Howe.

Vote and carried.

Article III., Section 24.

Mr. CLARK. Mr. President, at an early stage of the convention we adopted an article on the subject of temperance, about five or six lines. I would ask that that be referred to the committee on Engrossment, and be put on its final passage immediately following the report on Legislative Department this afternoon, in the committee of the Whole, and in the whole house, both. (Seconded).

The CHAIR. It is moved and seconded that the section which was adopted by the convention some time ago relative to temperance be referred to the committee on Engrossment with a request to report the same for final action this afternoon.

Vote and carried.

LEAVES OF ABSENCE.

Mr. BRIGHAM. I would like to ask indefinite leave of absence after six o'clock this evening. I have been away some time and it is a very busy season, and I cannot possibly stay any longer without sacrificing my own business more than I ought to.

COMMITTEE CHANGE.

Mr. KING. I move now that Judge Mayhew be

appointed on the committee on Schedule in place of W. W. Woods. Mr. Woods is sick and absent and will not be here again during the session, in all probability.

Seconded. Vote and carried.

Mr. MAYHEW. Mr. President, I decline to accept the position.

LEAVES OF ABSENCE.

The CHAIR. The gentleman has been substituted on that committee, in place of his colleague, Major Woods. Mr. Brigham asks indefinite leave of absence. Is there any objection?

Mr. CHANEY. Mr. President, I think we should call a halt on giving indefinite leaves of absence to members of this convention. To our utter dismay, we found ourselves without a quorum recently, and so far as the business transactions of my friend and colleague are concerned, I don't think they are so terribly urgent, no more so than the ordinary member.

The CHAIR. An objection has been made, the chair cannot excuse the gentleman unless the convention by a vote so orders. What is your pleasure?

Mr. SINNOTT. I move a vote be taken whether Mr. Brigham be excused or not. (Seconded).

Vote and carried. An indefinite leave of absence granted the gentleman from Latah.

The CHAIR. The chair is informed by the secretary that it is absolutely necessary for him to be absent from the convention today, and requests to be excused.

Mr. REID. I move he be excused. (Vote and carried).

PUBLICATION OF PROCEEDINGS.

Mr. WILSON. Mr. President, I have been appointed on a committee to arrange for and supervise the publication of the shorthand reports, or rather, the records of this convention. I would ask that some arrangement be made for the payment of this expense. Probably the best way would be that the special finance committee,

appointed by yourself some time since, be instructed to raise the money for this expense. Therefore I move that that committee be instructed to make arrangements for raising the necessary funds for this expense. (Seconded).

Mr. MAYHEW. I would like to inquire what the gentleman means by publication.

Mr. HEYBURN. If the gentleman will permit me, as the maker of that motion the other day, I did not include publication, but simply to have the notes transcribed, and then they will be ready for publication when ordered.

The chair put the motion. Vote and carried.

RESOLUTIONS RELATING TO STATE ELECTION.

Mr. AINSLIE. Mr. Chairman, I believe under the rules, the resolutions I introduced on Saturday come up in regular order now. I believe the resolutions asked that they be referred to the Judiciary committee. Under the rules I suppose the proper committee would be the committee on Schedule. I am ready to take them up today if it is desired; if not, to go to the committee. I understood it was suggested by some member not to be heard on this today or tomorrow. I am not disposed to press the matter at all. I move they be referred to the committee on Schedule. (Seconded).

Mr. GRAY. I would rather they would go to the Judiciary committee. It is a larger committee, and a committee of men that probably understand the question better than this Schedule committee, and I would like to have it, if it is agreeable to the gentleman from Boise. Why I opposed on Saturday bringing this up, I wanted every man to be heard or to have an opportunity. A good many have gone away. Let them be here to express their views on this matter.

Mr. AINSLIE. I never noticed the rules until I was examining them here, and I see that the duty of the committee on Schedule is to provide for these things.

Mr. HEYBURN. Mr. President, I want to under-

stand what we are voting on. Do I understand that the motion is that the whole matter be referred to the committee on Schedule without instructions or that——

Mr. AINSLIE. Without instructions.

Mr. HEYBURN. Then in order that that may be plain, I move to amend by stating that they shall be referred without instructions.

Mr. AINSLIE. Certainly, I accept that amendment.

The question is put by the chair. Vote and carried.

ORDER OF BUSINESS.

Mr. REID. I move that the convention resolve itself into committee of the Whole on the regular order of the day, which I believe is finishing the report of the committee on Public and Private Corporations.

The question was put by the chair.

Mr. MAYHEW. The committee of the Whole has taken up the consideration of the article on Public and Private Corporations and passed upon it. I offered an amendment by consent of the committee on Public and Private Corporations in relation to trusts. That matter came up the other day and was by my own motion or some other member to be taken up in consideration that that new section be considered in the convention. Now, the convention has gone all through that in committee of the Whole, and I do not see the necessity of going back into committee of the Whole.

Mr. REID. That is right. That amendment was acted upon in committee of the Whole, and I will change my motion, and move that the next order of business be consideration of the report of the committee on Salaries of Public Officers; and I hope the convention will proceed with that, because the chairman of the committee is here.

The CHAIR. Does the gentleman desire now to take up the matter of Public and Private Corporations?

Mr. REID. I withdraw my motion as to resolving the convention into committee of the Whole on the

consideration of the report of the committee on Public and Private Corporations, and make this motion, that the convention resolve itself into committee of the Whole and take up the report of the committee on Salaries of Public Officers, which is the first regular order on the calendar. And the reason that I request that is that the chairman of the committee, Mr. Poe, is here now, but he will go off this evening. It is in the regular order and it will not be skipping any part of the calendar, and I hope the convention will take it up at once, so that we can act upon it while the chairman is here.

The CHAIR. The first regular order is the report of the committee on Public Indebtedness.

Mr. REID. That will be the regular order; I will give way, to take that up and dispose of it first, and then proceed with the report on Salaries.

The CHAIR. Very well. It is moved and seconded that the convention go into committee of the Whole, for the purpose of considering first the report of the committee on Public Indebtedness, and after that, on County Organization.

Mr. REID. Salaries of Public Officers.

Mr. HEYBURN. I would like to include also—I understand we have not acted on the section that was ordered printed and laid on the members' desks providing for the investment of school funds—I would like to include that also.

Mr. REID. I accept the amendment. (Vote and carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. Shoup in the chair.

ARTICLE VIII.— PUBLIC INDEBTEDNESS—PROPOSED SECTION.

The CHAIR. I am informed that that report has been acted upon, but was laid aside in order to enable the gentleman from Shoshone, Mr. Claggett, to offer an amendment or an additional section. The additional section may now be read.

Mr. CLAGGETT. I will read it myself as it is in pencil and not very plain.

Section ——. All taxes levied and collected in any county for county purposes, and all county levies from whatsoever source derived, except those for school purposes, shall, after deducting therefrom the amount belonging to the state, be paid into and constitute a fund called "Current Expense and Redemption Fund;" and all county expenses except for school purposes shall be paid out of said fund in cash. Whenever the market value of county warrants of such county at date of issue shall be less than ninety-five cents on the dollar, all moneys remaining in said fund after the payment of said expenses shall be set apart for the redemption of all unpaid county warrants of such county. And the person or persons who shall, on public advertisement therefor, offer county warrants of said county, principal and interest included, for redemption at the lowest rate or smallest number of cents on the dollar shall be preferred in such redemption. The legislature shall by law enforce the provisions of this section.

Mr. REID. What report do you propose to add that to.?

Mr. CLAGGETT. It is an additional section to the report of the committee on Public Indebtedness.

The CHAIR. Is there any second? That will be Section 5, as Section 4 was struck out. The question is upon the adoption of this section. Are you ready for the question?

Mr. HEYBURN. Mr. Chairman, I realize that there is a necessity for some action to relieve counties which are situated in a certain way in regard to their public indebtedness, from those difficulties; but I am somewhat inclined to doubt the fairness and justice of this method, and these are my objections to it. We will say for instance that a county has issued $10,000 of scrip, which is outstanding; that the revenue of that county is fixed; the purchaser of that scrip, knowing what the probabilities of payment are, buys the scrip relying upon the fact that the county funds will be used for the payment of the scrip, applied to its payment; and then afterwards, the county commissioners,

if they are given this power at this time to take the fund that the purchaser of that county scrip relied on to pay his scrip, and defer payment or possibility of payment of that scrip for an indefinite time, it works a hardship and an injustice to the owner of that scrip. It seems to me there ought to be some method by which this could be done that would not be subject to that objection. For instance, in our county we have outstanding something over $65,000 of county scrip. Now in October next a large amount of that scrip is expected to be paid off by the taxes that will be collected from the levies of the county. Now, suppose that between now and October the county commissioners, instead of paying off that scrip, or providing for its payment, shall take this money to pay up outstanding indebtedness of the county. Isn't it working an injustice to the parties who naturally and of right calculate on their scrip being paid at that time? That is the question that submits itself to my mind.

Mr. REID. If the gentleman who introduced this amendment will not object, it would come in as well at the end of the report on County Government as here. It is a very important matter. At present I am not ready to act upon it. It is going to interfere greatly with our present method of doing county business. In other words, it seems to me I like the idea and the end he aims at, but whether or not we are going to give the county the power—the point I want to guard against—to issue its scrip, and then go on the market and buy it in at a less price than the face of it, at the same time holding power to levy taxes to pay it—whether or not it would not intimidate or compel or rather bulldoze people into taking less, is an important question to consider, and in order that we may consider it well I ask the gentleman to withdraw it for the present, at least, withdraw it as a part of this report, and propose it as an additional amendment to the report on Counties and County Organization, and let it be printed, and then when County Government comes up it can as well go

in there, and if that is not the place for it, the committee on Revision can put it at the end of that section very easily when the convention adopts it, or some substitute or amendment for it. But in order that we may have it printed and speculate over it a little and study it out, I would ask him to introduce it as an additional section to the report on County Organization, and have it printed and laid on our tables in the morning.

Mr. CLAGGETT. I have not the slightest objection to that; in fact, I would prefer to have that course taken. All I want in connection with the matter is that the convention shall take some decided action.

Mr. REID. The gentleman does not understand me as opposing it?

Mr. CLAGGETT. No, I do not. All I want is that the convention take some decided action so far as the government of counties is concerned, so that we may stop this absolute ruin of county finances by the present system, or lack of system under which the territory has been operated. And at the suggestion of the gentleman I will ask leave to withdraw this, and have it ordered printed, with leave to present it as an amendment to the bill to which the gentleman refers.

The CHAIR. Wouldn't it be better to have the amendment referred to the committee on Counties?

Mr. REID. That would just delay it, Mr. Chairman.

The CHAIR. Very well.

Mr. REID. The committee on County Government in the meantime, as well as others, can look over it, and this is the most expeditious way. It can be done by consent.

The CHAIR. If there is no objection, it will be so ordered. The next business in order is the consideration of Report No. 13, report of the committee on Salaries of Public Officers.

Mr. HEYBURN. I would suggest that the next business is Section 17 (11) of the report on Education, and School and University Lands. That was acted upon by

the convention, but Section 17 (11) was referred back to the committee of the Whole for consideration, ordered printed, and is now before us.

ARTICLE IX., SECTION 11.

The CHAIR. The secretary will read it.

SECRETARY reads: Section 17 (11). The permanent educational funds belonging to the state shall be loaned on first mortgage on improved lands within the state, or on state or United States bonds, under such regulations as the legislature may provide; *Provided* That no loan shall be made of an amount of money exceeding one-third of the market value of the real estate at the time of the loan, exclusive of buildings.

Mr. WILSON. Mr. Chairman, there is a little difference between the reading of the secretary and this section as printed and laid before us. The word "farm" in line 3 after the word "improved" appears in the printed copy.

The CHAIR. I will ask what gentleman introduced this substitute.

Mr. HEYBURN. Mr. Chairman, I understand that the clerk is now reading the substitute that was offered before this. This section as it stands (in the printed copy) was practically passed by the committee, or reconsidered in some way, either under motion or by general consent, and it was proposed to amend it by inserting after the word "funds" in the first line "other than university funds," so that it would read, "The permanent educational funds, other than university funds, belonging to the state, shall be loaned on first mortgage on improved farms:" and it was moved to strike out the word "farms" and insert the word "lands," and then it would continue "within the state, or on state or United States bonds, under such regulations as the legislature may provide; *Provided,* That no loan shall be made of an amount of money exceeding one-third of the market value of the lands;" and it was proposed to strike out "real estate" and use the word "lands," inas-

much as land was made the basis of the value, and it was for that purpose of considering those amendments that these matters went back to the committee of the Whole. And the section as printed is the section that was referred back to the committee of the Whole for amendment.

In order to bring the matter before the committee, I move that there be inserted after the word "funds" in th first line the words "other than university funds." (Seconded).

Mr. MAYHEW. I think in order that we may get at this properly, the proper method would be to strike out of the original article Section 17 (11), and adopt this as a substitute, and by adopting this as a substitute we can go on and amend it.

Mr. HEYBURN. It was adopted as a substitute.

Mr. CLAGGETT. Yes, it was adopted as a substitute and then referred to the committee of the Whole. There were so many amendments we wanted it printed.

Mr. MAYHEW. I second the motion, to insert the words suggested by the gentleman.

SECRETARY reads the amendment: Insert after the word "funds" in the first line "other than university funds."

Mr. HEYBURN. Mr. Chairman, I don't know whether or not the members of the convention have carried this matter over in their minds. But before the adjournment the other day the act of congress granting us university lands was read, providing exactly how the money should be invested, not leaving it for the territory to say how it should be invested, and absolutely vesting those lands in us at the time of the grant. It was not a conditional grant to attach in the future, but an absolute grant as of that date, and says in specific terms just how the university funds shall be disposed of. So the object of this amendment is, while we are providing for the investment of educational funds, to except that fund from it, because it is already provided for by the act of congress, and not subject to change by us.

Mr. HARRIS. I offer an amendment to the section.

SECRETARY reads: I move to strike out the words "one-third" and insert in lieu thereof the words "one-half."

Mr. MAYHEW. That does not affect the amendment; it is not an amendment to the amendment.

Mr. HEYBURN. The question is on the first amendment.

Mr. McCONNELL. Please have the first amendment read.

SECRETARY reads the amendment offered by Mr. Heyburn:

Insert after the word "funds" in the first line the words "other than university funds."

Mr. McCONNELL. I am opposed to the adoption of this amendment. I think it will be urged as a reason for its adoption that congress has provided for the loaning of university funds. I do not see why there should not be the safeguards placed on university funds that are placed on any other educational funds of the state. We have provided in our act that these funds shall be under the control of the Board of Regents. I think if this amendment is voted down, which it should be, and another amendment, which I will offer, is accepted, which will read like this: "Under such regulations as congress or the legislature may provide," it will do away with any difficulty that may arise, from the fact that congress has provided that these funds shall be invested in United States bonds. And then all the safeguards that are placed around our school fund will be also around the university fund. I believe that would be all required here to make it entirely safe. It would then read "The permanent educational funds belonging to the state shall be loaned on first mortgage or improved farm lands within the state, or on state or United States bonds, under such regulations as congress or the legislature may provide." I think that would be a very safe provision. If those amendments will be voted down, I

will offer this as a further amendment, which I think will satisfy everybody.

Mr. HEYBURN. Mr. Chairman, I have sent down for the University Lands Act, which will be here doubtless in a moment; but there is no more reason why we should provide for this thing in that way than there is that we should provide for the sale of the public lands of the United States, and say "as congress shall provide." Congress has provided; it is not something for the future; it has done so already, and I do not see any necessity of our dealing with the subject and simply filling up the constitution with a matter that has been disposed of by a superior power that we cannot control. Of course, if congress should hereafter relieve us of this limitation it has put upon our powers with reference to these university lands, it will be competent for the legislature to make any provision that is necessary, just the same as though in the future congress were to say that the state might sell public lands. Then of course the state could provide for the means of doing it. But it seems to me it would be a waste of time and rather absurd for the state to provide for the means of doing it in this constitution, hoping that at some time in the future congress might grant them this power to so dispose of them. For that reason I simply want to be consistent with the powers that are vested in us, and leave out a subject that is not within our jurisdiction, namely, university lands. Of course congress is not going to throw that fund recklessly into the hands of anybody, which it has already tied up, and so far said funds could be invested only in securities of the United States. If anybody wants a releasing act from congress, giving us further powers, congress in that very act will limit us to such other powers as it sees fit to vest us with. I have no objection to the amendment of the gentleman except for the fact that it is attempting to deal with a subject that it not within our power to deal with, and I do not want to see the constitution made up in that way. We might as well provide for the manner

in which the president of the United States shall be elected, and then say at the end "in such manner as congress may provide."

Mr. GRAY. Well, that is dependent upon some future action of congress, provided by the intended amendment to be offered by the gentleman from Latah.

Mr. McCONNELL. I will insert the words "as provided by law."

Mr. HEYBURN. But it is already provided by law.

Mr. GRAY. And if that amendment should prevail in this constitution you depend on some future act of congress, which we are opposed to.

Mr. HEYBURN. It is safe to say that when congress does act in the future it will act about as it has done in the past; that is, in a definite manner.

Mr. McCONNELL. I cannot see any reason why this fund should be excepted. If congress has provided for the protection of that fund, and we never have any university fund here which congress shall not have provided for, then it makes no difference if this is here; because the laws of congress would be superior to our laws. And, gentlemen of this convention, we have authorized a Board of Regents of the University of Idaho to assume the supreme control of these funds, and have provided no bonds. I suppose the legislature may provide for bonds. Those gentlemen may be as well qualified to guard these funds as anybody else, but I propose a safeguard against any mistakes which may be made by the Board of School Land Commissioners or the Board of Regents either. Upon looking the matter over I think it would be better to insert the words "under such regulations as provided by law." The same safeguards would apply to university funds at to the other funds of the state, and the sentence below "Provided," would leave it within the power of the territory in case the laws of congress did not provide for it, that the state could provide for it. The university fund vested in the state is a very small fund; we will have a

much larger fund hereafter doubtless, and it will be placed entirely in the control of the state, undoubtedly. I hope this university fund clause will not be stricken out; I hope it will not be placed in the hands of the Board of Regents or anybody else without having the same safeguards placed around it that we have around our school funds. I will ask Mr. Heyburn if he will not read the provisions of the act he referred to.

Mr. HEYBURN. I will read the provisions of the act granting the lands:

"*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 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 and located under the direction of the Secretary of the Interior, and with the approval of the President of the United States, for the use and support of a university in each of said Territories when they shall be admitted as states into the Union."

You will notice the terms of the grant. Thus it will be seen that the Board of Commissioners, our state commissioners, cannot sell these lands; it must be done by the United States, so that this Board of Regents that has control of the other lands has no control of these.

Mr. McCONNELL. It will have control of the money.

Mr. HEYBURN. It will not, for this reason:

"Providing the funds derived from the sale of said lands shall be invested in bonds of the United States and deposited with the treasurer of the United States."

Mr. McCONNELL. This board will not, but future boards will. We don't know what future boards we shall have.

Mr. HEYBURN. No Board of Regents under this act of congress would ever have any control of those lands, the appraisement or sale of them, or the fund derived therefrom, because it provides that they shall be sold under an appraisement by appraisers appointed

by the Secretary of the Interior of the United States,

"* * * that the funds derived from the sale of said lands shall be invested in bonds of the United States, and deposited with the treasurer of the United States." The money will not even be in our treasury. "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 salaries of professors or teachers, until the same shall amount to fifty thousand dollars, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to one hundred thousand dollars, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities."[1]

That is the end of the section. Approved February 18, 1881.

Mr. McCONNELL. Mr. Chairman, I think it is a very clear proposition to members of this convention that it does leave a latitude to us. That if these funds ever assume the proportions named in that act they shall be turned over to this state for the benefit of the university, and under the law the Board of Regents will have control of them. That fund will not amount to the specified amount within the time of the present Board of Regents, or perhaps during the time of three or four or five other Boards of Regents; but the time will arrive when this university fund, if this state ever gets control of any part of that fund, will be controlled as provided by our constitution by the Board of Regents, and I do not propose to take every safeguard away from it. I think it would be folly. The gentleman's own argument shows that when it arrives at a certain proportion it will go to the support of the university, and—

Mr. HEYBURN. I will ask the gentleman a question, with his permission.

Mr. McCONNELL. Yes, certainly.

1—21 U. S. Stat. at L., 326.

Mr. HEYBURN. Does the gentleman see any way under that act by which the investment of that fund can ever be changed from bonds deposited in the United States' treasury at any period in the future?

Mr. McCONNELL. No sir, I do not; but I say when it arrives at such an amount as in this act is contemplated, then the interest will go to the support of the university.

Mr. HEYBURN. Then later, if there be any necessity for investing the interest, it says that it must be devoted to the support of the university. Why then is it necessary to make provision for investing that which has been spent yearly?

Mr. McCONNELL. We don't know that it is, no sir, but we are sure this is not the only university fund. The way I propose to have it amended it will read like this: "The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state or on United States bonds, under such regulations as by law provided." Now, then, this would not interfere with them later, but if any time came when we had other funds to invest like that, the provisions attaching to our school fund would attach to those.

Mr. KING. I would like to make one suggestion to the gentleman that there are no United States bonds running longer than 1897; in seven years more all the United States bonds would be called in and paid off, and then the bonds that belonged to the university funds being retired, the funds therefrom must be invested in something else, because there will be no United States bonds to invest them in. Then who shall have the control of that money, and where does the gentleman wish the money to be invested?

Mr. HEYBURN. I will answer the gentleman in this way: that is a matter entirely for congress, and any action we might take looking towards that difficulty would be void, because congress has undertaken to provide for the investment of this fund, and as in all

matters; of course, when those bonds expire and mature congress is not so short-sighted but it will provide for the re-investing of this fund.

Mr. McCONNELL. Have you any objections to the clause "As provided by law"?

Mr. HEYBURN. I have objections to including university funds in this section.

Mr. SWEET. I would like to suggest to Mr. McConnell, that so far as your point is concerned, it would be a good one if it was not covered by the provision that the regents be subject to such provisions as the legislature may see fit to make, and part of it is covered in the substitute, which reads like this, that the regents have control of the funds of the university subject to or under such rules as may be prescribed by law.

Mr. McCONNELL. That is all that I want to include in this.

Mr. SWEET. That is in the substitute already; they are absolutely limited.

Mr. McCONNELL. Then I object to any further amendments.

The CHAIR. The question is on the amendment of the gentleman from Shoshone.

The question was put by the chair and a viva voce vote taken. The chair was in doubt. On the rising vote the result was, ayes 19, nays 5, and the amendment was adopted.

SECRETARY reads the amendment offered by Mr. Harris: Strike out the words "one-third" and insert in lieu thereof the words "one-half."

The CHAIR. Are you ready for the question?

Mr. MAYHEW. I heard no support to that amendment.

Mr. GRAY. I will second the motion.

Mr. HARRIS. I move this amendment in justice to the claims of the people, who are the only ones that can borrow the money, in order that they may have the chance to get hold of some of this cheap money. At present they are paying not less than two per cent in

many instances for the use of money; two per cent in the way of premiums. This money will probably not bring more than eight per cent. The farming class of this country, who are the bone and sinew and life of the land ought to have this advantage. They are down-trodden by reason of these high rates of interest they are compelled to pay, and if all their land is not security enough for the cash value of one-half of it, I don't know what would be security enough. They have good fences generally, tolerably fair barns and houses. These don't count for anything, yet in foreclosing a mortgage on lands it will count on the sale. There will not be any danger of any loss by loaning it to these farmers for one-half the value of their farms.

The CHAIR. Do I understand you to say that money is being loaned here at two per cent a month?

Mr. HARRIS. It is in my county. There is a middleman and we pay him six per cent to obtain the loan, and then borrow the money at one and a half per cent, and the interest is taken out in advance, so that out of $100 you get $80 and give a note for $100. That is the way they loan money down my way. Now, it would be unjust to these farmers, who pay more taxes in proportion to their wealth than any other class of people; and I ask that that "one-third" be stricken out and "one-haif" inserted. Then I maintain that the security is good, as good as any private person asks, and I think it is perfectly safe for the school funds.

Mr. HEYBURN. Before voting on that motion I desire to send up a correction of two words, because it will depend upon whether those amendments are allowed, whether I shall support the motion of the gentleman just on the floor.

SECRETARY reads: Strike out the words "real estate" in the seventh line and insert the word "lands."

Mr. MAYHEW. I move the adoption of that amendment.

SECRETARY reads further: strike out the word "farm" in the third line.

Mr. HEYBURN. I would have no objection now if those amendments are adopted to supporting the amendment of the gentleman from Washington. If it is left on a purely land basis, then I think probably loans might be made safely on one-half of the value. But if there is any question about it being on a land basis, without regard to the kind of lands, then I think the proportion of value, which should be loaned upon, should be cut down. I have asked to strike out the word "farm" so it will read "upon improved lands," and in the seventh line I ask that the words "real estate" be struck out and "lands" substituted, so that it will always leave the value upon the land and not subject to the vicissitudes of buildings burning down or getting out of repair and becoming worthless. It it can be confined to the land I think probably one-half of the value might be loaned with safety.

Mr. GRAY. Would not the insurance be an asset?

Mr. HEYBURN. I will answer that by saying that I took that position before a convention somewhat largely against me, and I do not feel like renewing the debate unless there is some change of heart on the part of the members.

Mr. WILSON. Mr. Chairman, if you strike out that word "farm" in line 3, you might loan this money on a mine if it was patented.

Mr. HEYBURN. No, nobody wants to borrow money on mines; but except mines if you want to.

Mr. WILSON. Leave farms in there; that is pretty good.

Mr. HEYBURN. I will accept an amendment excepting mines. We are not here to try to get money for miners at all, and if the gentleman is uneasy about that, take the value of land other than farm lands; that is to say, orchard land or those valuable pieces of land; if the value is confined to it you are certain to get security so far as the land is concerned, because these men here farm their little town lots.

Mr. MAYHEW. I don't see the necessity of striking it out, or to insist upon this term "farm land." I shall support Mr. Heyburn's motion readily to strike out the word "farm" and insert "lands." I don't know what the gentleman means by saying "to loan money simply upon farm lands." It strikes me readily in different sections of this country that farms fail the same as any other property. It must be admitted by every member of this body that there are many mines in this country that are of greater value than any farm here, and I don't presume that this money that may be borrowed is to continue for a great many years. It may be a fact that many persons who have found mines in this country, and which are very valuable, require some loan of money to develop them; and why not loan the money upon those lands when it is once ascertained through the commissioners that it is a valuable investment, or rather that they are valuable lands. This board which is to loan this money to these farmers is not going to loan it upon farms of no value, and it is not every piece of land that is taken up for farming purposes that is going to be of great value in the future. Farms that lie in close proximity to towns may be of greater value than farm lands lying a considerable distance from those towns, and I don't believe it is proper to make this distinction. For the reason I have heretofore stated I shall support the amendment of Mr. Heyburn. I don't believe in making this distinction to loan this money to farmers, notwithstanding my friend says they are the bone and sinew of the country and still downtrodden. I don't believe his position is correct that they are downtrodden, or that they are the bone and sinew either. They belong to a respectable class of our communities, bound to exist, just the same as the mines of this country. I think they are on an equality and should be dealt with on equal grounds. I believe in placing all upon an equal footing.

The CHAIR. I understand the question is on the amendment of the gentleman from Washington.

Mr. MAYHEW. I understand not, not the one I am speaking to. I am speaking in support of the amendment offered by Mr. Heyburn, and in opposition to the amendment offered by Mr. Harris.

Mr. PYEATT. I move to strike out the entire section 17 (11) with its amendments.

Mr. GRAY. I second the motion.

The question was put by the chair.

Mr. McCONNELL. If the gentlemen of this convention desire to strike out every safeguard for the educational funds of this state, and they have the votes of this convention, I suppose it is in their power to do so, and from their arguments it is very apparent that many of these gentlemen so desire. When a gentleman gets up on this floor and tries to draw a distinction between orchards and farm lands it either shows he is trying to cover up something or does not know anything about the question.

Mr. MAYHEW. That is your opinion about it.

Mr. McCONNELL. Any man here who is an agriculturalist and knows anything about agricultural land knows that farm lands and orchard lands are one and the same thing.

Mr. HEYBURN. Well, take these orchards in town here, are those farm lands?

Mr. McCONNELL. They are farm lands or could be farmed if the orchards were taken off.

Mr. HEYBURN. Take these orchards on lots of the farm lands, would they come within the provisions of this act as farm lands?

Mr. McCONNELL. They would come within the visions of this act if they were not within the corporate limits of a town, and might be construed to be so anyway. That would be a matter for the board. But it is clear, Mr. Chairman, that there are certain gentlemen in this convention who desire to have this money loaned in mining camps and in towns. This is a clear proposition. To strike out this word "farm" in that sentence, it then says it may be loaned on lands; what kind of

lands? Mining lands, lands within townsites, or any other lands? Now, I will make this as a proposition, which every gentleman knows who is familiar with mining and farming investments, that if a piece of mining property is a good and valid investment, they don't want to borrow money from this school fund, because they can borrow it from banks. And if a piece of property in a town is a good piece of property, they don't want to bother around the school board to get money; they can go to the bank and get money.

Mr. MAYHEW. Do you propose to legislate exclusively for the farmers of this state?

Mr. McCONNELL. I propose, as chairman of this committee, if possible, to place every safeguard around the educational funds of this state, without regard to whether it affects this or that interest.

Mr. MAYHEW. Let me —

Mr. McCONNELL. I am not a farmer, I don't want to borrow any money on any of my lands, I own town property.

Mr. MAYHEW. My God, you are like a goat; I can't get my word in at all.

The CHAIR. Does the gentleman yield for a question?

Mr. McCONNELL. Yes.

Mr. MAYHEW. The only question I wanted to ask the gentleman is this: Do you propose by this fundamental law to legislate exclusively for the Mormons of this state?

Mr. McCONNELL. I propose to legislate for your children and grandchildren, if you ever have any, for their protection. I may be in error; so far as you are concerned it may not do your grandchildren any good, but I propose to legislate for the future generations of this territory, and place every safeguard around the educational funds, without regard to the interests of any one class. The class I propose to legislate for is the children of this territory.

Mr. MAYHEW. That may be a fact, that nobody have children but farmers.

Mr. McCONNELL. The gentleman from Shoshone I understand hasn't any, so he is not so much interested in this fund.

Mr. MAYHEW. I am very much interested in everybody's children, whether miners', mechanics' or farmers' children. I don't understand that there should be any class distinction or legislation made at all under the principles of a free government.

Mr. HEYBURN. I beg the indulgence of the committee to say the last words I have to say in this matter. I probably am about as much interested in this matter as the gentleman from Latah is; I probably contribute just about as largely to the tax funds of the territory in my county as he does in his, and I have a right, although I haven't any children, to express my opinion as to how the funds which I help to produce and share in shall be disposed of in this territory.

Mr. MAYHEW. I am glad somebody on this floor is on an equal footing with myself.

Mr. HEYBURN. Now, Mr. Chairman, the gentleman seems to think somebody is trying to make it easier for the miners and mechanics to get hold of this fund. I will vote for a provision of this kind, providing that no part thereof shall be loaned on mining property, although I do not recognize that there is any justice in it; yet I know these people well enough to know that the school fund does not cut any figure with them. They maintain their own schools and probably maintain them better and more months in the year than the schools in the county the gentleman comes from, and pay the teachers as high salaries. I know the schools in our county are about as largely attended, and kept open as many months in the year as in any other part of this territory, and about as well conducted. Now, Mr. Chairman, the gentleman's argument, that because I spoke of orchard lands not being included within the class of farm lands, that therefore I did not know what I was talking

about, has no weight. I submit to the gentlemen of this committee that I do know what I am talking about in regard to the quality of such tracts as you have within this incorporated city, or as are within the incorporated city of Lewiston, or any other such city or town in this state. Those lands have as permanent or reliable value as the farm lands of Latah county have, or any other county in this territory, and they will have for the next hundred years to come, in all human probability. And I would like to know what reasonable ground there is for excluding this class of lands from the benefits of what the gentleman from Washington has been pleased to term "these cheap loans." I don't know whether these will be cheap loans or not. I presume we will have a Board in charge of this money that will see to it that the money is not loaned on worthless property or property that is going down in its improvements and value. I suppose the people will have to trust somewhat to the integrity, honesty and intelligence of those who will have charge of this fund in the future. I simply do not want to see class legislation foisted upon this convention under the guise of high sounding terms of protecting your children and mine or anybody else's children. Those are beautiful terms and sound patriotic and all that, but we don't want to lose sight of the business proposition that lies below this whole matter. We want to see this school fund invested so that when it is needed, or when the entire country is under the new ship of state, it will be where the powers that be can put their hands upon it and use it. That is all we want, and we don't care whether it is a farmer paying the interest, or whether the state is paying it on its bonds, or the United States government, or whether it is the owner of some of these beautifully improved lands so permanent in their improvements and value as lie around this city.

Mr. CHANEY. I would like to ask the gentleman a question. Do lands and town lots in a mining camp come within the scope of that amendment?

Mr. HEYBURN. It depends upon what the gentleman calls a mining camp. No town lot in our mining camps would. Because towns, everyone of them in our country, are located upon mining property, and they come within the exception that I have offered to incorporate in this section. We have no towns up there except they are located upon mining titles, so that they would not come within it; and if they are not located upon mining titles, then they would be like the gentleman's own town or this town.

Mr. POE. Mr. Chairman.

The CHAIR. If the gentleman desires to offer an amendment he should offer it to the chair.

Mr. POE. I rose and addressed the chair, and the chair did not recognize. I ask permission to offer an amendment.

The CHAIR. I simply made the suggestion, because the chair cannot tell how many amendments are here unless the gentlemen announce them.

SECRETARY reads: Amend section 17 (11) by inserting after the word "lands" in the third line the words "other than mineral lands or lands within a mining district."

Mr. HEYBURN. I have no objections to that.

Mr. GRAY. There seems to be an indisposition to trust this Board. I am willing to, and as we have this section now I would rather strike it out, and I second the motion to strike it out, and I believe it would be correct to do so, for I don't see, as we are fixing it now, that it is any better. I was willing to have the section at first, but as it is at present I am opposed to it and shall vote against it.

The CHAIR. The question is on the motion of the gentleman from Lemhi (MR. PYEATT), that Section 17 (11) and all amendments be stricken out. (Vote and lost.)

The CHAIR. The question now recurs upon the motion of the gentleman from Harris, Mr. Washington (laughter). I mean the gentleman from Washington,

Mr. Harris, that the word "third" in line six, be stricken out, and the word "half" be inserted in lieu thereof.

On the viva voce vote the chair was in doubt, and a rising vote was taken, resulting in 14 ayes, 19 nays; and the amendment was lost.

The CHAIR. The question now recurs upon the motion of the gentleman from Shoshone to strike out the words "real estate" in line 7, and insert the word "lands," and also strike out the word "farm" in the third line.

On the viva voce vote the chair announced the amendment lost. A division was called for, and on the rising vote the result was, ayes 8, nays 25; and the amendment was lost.

The CHAIR. The question is now upon the amendment of the gentleman from Nez Perce, Mr. Poe.

Mr. POE. I will withdraw the amendment, since the amendment to strike out the word "farm" has been defeated.

The CHAIR. If there are no objections the amendment is withdrawn. The question is now upon adopting the article as a whole. Are you ready for the question?

("Question, question.")

Mr. McCONNELL. Has the section been adopted as amended?

The CHAIR. The question is now upon the adoption of the section as amended. (Vote and carried.)

The CHAIR. The question is now upon the adoption of the article as a whole.

Mr. HEYBURN. Mr. Chairman, the article was passed upon by the convention, and when this section was referred back to the committee of the Whole, the committee of the Whole has no jurisdiction over the article other than this section.

The CHAIR. Then that motion is unnecessary.

Mr. REID. I now move that we proceed to consider

the report of the committee on Salaries of Public Officers.[1]

The CHAIR. I think that would be in order without any motion.

ARTICLE IV., SECTION 19 — EXECUTIVE DEPARTMENT.

SECRETARY reads Section 1 (19) of the article referred to.

Mr. WILSON. Mr. Chairman, I have an amendment.

SECRETARY reads: I move that the words "fifteen hundred" in line 8, Section 1 (18) be struck out and the words "one thousand" be inserted in lieu thereof; and the words "fifteen hundred" in line 9 of said section be stricken out, and the words "two thousand" be inserted in lieu thereof. (Seconded.)

Mr. WILSON. It simply takes five hundred dollars from the state treasurer and gives it to the attorney general. In other words, it makes the salary of the state treasurer what our territorial treasurer receives now, and the salary of the attorney general the same as it is now, and I can see no objection to it. It makes the salary of the attorney general $2,000, and the state treasurer $1,000. The article we adopted on Executive Department provides all those officers shall reside at the seat of government, and I know that any business man here who can give the necessary bond is willing to take the office of state treasurer for the salary of $1,000. In fact, it would be sought after; not so much on account of the salary, but for the simple reason that they have control of large funds, which is useful in their business. The banks will always do it, so there will be no question about that salary being satisfactory. But $1,500 is not enough for the attorney general, and practically excludes every lawyer in Idaho who does not live at the seat of government from accepting the position. And I think it is freely conceded that no lawyer who resides elsewhere can afford to come here and accept the attorney

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[1]—The first section of this report on Salaries was afterwards incorporated in Art. IV. as Sec. 19.

generalship of Idaho at $1500 a year, and it does not increase the expenditure on account of those salaries one dollar, but it equalizes them. That is all. It decreases one $500 and increases another $500, which, as it is now, must be objectionable.

Mr. POE. Do you wish to vote on those propositions separately or jointly?

Mr. WILSON. Jointly.

Mr. POE. So far as the amendment to change from $1500 to $1000, on account of the treasurer, I will accept that; but I will not accept the other proposition. So if you want to put them separately—

Mr. WILSON. No, I think they ought to go together. I was on the committee and insisted on this change there, but there were three against me and my wishes did not seem to prevail.

Mr. POE. In the consideration of this matter it was the object of the committee to put the salaries at such figures as would justify obtaining men to perform the duties, and at the same time not make them exorbitant. Of course the law would require the attorney general to reside at the capital of the territory; but it was well considered in the matter of the attorney generalship, that in all probability in the performance of the duties of attorney general, but very little of his time would be required. In fact, it would not interfere with either his civil or his criminal practice in the courts to any great extent, and we considered that $1500 would amply pay a competent man to do that in connection with his other business. If the attorney general was confined exclusively to the performance of that duty and was not permitted to do any other business of any nature or character whereby he could receive compensation, then probably it would not be enough. But, Mr. Chairman, and gentlemen of the convention, you will observe in this bill that we have provided that the attorney general, in addition to this $1500, shall receive the necessary expenses that he may incur by reason of having to travel in the performance of his official duty.

Now, we don't know how the legislature may fix that: "Provided, however, that the legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction, while traveling within the state in the performance of official duty." Now, if perchance the attorney general should have to travel anywhere away from the capital to perform the duties here, we have provided that his expenses shall be paid. Now, I say there are plenty of men and competent men that will be glad to get the position to have the $1500 paid into their pocket each year for the services they will have to perform as attorney general. It is not laborious, it will not be great, and I am under the impression that it is pretty good compensation. So far as the treasurer is concerned, we took this into consideration, that while there may not be any great labor necessary for the treasurer to perform, yet there is considerable responsibility. He has to keep a correct book, a correct account of the funds of the state, and you have got to get a man there with some ability as a book-keeper and of finances, and he has got to give an enormous bond, a bond entirely out of proportion to the salary he receives; probably it may be $100,000, and it may be $200,000. There is a great deal of responsibility attached to that office, and not only the labor should be paid for, but there should be some compensation for the risks taken and the responsibility placed upon him. I care nothing about that matter of the treasurer particularly only this. The gentleman belongs to Ada county, he lives in Boise City at the very place where the capital is, where the treasurer will have to live, and he says that if you reduce it to $1,000 the result is that he or some of his friends in Boise City must inevitably be the treasurer, because they cannot leave their home anywhere else and come here for any such salary as that. It is very shrewd in the gentleman, I admit. I don't say it is selfish of him, or that he ever thought of it, but that is the natural result. It is inev-

itable if you put it to a nominal figure like a $1,000, $500, $600, or $700 salary; nobody but a man from Boise City can be treasurer. That is all right; I am perfectly satisfied that anyone there should be, if he is competent, and undoubtedly there are plenty of them here that are competent. But I see no reason why it should be changed.

Mr. WILSON. I am amazed to see the chairmen of these various committees get up and antagonize reasonable propositions for no other reason than that the proposition antagonizes their report. It seems to me it shows a very narrow mind on the part of the chairmen of these committees. This committee consisted of five. There were two on that committee that favored the position I have taken, and three did not, but the chairman himself cast the deciding vote on that question. He insinuates that some gentleman from Boise City will desire this position, and that is the motive for my amendment. It seems to me that is a very childish insinuation. He is aware that I am an attorney. If I had any selfish interest in the matter it would be to increase the attorney general's income instead of that of the treasurer.

Mr. GRAY. That was your motion, wasn't it?

Mr. WILSON. (Amid laughter) Yes, it was. But he says I desire to reduce the salary of the treasurer, so that a man in Boise City can always get it, and that nobody else can afford to, and makes the assertion that the attorney general —

Mr. POE. Excuse me, but I did not say you desired to do that. I said that is the inference that would be drawn. I did not accuse the gentleman of any such thing as that.

Mr. WILSON. An accusation is more honorable than an insinuation. The gentleman makes the assertion that the attorney general can practice in the courts and have criminal and civil practice besides his official duties. It seems to me he loses sight of the proposition entirely.

He cannot take any criminal case even in a justice court, if he is attorney general, because he is compelled to represent the state in all cases that may come before the criminal court, and the smallest criminal case may come before the supreme court, and therefore the gentleman knows the attorney general could not take a single case in the district court if he was attorney general of Idaho. The qualifications of men for attorney general are entirely different from those of men for state treasurer, and I think that a man as attorney general should have better pay than the state treasurer. I know the duties of the office of state treasurer amount to nothing; business men of our city here take that office, and have no separate office at all, but do it in conjunction with their private business. Men in the mercantile business here have had it a number of years, and practically it takes none of their time. So far as their bond is concerned, the compensation which they receive by virtue of controlling that large amount of money which the state has, amply pays for it. It is simply an adjustment to an equitable basis to change it, which two out of five in the committee thought was right, and which three thought otherwise.

Mr. GRAY. Mr. Chairman, I favor the amendment to give the attorney general $2,000, and that is not enough.

Mr. HAYS. Are you in favor of taking it away from the treasurer?

Mr. GRAY. No, I would not give the bond the treasurer has to give for $1,000. I would not have the responsibility connected with it for $1,000. And no man that has any idea of the responsibility placed upon it would be willing to, I think. I stand with my friend from Nez Perce, that it does seem as if it was to keep every man in the territory from having that position if he does not live in Boise City. He has got to have other business than that or he cannot live on it.

The CHAIR. Does the gentleman from Ada ask for a division of the question?

Mr. GRAY. I do ask for a division of the question. And as I say, if I had the placing of it, the attorney general should have not less than $3,000 a year. But then, as it has gone to the committee, I am content with the amendment; for I know the able gentleman that holds the position today has got as much as that in one case in defending criminals. If you want to put officers down to that which is a starving salary you never must expect you will get good ones. If you do, they won't attend to the business.

The CHAIR. The chair rules that this is a divisible question.

Mr. WILSON. I have no objection to the division of the question. If the convention thinks the treasurer ought to receive $1,500 I have no objection; I was equalizing it.

The CHAIR. The question is shall the words "fifteen hundred" in line 8, Section 1 (19) be stricken out, and the words "one thousand" be inserted in lieu thereof. Are you ready for the question?

Mr. McCONNELL. Mr. Chairman, I am in favor of that amendment, for this reason: that there are perquisites connected with this office which will increase the income of the office very largely.

Mr. GRAY. In the treasurer's office?

Mr. McCONNELL. Yes.

Mr. GRAY. Tell me what it is?

Mr. McCONNELL. I will if you will wait. Of course, the perquisites will be provided by the legislature. They are in other states. The laws of many of the different states provide that insurance companies, for instance, be required to deposit bonds to a certain amount with the state treasurer, to insure the insurers of the state against loss by fire in case there should be a conflagration in any of the towns; in other words, that they would have some security that their policies were good. In the state of Oregon, the state treasurer gets, I think, $800, but he receives a percentage on deposits, which increases his salary to such an extent

that the treasurer's office exceeds every office within the state. It is a well known fact that the politics of the state of Oregon were manipulated eight years in the interest of the state treasurer. I think there would be no difficulty in finding any gentleman, who is able to give the bond, who will take it for $1,000 a year. There are not very many people in the territory who can give these bonds; it will be entirely confined to some gentleman of this town or some adjacent town.

Mr. GRAY. Let me ask the gentleman a question. Under the laws as now existing can the treasurer take one single dollar, or do you propose to make a law some time to give him something more?

Mr. McCONNELL. I suppose this state will follow the precedents of other states. They do it. It is not the case now in the territory.

Mr. GRAY. He is not entitled to one single dollar more than the salary.

Mr. McCONNELL. No sir, but would you propose to say we could not get a treasurer for $1,000 now?

Mr. GRAY. I say there are very few you can get.

Mr. McCONNELL. Well, we only want one.

Mr. GRAY. Yes, and then he is trifling away his time.

Mr.McCONNELL. Well, he is to be pitied, but it seems we can always find a man. I favor the amendment.

Mr. MAYHEW. I would like to hear the amendment read.

The CHAIR. That the words "fifteen hundred" in line 8, Section 1 (19) be stricken out; and the words "one thousand" inserted in lieu thereof, which will reduce the salary of the treasurer from $1,500 to $1,000 a year.

Mr. CLARK. Mr. Chairman, we have adopted in the Executive Department Section 19, which contains this clause, applying to all the state offices: "The compensation enumerated shall be in full for all services rendered by said officers respectively, in any official capacity or

employment whatever during their respective terms of office. No officer named in this section shall receive for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty shall be collected in advance and deposited with the state treasurer quarterly to the credit of the state." That has been passed by the convention, and shows there can be no income to the treasurer except salary.

Mr. McCONNELL. Well, if that is the case I had overlooked it. I think $1,500 is none too much then.

The chair puts the question and the amendment is lost.

Mr. REID. I move the adoption of the section.

The CHAIR. There is another amendment. The question is now to strike out the words "fifteen hundred" in line 9 of said section and insert in lieu thereof the words "two thousand."

Vote. Division demanded. On the rising vote the result was, ayes 15, nays 24. And the amendment was lost.

Mr. McCONNELL. I desire to offer an amendment.

SECRETARY reads: Strike out in line 4 the words "twenty-five hundred" and insert "three thousand."

Mr. GRAY. I am in favor of that, but the governor has not half the responsibility nor the hardships that the attorney general has. But I would be in favor of that. It is too little for a man to spend his time and his hospitalities which he has to expend to the people—even that is too little; but when you tell me that the attorney general can do this work for $1,500—you will get one whose services would not be worth anything. Better not have it in at all.

The CHAIR. The question is now as to the governor's salary.

Mr. McCONNELL. Mr. Chairman, I offer this amendment for the reason that I want to be proud of Boise City; I want to be proud of our governor, and I want to place him in a position that he will not have to

go to the mountains and hide himself to prevent breaking himself up in the office. The salary of the governor of Oregon is so low that with few exceptions they avoid the capitol. They only go there when it is necessary to sign some executive order; and no man can live and maintain the dignity of the governor of Idaho or any other state for $2,500 a year. He has to entertain people when they come here, has to keep open house, and he cannot keep house for even $3,000 a year in this city, and throwing his time in for nothing. But knowing as I do that the people of the territory desire an economical administration of statehood, knowing they would hardly endorse or appreciate the fact that it costs so much to keep house, I only make it $3,000 when I really would be in favor of $6,000.

Mr. REID. Mr. Chairman, I would like to see our officials well paid, but we are just going to commence to keep house now, and ought to be as economical as possible. The great objection we are going to meet in becoming a state and to the adoption of our constitution is the question of expense. The governor today is getting $2,650. I suppose that is about the same as his predecessor received. I think $2,500 is ample to start with. The legislature may increase it hereafter. Surely we can get men to serve us as governor, patriotic men; we have had two, and have got one now, fully identified with the interests of our territory and using every possible effort to develop and bring Idaho to the front, as did his predecessor. I believe there are other gentlemen in this territory who will think that they could sacrifice something, if it is necessary; I believe a man can come to Boise and support his family on $2,500 a year. I don't believe that nine-tenths of the lawyers in this territory, with all the talk that is consumed here, clear more than that during a year. Of course there are exceptions, but we must be economical in starting out. If you look over the field you will find it is only the rich states where they pay these high salaries, and the great question you are going to meet with the moment you

strike the people—and if you take up the papers laid on our desks from day to day, or go to the newspaper offices and read the exchanges—you will see there is a warning note raised that we must not proceed on the idea that we are as rich as California or any other state. Go to our assessment roll or to any of our resources, and you will find that we cannot stand it, and the people will not stand it. Gentlemen, I will appeal to the lawyers of this body especially, for we have got to pay the salaries, or the increased expense; let us save that and add it to the judiciary system. We want an independent supreme court. The people want it; I don't mean the lawyers, though I am appealing to them because they know the need of it, and if we have to increase the expense, let us increase it so we can improve our judiciary system. These gentlemen who have been serving us, have been serving us at about these rates. Idaho has never lacked for good officers, and the committee in reporting salaries did not want to starve anybody, and yet wanted it to be reasonable and comfortable, and after looking over the whole field of salaries, they thought the territory could stand these. Now, as the gentleman intimated, we don't want to stand by the report if it is not right; all wisdom is not lodged in us. This work was turned over to us and we looked at our resources and we hoped by adopting the county system to save a hundred thousand or two hundred thousand dollars in order to keep down the actual expense that would be large in becoming a state instead of a territory. But these state officers can live on that very comfortably. After a year or two, if we find we can do so, and that they cannot live on the same salaries our officials have lived on in the territorial days, then we can instruct our representatives when they are elected to increase their pay. But now, when we are starting out to keep house, as it were, we must be economical. We are bound to change our judiciary system. Everybody, every litigant is dissatisfied with the present system. We ought to have an independent supreme court and are bound to increase our

expenses for the judiciary. Let us not increase it in the executive department unless for good reasons. I would like to pay our governor five or six thousand dollars so he could keep open house, so that when one of our citizens comes from any part of the state he could treat him royally, so the people could get acquainted with the governor in his home and around his fireside; but we are not able to have the luxuries yet. Let us get along with the necessaries like every wise and prudent man does, and after awhile when we develop our resources and our assessment rolls increase, we can support our governor with that munificence and luxury that the people would like to have. But I think we ought to go slow in raising salaries.

Mr. MAYHEW. Mr. Chairman, I do not propose to discuss the salaries of any of the officers except that of the governor. It seems to me when the gentleman goes to the extent he has in discussing the propriety of the salaries of the different officers enumerated in this article, he is somewhat begging the question. I think the salary of the governor of the territory, or rather of the state when it becomes a state—and I am in hopes it will soon become so, even with the present congress, as we have assurances it will—should not be less than $3,500 a year. My impression is that the governor of the state will be required to go to considerable more expense in his office than the territorial governor. The territorial governor is an appointive office, and I don't believe it is economy to be governed by what congress in its munificence has given to the governors of the territories. When we leave the condition of a territory we assume that of a state, and I believe in maintaining the dignity and character of the governor's position. He is naturally required to be at greater expense, not only in his campaign, but is required to spend more money in leaving his home and going to live at the seat of government, devoting his whole time to that position. No one except a rich man is able to do it. Now, what do you do? By putting him on a salary

of $2,500, no man, it makes no difference what his abilities may be or how patriotic he may be, it makes no difference how much service he has rendered the state or with how much devotion he has adhered to his party or served the interests of his state, can afford to take that position. As I have stated, I don't believe in making a distinction. A man of ordinary circumstances who may aspire to that position cannot afford to take it because his pecuniary circumstances will not permit him to do so. The result is that no one but a wealthy man can have the position. It is not an honorary position, but the most responsible one in the gift of the state. I believe in placing this position upon a foundation where a man of merit, let him be republican or democrat, who aspires to that position, if he should be fortunately elected, would be able to maintain the dignity of the office both as an executive and as a gentleman. He cannot entertain his friends, his neighbors, nor perform the many functions of his office, which are required of him independent of attending strictly to the legal duties required of him by the constitution and laws, on $2,500 a year. But he is also required to do many other things, to go to many places and investigate different things that may occur in different portions of the state.

Mr. REID. We provide in this bill that when he is traveling on official business in different parts of the state the legislature can pay his expenses.

Mr. MAYHEW. Certainly. That is still begging the question in my opinion. I don't believe in having cheap officers. I believe in putting this salary at a figure that will tempt the very best talent in this state to aspire to this position; I don't care whether he is a lawyer or what he is. It is no reason because a man is a lawyer that he is more entitled to these positions than any other person, and when the gentleman appeals to the profession of the law, that they do not clear $2,500 a year, that is true, not many of them do, but it is not what a man may clear, and it is not what he may save up. The question is, what is the position worth, and

what should we pay the executive of this territory. I am in favor of giving $4,000, nor would $4,500 be too much.

Mr. GRAY. $5,000?

Mr. MAYHEW. I think $5,000 under the circumstances would be a little too much; but I think $3,500 would not be any too much, and I do think $2,500 for the governor is decidedly too small. I do not think this is economy. A gentleman says when we go out before the people, if we give these officers extravagant salaries, we will meet with opposition. The gentleman may have a more extended idea and acquaintance in this territory than I have upon that question; I never have discussed with the people any question as to salary, but I will venture to say that most men—day laborer, miner, farmer or whatever the occupation may be, would not object to the governor of the state receiving sufficient compensation to maintain himself with character and dignity. I don't believe the people will complain unless it is some man who envies the position. As a general proposition these people, noble, practical and generous-hearted people as they are in this territory—laborers, farmers, mechanics, miners—do not complain, and I have never heard anyone complain yet in the four or five years I have lived in the territory and in the west for the last twenty-five years, of the salaries of those officers, and I don't believe they will in the future. The gentleman makes an argument that we curtail the salary of the governor in order that we may maintain the judiciary. That is in favor of an independent supreme court, and he makes that in the way of an argument why we should lessen the salary of the governor. I don't think it is any argument at all. I think by the manner in which they have consolidated the several offices in the counties of the state, to that extent we are not increasing the salary of this office. I don't want to be considered extravagant in this matter, but I do desire that this convention shall be fair to the executive of this

state and other officers. Of course this question of attorney general has been voted by this convention.

The CHAIR. The gentleman's time has expired.

Mr. MAYHEW. Well, I expire with the time.

The CHAIR. The chair will recognize the gentleman from Latah (MR. BRIGHAM).

Mr. BRIGHAM. I just wished to express a few ideas in regard to this matter. I represent an agricultural constituency here, and I think in looking over the circumstances of the people of this territory, that we are obliged to economize; that we ought in justice to those whom we represent here to be careful. There is one idea occurred to me while the gentleman was speaking that is evident to us all; that where we have high salaries, as a rule we have no more efficient administration of that office than we have where they are cheap. You know that in our county governments, for example in the office of sheriff, where the position is recognized as being exceedingly remunerative, that is just where the corruption steps in, corruption of the suffrage and every way they can do in order to seek that position, and it is not, as a rule, with all respect to the gentleman, the best men that get into these positions by any means. There are competent men enough to fill those positions without paying exorbitant salaries. You will find them in the farms, in the fields, you will find them everywhere, gentlemen of culture and ability who will take the positions, and I say we ought to lessen the expenses of this territory as much as we can.

Mr. MCCONNELL. I rise to congratulate my friend from Nez Perce (MR. REID), on his desire to economize as we are just about commencing to keep house, but at the same time I cannot help but smile at his inconsistency when I look over the list of names of the gentlemen who compose the committee which made this report, the majority of whom are lawyers at the bar. And then to look down and see the provision they have made for lawyer's salaries as judges and prosecuting attorneys, and take into consideration the salary they give the

governor. The salary of the district attorney, $3,000 a year—

Mr. MAYHEW. Yes, that is right.

Mr. McCONNELL. Yes, I have not objected to that, and won't, unless there is objection made to placing the governor on a par with the district attorney, who in nine cases out of ten is a pettifogger in the country districts, and he is supposed to have a salary larger than the governor, because, I suppose, he is a member of the bar or has been admitted—a young man who has read law in some office for three months, perhaps. There is a motion made in court that he be admitted to the bar, and he is admitted, and then nominated for district attorney and he gets a salary larger than the governor. I think it is very inconsistent, as we are about to commence housekeeping. I hope the governor will be allowed a salary of $3,000. I don't think it is unreasonable when we come to consider the other salaries.

Mr. WILSON. Mr. Chairman, I am in favor of the governor receiving a salary of $4,000, but we are sitting here as a board of equalization, as much as anything else, and have just fixed the salary of the attorney general at $1,500, and I undertake to say that his labor is twice that of the governor. The report of the Judiciary committee requires that four terms of the supreme court be held annually, two at Lewiston and two at Boise City, four terms in all. And for one to undertake to say that a man of sufficient ability to fill the office of attorney general can afford to attend the two terms of court annually at each of these places for $1,500, is to talk—well, I can't express it.

Mr. MAYHEW. The question of the attorney general is disposed of, Mr. Wilson. The question now is as to the governor.

Mr. WILSON. Yes sir, but I say we are sitting as a board of equalization, and I am in favor of the governor being paid $2,500, because we have fixed the attorney general's salary at $1,500. I would have the attorney general paid $3,000 and the governor $4,000, but the

committee did not have it so. When the time comes I intend to move to strike out the salary of the district attorney, move to strike out $3,000, and make it in proportion to the rest of the salaries. Therefore I am in favor of $2,500 as the salary of the governor.

Mr. REID. The gentleman from Latah sometimes gets very ironical, but before he shoots his irony he ought to arm himself with facts. He goes on the idea that we are paying county attorneys $3,000.

Mr. WILSON. District attorneys.

Mr. REID. Yes, as I call them, but which the gentleman called pettifoggers. This district attorney who is paid $3,000 is a man who has to go over the whole district with the judge, pay his own hotel bills and prosecute all the criminals in the county, and county attorneys are abolished entirely. When the governor moves we provide his expenses shall be paid. If the attorney general or prosecuting attorney was a stationary office it would be different, but he has got to follow the judge around and pay hotel and stage bills and everything like that.

Mr. MAYHEW. As long as we have taken a vote on attorney general, if this constitution should be adopted and two terms of court at Lewiston and two at this place provided, I ask if the attorney general is not required to attend those four terms?

Mr. REID. Yes, and there is a provision that when he is travelling on public business his expenses will be paid. He will get $250 a term to prosecute what few cases there are and all his expenses paid; and I dare say any good lawyer in the territory would do the same thing. When we get a little richer I would be willing to give some good lawyer a sinecure, an old man. I know in the state I came from the attorney general gets $1,500 and in addition to that the supreme court makes him the reporter for the court, and he gets about a thousand dollars out of that, $2,500 in all, or maybe $3,000; and that does not come out of the taxpayers, because the

lawyers buy the reports. He can make in addition to that—

Mr. MAYHEW. Can you live cheaper in North Carolina than in this country?

Mr. REID. No sir, not a great deal of difference. The difference is about one-fifth, as I found it. But the gentleman who occupies the position now, I don't know what his salary is.

Mr. WILSON. About a thousand dollars.

Mr. REID. Well, this is about $1,500. We can get some gentleman in Boise—all the officials I have met with live in Boise—conduct their offices very well, make good officers; but the gentleman's answer is that we are providing for lawyers. We have given the governor the same as he has now, and given the judges $600 less than they are getting now, so when you criticise, arm yourselves with the facts. The district attorney now that prosecutes in the name of the state gets $2,500 to $3,000; we have put the district attorney who has got to go around with the judge to the different counties and prosecute criminal cases and pay his own expenses, only $3,000, and you gentlemen who attend courts know what it is to travel in this country. We have put it at the lowest figure, and we want patriotism and economy to have something to do with this. I don't object to good salaries; I think the state ought to hunt up the best person and get the best talent, but I believe there is patriotism enough in the territory to get the best talent at those salaries. Some gentlemen seem to have the impression that we are legislating in favor of lawyers, and that we have raised the salaries of lawyers and provided them good places; but that is not the fact. We have cut down the salaries of the judges, and we leave the salary of the governor the same. The district judges today get $3,600, and we have reduced it to $3,000. But they get $100 from each county; it is about $3,600. We have provided that the governor shall have expenses paid whenever he travels. We have not provided anything of that sort for the judges, and they have to travel and pay

their expenses and don't get as much as the territorial judges now get; so that when you make the charge that we are taking care of the lawyers and legislating against the other officers it is not sustained by the facts.

Mr. SWEET. I an in sympathy with the amendment offered by my friend Mr. McConnell to this extent, that I would like to see the governor paid $3,000 a year, but I do not see any occasion for doing it under the circumstances. That is not enough money, I am ready to admit; but there is one fact to be taken into consideration in connection with these officers. We have enacted or are about to submit a constitution, and provide in this constitution for the protection of the people. In order to protect the people they must be heard and their claims presented in the courts. It is expected, and it will indeed follow, if this constitution is adopted as it is now drawn, that the state will be in controversy with some of these railway corporations inside of a year after it is adopted, as to what this constitution means; and they will walk into the supreme court of this state with legal talent for which they pay $10,000 per annum, or $15,000, and we will contend against them with $1,500 officials. And there is quite a difference between a $10,000 man and a $1,500 man; it is so all over the country. Now, I only mention these things because I think it is right, notwithstanding my friend Mayhew has called attention to the fact several times that the salaries of judges and attorneys are not under discussion, I think it is only right and fair to compare those cases. District judges upon whom centers more interest than any governor of any state, receive $3,000 per annum and pay their own expenses, and if a judge has $1,200 left after paying his expenses, he is a fortunate and economical man. His salary is altogether too low; at the same time it will doubtless remain at that figure. I maintain he is as important a factor in any state or territory to the maintenance of good government as any governor, and necessarily should receive as much money; but under this bill he will not receive as much by $1,000,

and I don't think it is consistent or reasonable to raise the salary of the governor under the circumstances.

Mr. GRAY. I should do right by the governor even if the convention has seen fit to do wrong by the attorney general. I am in favor of the amendment. I will say with my colleague that it is not any comparison. There are such things as governors that do not have to put in ten or fifteen years of their lives reading law books, and they make good governors too; but I say where a man prepares himself for a position he should be recognized in some particular. The gentleman from Nez Perce says a good many lawyers would be glad to make $2,500 a year. If that is all we ever got, with that salary of $1,500 we would go hungry to bed before the year was through. We make more than that and still we don't lay it up. He says that we could lay up money on that. A great many of us are not much on the lay-up, but still it takes a good deal to keep us during the year. Perhaps it is our way of living, but I say this, that I am yet, even if the convention has not seen fit to treat the attorney general as he should be treated, willing and anxious that we should treat the governor well. For I will say that the governor who holds that place today and fills his office perfectly, is losing money every day of his life. He is not living upon what he is getting. It has been spoken here by some of these gentlemen in a way that it would appear as if they thought that a man must be governor, and then keep store or a peanut stand to help him out during the year, as the only way to do; and that other officers would have to be placed in that same position, instead of having men that are capable of filling the offices. I do believe we should pay our officers well; we have some good talent in the territory, but if we put them upon these starving rates we will get none of them. We will get judges such as would make fair justices of the peace or something of that kind, and all officials will come in that line.

(" Question, question.")

The CHAIR. The question is on the amendment of

the gentleman from Latah (MR. MCCONNELL), that the words "twenty-five hundred" in line 4 be stricken out and the words "three thousand" be inserted in lieu thereof.

A viva voce vote was taken and a division called for. A rising vote was taken with the following result: Ayes 10, nays 22.

Mr. MCCONNELL. I have another amendment, Mr. Chairman.

SECRETARY reads: Strike out in line 12 the words "three thousand" and insert "two thousand."

Mr. WILSON. I have an amendment also.

Mr. HEYBURN. I have an amendment. I would suggest that we are not proceeding to consider these officers in the order in which they come, and in order to avoid confusion, I would simply make the suggestion that we take up the officers in the order in which they are named in the bill.

SECRETARY reads: Amend Section 1 (19) by inserting in line 5 after the word "governor" the words "when serving as governor in the absence of the governor of the state, shall receive the same salary as provided for the governor;" and strike out in the next line the words "to be allowed only."

The CHAIR. The chair thinks this section should be read in paragraphs.

Mr. POE. This section proposes to give to the lieutenant governor the only compensation provided for him under this bill, and says the only compensation is that he shall receive the same per diem as the speaker of the house of representatives, and mileage. Now, this amendment is to the effect that if at any time the governor should be absent from the state and unable to perform the duties of governor, then by virtue of his office he would act as governor. This amendment is to the effect that while he so acts as governor he shall receive the same compensation the governor would be entitled to in the performance of that duty. And as chairman of the committee I will accept that amendment.

Mr. CLARK. I beg leave to call the attention of the convention to the report upon Executive Department, which we have already adopted, which states that when the governor is unable to discharge the duties of his office, the powers devolving upon the governor, and all his duties and emoluments of office, shall devolve upon the lieutenant-governor. His salary is transferred to him by Section 12 of the Executive Department.

The CHAIR. The amendment offered by the gentleman from Shoshone seems to be already provided for.

Mr. HEYBURN. I think not. We are providing salaries here, and the fact that that provision is contained as an abstract principle in another bill, which does not provide for the salaries of officers, does not make it unnecessary here. This bill is supposed to be an enumeration of all salaries, and the other is simply a limitation upon it. If it were to stand as it is here, this being a salary bill, and there was a conflict, this would be held to govern with reference to his salary, and it would do him great injustice possibly.

Mr. CLAGGETT. I cannot see for the life of me but what the point made by the gentleman (MR. CLARK) is well taken. This constitution is a whole. We are not adopting half a dozen or fifteen or twenty instruments; we are adopting a constitution as a whole. One provision of it is for the salary of lieutenant-governor. The amendment offered is that when the governor is not acting as governor, when the lieutenant-governor is acting in his stead, he shall receive the compensation. And that is all provided for in the Executive Department and covered plainly.

The CHAIR. The chair does not understand that the gentleman from Ada raises a point of order; but simply the propriety of it.

Mr. CLAGGETT. No, I simply call the attention of the committee to the fact that this amendment as offered is unnecessary, because we already have the same provision in the constitution.

The CHAIR. The question is upon the amendment of the gentleman from Shoshone.

The secretary re-read the amendment.

("Question, question.")

The vote was taken and the amendment was lost.

Mr. HEYBURN. I move to strike out this clause with reference to the lieutenant-governor so there will be no inconsistency in the constitution, if it is already provided for in the other act. (Seconded.)

The CHAIR. It is moved and seconded that the entire clause relating to lieutenant-governor shall be stricken out of this article.

Mr. CLAGGETT. If you strike it out we will have no provision whatever in any part of the constitution for the services and compensation of lieutenant-governor.

Mr. HEYBURN. I just understood the gentleman's argument was that it had been already provided for.

Mr. CLAGGETT. I beg the gentleman's pardon. I say the amendment offered was already provided for, but not the substance of this matter that he moves now to strike out.

Mr. CLARK. Mr. Chairman, in the clause fixing the salary of the members of the legislature, in the report upon the Legislative Department, the salary of the lieutenant-governor appears. Section 23, line 9, reads as follows: "The presiding officers of the legislature shall each in virtue of his office receive an additional compensation equal to one-half his per diem allowance as a member."

Mr. CLAGGETT. That makes no provision for the lieutenant-governor at all. He is not a member of the legislature. That is where it comes in.

Mr. MAYHEW. He has no vote and still presides.

Mr. CLAGGETT. He has no vote. It simply fixes the per diem of the members and then provides that the presiding officer of each house shall receive additional compensation; but nowhere in this Legislative or Executive Department bill is there any provision as to what the compensation of the lieutenant-governor shall be.

Mr. BALLENTINE. I call attention of the committee to Section 19, Executive Department, line 7, which reads:

"The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the session of the legislature."

Mr. HEYBURN. I would like to have any gentleman show me where there has been any provision made for the payment of the lieutenant-governor as presiding officer in any bill, in the absence of the governor. There has been none read yet.

The CHAIR. The question is shall this article from the word "and" in line 5 be stricken out down to the words "secretary" in line 7, as I understand it.

Mr. REID. Since it has been amended I wish to move to strike it out, because it is in the line referred to by Mr. Ballentine. When this is struck out there is no provision anywhere, having struck out the other part of it for paying the lieutenant-governor when he acts as governor.

Mr. MAYHEW. "The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the session of the legislature."

Mr. REID. Suppose for any cause he should succeed to the governor. What pay does he receive then?

Mr. HEYBURN. The emoluments of his office.

Mr. BALLENTINE. I also call attention to it in Section 12 of the Executive Department.

The CHAIR. I will call the attention of the committee to this article. This is a report on Salaries, and as I understand it, the lieutenant-governor is not a salaried officer.

Mr. REID. He has a salaried office when he becomes governor. If this is struck out, when he becomes governor it says he shall receive such and such pay only when he is acting as president of the senate.

Mr. BALLENTINE. I will read this section: (Section 12, Article IV.)

"In the case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall cease shall devolve upon the lieutenant-governor."

Mr. HEYBURN. Does the gentleman consider that the word "emoluments" there used covers salary?

Mr. BALLENTINE. Yes, I think it does.

Mr. HEYBURN. I do not think it covers salary. The emoluments are something in addition to the salary of the office, and always are, and it is for that reason, that we want to provide that the salary shall go to him. Emoluments are not salary; it is not covered by that term.

Mr. McCONNELL. Under the provisions of the article adopted, emoluments must mean salary, because they are not allowed anything else but salary.

Mr. REID. They are allowed when they travel in the state, actual expenses and so on, and I know it is held with reference to a member of the house of representatives that he gets salary and emoluments, to-wit, a per diem, and also an allowance for stationary and things of that sort.

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

Mr. HEYBURN. Mr. Chairman, I don't like to see a mistake that is so palpable on its face made by an intelligent convention. This word emolument does not mean salary, and if he has no emoluments then he receives nothing. It does not cover the term salary at all. The amendment originally offered was because there was no provision in this section saying that when the lieutenant-governor was acting in the place of the governor he should receive his salary, and it was offered with that idea in view, and it was voted down.

Mr. REID. Yes, I was going to say that the convention has destroyed, by defeating the amendment a

moment ago, the right of the lieutenant-governor to receive any salary.

Mr. HEYBURN. Exactly; voted that he should receive no salary during the time the governor is absent from the state, and if the governor is absent or unable to act and conduct his duties there is no provision by which he shall receive the salary, except under the obscure term "emoluments," which will require a construction to determine its meaning. We might as well be plain about it, and say he shall receive the salary. That is all I have to say.

Mr. CLAGGETT. Mr. Chairman, my understanding of the word or the legal meaning of the word "emoluments" is that it means anything that is received in the shape of a pecuniary advantage whatever. It is a word so much broader than salary that it includes salary and everything else. (Reading from dictionary) "The profit arising from office or employment; that which is received as a compensation for services, or what is annexed to the possession of office, as salary of office, and perquisites." It covers everything.

Mr. REID. I will ask the gentleman if that is the legal construction of it?

Mr. CLAGGETT. Yes, I don't think there is any doubt about it.

The CHAIR. All in favor of the motion, that all of this article applying to the lieutenant-governor shall be stricken out say Aye; contrary No. The chair is in doubt.

On the rising vote the result was ayes none, opposed five; and the motion to strike out was lost.

Mr. MAYHEW. I move the committee rise, report progress and ask leave to sit again.

Mr. CLAGGETT. Before that motion is put I want to bring up by unanimous consent another matter. I understand this bill relating to Irrigation has been engrossed and made a special order for final reading at two o'clock.

The CHAIR. If there is no objection the gentleman may proceed.

ARTICLE XV., SECTION 3.

Mr. CLAGGETT. The way we amended Section 3 of that bill left it, in my judgment, in very bad shape; and I therefore move as the sense of the committee, that the committee on Engrossment (if there is no objection made to it here) be directed to substitute for Section 3 as contained in the engrossed bill, Section 3 as amended, and which I will read now:

"The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those requiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference over those claiming for any other purpose."

And I stop right there. In other words, recognizing the doctrine of priority all the way through, except that in the matter of domestic purposes we make a preference, and that preference to be exercised in the manner limited by law. I am afraid of those amendments which were put on the bill the other day.

The CHAIR. I think the motion is out of order at this time, but if there is no objection—

Mr. CLAGGETT. I know it is, and I ask unanimous consent to have the matter considered now. I have submitted it to both gentlemen who offered the amendments the other day, Mr. Heyburn and Mr. Ainslie, and they both concurred in the suggestion of the change.

Mr. HEYBURN. I am in favor of striking the whole thing out, but if it is to be in, I prefer the change.

Mr. CLAGGETT. The matter can be put in shape of a motion in convention, Mr. Chairman.

The question was put by the chair, shall the commit-

tee rise, report progress, and ask leave to sit again? Carried.

CONVENTION IN SESSION

The president in the chair.

ARTICLE IX, SECTION 11.

Mr. SHOUP. Mr. President, the committee of the Whole makes the following report: Mr. President, your committee of the Whole have had under consideration Section 17 (11) of the committee's report on Education, Schools, School and University Lands, and recommends as follows: that the section be amended by adding after the word "funds" in line 1, the following words, "other than university lands," and that the section be adopted as amended.

The CHAIR. If there are no objections the report of the committee of the Whole on that bill will be considered as received and adopted.

SECRETARY reads further: "Also have had under consideration the report of the committee on Salaries of Public Officers, and come to no conclusion, and ask leave to sit again. J. M. Shoup, Chairman.

The CHAIR. The report will be received and lie on the table.

ARTICLE XV, SECTION 3.

Mr. HEYBURN. Mr. President, I move that in the report of the committee on Manufacturing, Agriculture and Irrigation, in Section 3 the words in the third line "for the same purpose" be stricken out; and that also all after the word "purpose" in the seventh line of the section be stricken out. (Seconded.)

The CHAIR. That makes the section correspond as just read by me in committee of the Whole. All those in favor of the motion—

Mr. COSTON. I would like to hear that section read again. It seems to me it radically changes it.

Mr. HEYBURN. The change is this: It strikes

out the words "for the same purpose" in the third line; and then strikes out all after the word "purpose" in the seventh line; and leaves just the one word in the seventh line.

The CHAIR. I will state to the gentleman from Ada that that will leave the section as reported by the committee with the exception of this word stricken out. It gets rid of the amendments that were granted on the bill the other day in that section.

Mr. COSTON. Then the theory of that section would be to give the preference for domestic purposes, and extend it no farther, but let it stand equal, recognizing no priority of right only for domestic purposes. Is that the theory?

The CHAIR. That is it.

Mr. McCONNELL. Do I understand, Mr. President, that if this amendment should be adopted, it would be in effect that a manufacturing interest might use the water if he had the priority of right, where it might in a season when the water was short, work to the detriment of agriculture or to the exclusion of agriculture?

The CHAIR. No sir. It stands just in this shape. The constitution recognizes and enforces the right of preference for domestic uses, subject to such limitations as may be prescribed by law; but that so far as any other preference is concerned, it leaves it to the legislature in its wisdom to provide.

Mr. McCONNELL. Well, I am opposed to this amendment then, because it strikes out what we have been working to secure. We have been working to secure a permanent investment to those people who have seen fit to go out on the plains and improve farms. If they have no priority of right after they have gone there and done that work over a manufacturing interest, then there is no security in their going there. That is the way I would understand it. For instance, here is a ditch; I don't know by whom it is owned. I understand they say the motive power for generating electricity or a portion of it is secured from it. That would be prior-

ity of right over those lands in case there was not water below there for agricultural purposes, and in case there was not water enough to furnish this motive power here they could shut the water off those farms they are now attempting to cultivate and divert the water entirely for this machinery down here. That is the result of this amendment as I understand it.

The CHAIR. I do not so understand it.

Mr. McCONNEL. Then I move we adjourn and take this matter up this afternoon and discuss it again.

The CHAIR. If there are no objections it will be laid aside informally.

Moved and seconded that a recess be taken until two o'clock P. M. (Carried.)

Afternoon Session, *July 29.*

The CHAIR. The special order at this hour is reading the report of the committee on Legislative Department in committee of the Whole.

Mr. REID. The chairman of the committee on Engrossment is absent. Has the committee reported?

The CHAIR. I am informed by the secretary that he has not yet reported it.

Mr. REID. By consent I suppose we could continue taking up that question we were discussing before recess.

Mr. McCONNELL. I object to its taking place now.

Mr. REID. Then I suggest by unanimous consent we proceed with this salary bill as in committee of the Whole, as the senate sometimes does — need not go through the formality, but proceed as if it was. It can be done by unanimous consent on the salary bill, and I ask unanimous consent that we proceed until Mr. Hasbrouck comes in, without a change of officers, as if we were in committee of the Whole.

The CHAIR. There being no objection, we will proceed.

Article IV, Section 19.

Mr. REID. I ask for the reading of the amendments.

SECRETARY reads: Strike out in line 12 the words "three thousand" and insert "two thousand." McConnell.

Mr. McCONNELL. Mr. Chairman, I move that the words "district attorneys each three thousand dollars per annum" in line 12, Section 1 (19), be stricken out.

Mr. REID. In the absence of the chairman of the committee I desire to speak. I suppose the amendment is offered to strike out $3,000 to district attorneys in line 12. I will explain his duties and give the reasons why the committee put his salary at that price. This district attorney will go around with the judge in the district. Suppose we have three judges—I don't know how many we will have—those in the northern district will have one judge, and there are five counties. He will have to go to Shoshone, Kootenai, Latah, Nez Perce and Idaho counties; follow the judge to every court and prosecute in the name of the state. We have made no provision in the county bill for a county attorney. We abolish that office, and let the district attorney prosecute in the name of the state, follow the judge around the district. We allowed that his salary ought to be $2,500, and we put the $500 in to cover expenses. He gets no fees, nothing but this. We thought $500, say where there are five counties in the district, would be to pay his expenses, and he would get $2,500 for his services. We estimated that in estimating the salaries of the judges, that their expenses would be about $500, and they would get about $2,500 as a salary. If the committee wants to say $2,000—I mean the convention as in committee of the Whole—if they think he can get along for that, the committee that reported this bill does not make any special objections. But the gentleman has been talking about getting good talent and all that sort of thing. This district attorney will have to go around to the different counties, it will be his duty as prescribed to examine into probate matters, to see that administrators and guardians have fulfilled their duties, to see that county officers perform theirs, and he

will have to prosecute all crimes, murders, arsons, and everything of that sort, besides a great many other duties in the way of looking after the interests of the state and the people generally. If you put it at $2,000 his salary will be practically $1,500, because it will take $500 and more to pay his expenses. But the committee thought you could get a lawyer, a man who is capable, for that amount. And Mr. Sweet suggested this morning that in the supreme court room the attorney general would have to meet the best talent of the railroads and the corporations; so in the district courts the man who represents the state in prosecuting for the state, has to fight the whole bar, and will meet the very best talent the state can afford. We want a man to meet those conditions who is capable of taking care of the state's interests. However, if you gentlemen of the convention think we can get good men for $2,000 of course you can vote it, and the committee will acquiesce; but I am explaining why we did it. We thought we could get one of the best lawyers the bar afforded, but not as my friend suggested, one who has just got his license, that he called a pettifogger; I don't think it necessary because he has just started out, that he should be a pettifogger, but I know it has been the habit to make young men district attorneys and I am glad it is so. If they don't know how to do the business they can ask the older attorneys. In some cases we have unfit attorneys, but that is not the rule. I think the district attorney for these districts, a man who prosecutes for the state, ought to be a man learned in the law, a man of experience who can try capital cases, a man who can measure lances with the very best talent among lawyers who will be called upon to defend criminals. I think you ought to allow him $500 for expenses and $2,500 for salary, and we have put it all in as salary. But if you think $2,000 is enough, well and good. I think my friend from Ada moved this amendment, I think, to kill the office, because he has made a strong fight. I hope I am mistaken.

Mr. SHOUP. It seems to me this discussion is premature at this time, inasmuch as it has not been decided whether we shall have a district attorney at all or not. If we occupy two or three hours in discussing what the salary of the district attorney is, and afterwards decide we won't have any district attorney at all, but retain the present system of the counties, it will be all thrown away. I think this ought to be passed until after the report of the Judiciary committee is considered.

ARTICLE III, LEGISLATIVE DEPARTMENT—FINAL READING AND PASSAGE.

The CHAIR. Gentlemen, the order of the committee was that we proceed as in committee of the Whole until Mr. Hasbrouck, chairman of the committee on Engrossment, was ready to report.

Mr. HASBROUCK. I have the report.

SECRETARY reads: "Boise City, Idaho, July 29, 1889. Mr. President: Your committee on Engrossed Articles of the Constitution, to whom was referred Article — on Legislative Department, have carefully examined the same and find it correctly engrossed. We also found a section referred to your committee in relation to Section 1, supposed to belong to the Bill of Rights, carefully copied. Hasbrouck, Chairman."

SECRETARY reads the revised article on Legislative Department.

The CHAIR. The article as read by the secretary will be referred to the committe on Revision to be embodied in the constitution.

Mr. GRAY. It has passed any amendments, now, has it, Mr. President?

The CHAIR. Yes, according to the rule it seems to be.

Mr. REID. Don't we vote by ayes and nays on its final passage?

The CHAIR. This is not its final passage.

Mr. REID. Yes, it was ordered to final reading at this time.

The CHAIR. But it was voted on by ayes and nays the other day, and the report of the committee came up in convention, and was finally adopted by aye and nay vote and then referred to the committee on Engrossment to be sent back here for final reading to see if there were any corrections, and after it has been read the rule provides that it shall be referred to the committee on Enrollment and Revision, and when that committee reports, then each article is to be voted upon separately on the final reading of the entire constitution, and then the constitution adopted.

Mr. GRAY. What sense is there in reading it now, if we have no say about it?

The CHAIR. Not unless there is some motion made to suspend the rule.

Mr. MAYHEW. I understand the object of reading it now is for the purpose of seeing whether it is correctly engrossed.

The CHAIR. That is the intent of the rule.

Mr. McCONNELL. Is it the intention of the rule not to give a third reading of these bills, and not to have them voted on the third time as it will appear in the constitution finally? Is there to be another opportunity to offer any amendments than those offered when it is first brought into the convention? It is considered in committee of the Whole, then brought into the convention and passed to its third reading, as I understand it. It has only had two readings; one in committee of the Whole and one in the convention as reported from the committee of the Whole, and it certainly should have a third reading on its merits.

The CHAIR. There is a third reading provided for here in rule 54, which reads as follows: (Reads the rule.) The final vote was taken, as I understand it, on the report of the committee on Revision and Enrollment.

Mr. REID. The other day we proceeded under rule 52, which is as follows: (Reads the rule.) The order

then was that it should go on its final reading at this hour. In the meantime the committee on Engrossment was ordered to pass this over. Now, I take it the proposition is, shall we agree to this proposition as read? This is the final reading, and if so, it goes to the committee on Revision. That is the plan we took the other day, and took the ayes and nays on it.

The CHAIR. The chair understood the ayes and nays were taken on the adoption of an article when it was considered by the convention on the report of the committee of the Whole. It is a matter of no special consequence. The secretary will call the roll.

Mr. GRAY. I understand then no opposition can be made now except to the entire bill.

The CHAIR. This is the final reading according to the views of the convention, and it cannot be stopped at this time for amendments unless some motion is made to reconsider the vote by which it was ordered to be engrossed, or to make some other disposition. In the absence of any motion to suspend the rules and make some other disposition of the engrossed bill, the proposition now is upon its rejection or adoption. Roll call:

Ayes: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Pierce, Pyeatt, Reid, Sinnott, Shoup, Underwood, Whitton, Wilson, Mr. President—38.

Nays: Gray, Pinkham—2.

The CHAIR. The article is adopted, and the engrossed bill will be referred to the committee on Revision and Enrollment for embodying in the constitution.

ARTICLE III, SECTION 24.

The next matter, made a special order for this hour, is the matter which was brought up by the gentleman from Ada (MR. CLARK) this morning. It is reported

as Section 1, but Section 1 of what article is not mentioned.

Mr. CLARK. It was agreed at the time that was introduced that the committee on Revision would place it where it was most appropriate in the instrument. It was simply spoken of as "the temperance section." I presume it would be in the Bill of Rights, but we left it for that committee.

The CHAIR. The secretary will read the section.

SECRETARY reads: Section 1. The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The legislature should further all wise and well directed efforts for the promotion of temperance and morality.

Mr. GRAY. I call for the ayes and nays.

The CHAIR. That was by order of the convention this morning made a special order at this time on final reading for incorporation in the constitution.

Mr. MAYHEW. I think it ought to go to the last part of the constitution as a sort of moral prayer.

Mr. HEYBURN. Mr. President, I was not here and this is the first time I have heard of this measure, and I desire to have it read that I may know what it is. (The section was read, as above set forth.) Mr. President, I will vote no. I believe in the sentiments expressed, but I don't think it has any place in the constitution.

Roll call:

Ayes: Ainslie, Allen Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Hasbrouck, Hays, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Moss, Pierce, Pinkham, Pyeatt, Reid, Sinnott, Sweet, Underwood, Whitton, Wilson, Mr. President—37.

Nays: Harris, Heyburn, Mayhew, Shoup—4.

The CHAIR. The vote on the final reading of the article as read is yeas 37, nays 4. It will be referred to the committee on Enrollment and Revision, with

instructions to incorporate the same in its proper place in the constitution.

MOTION TO LIMIT SPEECHES.

Mr. ANDERSON. Mr. President, if it is in order I move that speeches by members before this convention be limited to five minutes. (Seconded.)

The CHAIR. The chair will have to rule the motion out of order for the reason that previous action of the convention was taken limiting them to ten minutes. If the gentleman will send his notice up it may be taken up tomorrow under the rule.

Mr. REID. Mr. President, does the question of irrigation come up by special order at this time?

Mr. Sweet in the chair.

ARTICLE XV, SECTION 3.

The CHAIR. It comes up at this time, yes. The secretary will read for the information of the convention Section 3 of the bill as it was agreed upon the other day in the committee of the Whole, and then Section 3 offered as an amendment or substitute for Section 3 by the gentleman from Shoshone (MR. HEYBURN).

SECRETARY reads: To amend Section 3 by adding after the last words, "and in an organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have the preference over those using the same for manufacturing or agricultural purposes." And to continue Section 3 as follows: "but the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public use and private use as referred to in Section 14, Article I, of this constitution.

The CHAIR. The secretary will now read the substitute proposed by the gentleman from Shoshone.

SECRETARY reads: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority

of appropriation shall give the better right as between those using the water, but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have preference over those claiming for any other purpose."

Moved and seconded that Section 3, as agreed to the other day, shall be amended as last read by the secretary.

Mr. McCONNELL. Mr. Chairman, I hope this amendment will not be adopted. We had this question fully discussed the other day, and it seems that the lapse of time has given an opportunity for some gentlemen to change their minds. But I still think there are enough members on this floor who are not attorneys for any ditch company, and haven't any special interest only in the welfare of this state, to vote against this amendment. If this amendment passes, parties who own ditches in this territory and have on those ditches manufacturing enterprises, may at any time take the water they have heretofore rented to farmers, and by that rental have induced them to go on to these sagebrush lands and open up thousands and thousands of acres and build homes, and turn it to the use of manufacturers. There is no provision to protect those men. Gentlemen of this convention, we are more interested today in the reclamation of these sagebrush lands than any other problem that has been brought before this body; and if you adopt this amendment you practically place these gentlemen who are tilling these sagebrush plains down here at the mercy of the ditch owner. For instance, there is one ditch right along here, and I don't know how many more there may be in the territory, but here is one ditch at least that has within a few miles of its head a large milling enterprise, and an enterprise for the generation of electricity. They furnish part of its waters down below on the plains to the farmers. Suppose now we strike this out, and give

them the privilege of saying at any hour of the day or any day of the week: "We have use for this water ourselves for manufacturing and we cannot let you have it any longer." What condition will those farms be in, gentlemen of this convention? That is the question that comes right home to you. I don't suppose that any of my children or any of the children of Judge Claggett, or perhaps any of your children will ever be situated down here, but they may; it is not likely we will cultivate those lands, but our children and their children may, and let us not place anything in this constitution, which will place those agriculturalists, who are necessarily poor people, in the power of any incorporation which brings out a ditch. I live in a remote part of the state where irrigation has not been adopted or will be adopted, but I rise in defense of this proposition of irrigation here. It is to your interests, gentlemen, who live in the southern part of the territory, to see that the eloquence of those men, who perhaps may be paid and perhaps not, for their eloquence, does not prevail in this convention.

Mr. GRAY. Mr. Chairman, I feel as much interest in this water question as anybody who doesn't drink any more water than I do. But I will say that if I make a ditch it is mine, and if I spend $25,000 or $50,000 to build a ditch, it is mine, and I want the privilege of using it if I need it. If I make a contract with a man I don't suppose this convention could change that contract; I don't suppose there is any lawyer upon this floor that would say that he could change it or anybody could change it, but when you say to me, as it has been said to me before, that I have got to rent this water because once I have given it to a man twenty miles below before I needed it myself; and further say to me when I want it myself that you are going to bar me from the right ever to use it again, I don't know whether the man who argues that knows anything about water or not. I don't believe he does; I don't believe he even drinks enough to know anything about it. What I want is

this, and I have tried to tell this convention before, that when a ditch is opened the first man at the head shall have the right as long as there is any water there. If I have dug that ditch and want to use it on my own land, I claim I have the right to do it; and I claim I have the right when I spent my money and my time to build it, it is mine as much as any man's land is his, without he entered into a contract with me, and if he has then I must fulfil my contract. The idea is to make me build a ditch costing $25,000 or $50,000, and then give it to some man that is forty miles below, where on account of the evaporation it would not be worth cleaning out by the time it got there; the ditch would not be worth cleaning. I want these gentlemen to understand me. It costs money to build ditches; it costs money to do most anything; but I want them to understand this, that if I have water to sell, I want to sell it to the first man on the ditch. I have that right, because I don't want to lose it by evaporation. It is money to me, and as long as there is water in the ditch, and I have got it for sale, I don't want it to ever pass any man's land if he will take the water. I don't want it ever to be allowed to pass; and I believe the principle is correct. I can go down here and make a contract with a man to supply him with water, and then this water will waste largely in going, by percolation, evaporation and all that, and then I will say to him, "See here, sooner or later you have got to shut up." That will be the doctrine the gentleman is going to adopt. That is just exactly what I think. If I make that ditch it is mine as much as the hat I wear on my head, if I pay for it. If I enter into a contract I will comply with it, I have got to comply with it, but don't make me dig ditches to supply a man with water who is forty miles down the country; don't force me to do that and waste all the water before it gets down there.

ARTICLE XV, SECTION 1.

Mr. REID. I would like to ask the chairman of this

committee before I vote on it—I had not noticed it particularly, and I thought you gentlemen knew more about water rights than I did—about two or three things that I don't understand. "The use of all waters now appropriated;" and further down the words "also of all water originally appropriated for private use, but which after such appropriation has heretofore been or may hereafter be sold, rented or distributed." Now, I wish to ask, if that does not interfere with vested rights I don't understand the English language, and if it does, it is just as void as if it had not been written. I understand it that way. It says "all water now appropriated," no matter what the law has been heretofore. I always understood the principle here in this water right business, "first in time, first in right," no matter what right he has acquired.

Mr. McCONNELL. That is not all of it; read on.

Mr. COSTON. Mr. Chairman, I rise to a point of order. There is no amendment proposed to the first section. The question is pertaining to the change of Section 3.

The CHAIR. That is all.

Mr. REID. Well, I suppose that Section 3 takes all up for consideration, section by section. I am talking about Section 1 now. The reason I am asking is that my vote on Section 3 might be influenced by the explanation I have on Section 1, and the whole when it comes up.

Mr. McCONNELL. Do you desire an explanation on that?

Mr. REID. Yes, I want to know if it does not interfere with vested rights. If it does, I don't want to be put in the attitude of going to the congress of the United States with a constitution which on its face interferes with vested rights or contracts acquired under prior laws.

Mr. McCONNELL. In the absence of the chairman of this committee I suppose it will devolve on me to defend the action of the committee. This was taken

from the California constitution.[1] They found it necessary to declare water appropriated for public use a public trust, and that the legislature should have the right to prescribe suitable laws concerning it. It does not say that the use of all waters now appropriated or that may hereafter be appropriated, shall be taken away from anybody, but the waters "that are appropriated for sale, rental or distribution" shall be under the control of the legislature.

Mr. REID. Let me put another question. There is a ditch running around the town of Lewiston where I live that a gentleman has already acquired rights under and sells it and rents it. Now, this first section, as I understand it, declares that man's vested rights, for which he paid a valuable consideration, may be condemned to the public use. Suppose Mr. Eastman, who furnishes the water for this capital, should have his rights declared to be a public use, according to this language; all rights now "for sale, rental or distribution," now apropriated or which have been appropriated originally "for sale, rental or distribution." If that is so, I don't want to be put in such an attitude as that for any such section.

Mr. McCONNELL. I suppose it is out of order, but if I may explain that —

The CHAIR. You had better argue what is before the house.

Mr. McCONNELL. I would like to make an explanation to the gentleman before he gets the wrong idea. I would hate to have—

Mr. REID. I ask for information.

Mr. McCONNELL. Let us say you have a ditch out here out of which you get water and pay a certain amount to the people owning the ditch. They have used that water quite a number of years; it is a franchise; there can be no other ditch brought where that ditch is because it occupies a position that prevents the bring-

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[1]—Constitution of California, 1879, Art. XIV., Sec. 1.

ing in of another ditch. Now, suppose these men who own the ditch have a mill at the end of it. And this comes right to the point, right home to the gentleman's own constituency, for those gentlemen on their prior right can say, "We will use this water all for the mill; we will not allow you to have anything for your gardens, orchards or houses." What kind of a position would his constituents be in? They would have to move up to Moscow where we don't have to irrigate.

Mr. REID. But, in line 4 it says, "hereby declared to be a public use," and that man has taken his rights and vested them, and has his deed and is protected, and took out his charter for a special purpose, and here you declare that man's franchise and vested right, which he has acquired under the laws governing this territory before the adoption of this constitution, to be a public use, interfering with his rights.

Mr. McCONNELL. I declare that it is a public use.

Mr. REID. If it applied to anything acquired after the adoption of this constitution, it would be a different thing. That is what I want to see as to the effect of it. If it is the opinion of the legal talent of this house that that does not interfere with any vested rights or franchises, I am in favor of it; but if it does disturb them or make them subject to litigation, I will vote against it, because it is not the object of this constitution to precipitate litigation upon the people.

Mr. McCONNELL. This is a part of the constitution of California.

Mr. GRAY. That was a law passed for the—

Mr. McCONNELL. (Interrupting) I hold to this theory whether it is the law or not. I am not a lawyer, but I will exchange common sense with other men, who are perhaps better versed in legal lore. I claim if Mr. Eastman here chose to shut the water off from this town, the people would have a right to say that he should not do it, because he has put the water into their houses, and without it they cannot exist, and he has no right to shut it off if they pay for it.

Mr. REID. But you declare in this section that the public can deprive him of it if it wants to.

Mr. McCONNELL. No sir, not at all.

Mr. COSTON. Having participated with the committee on Agriculture and Irrigation in the consideration of this proposition, I desire to submit a few words as to my understanding of the force of these pending amendments. The section as it already stands adopted has just been read. It does not interfere nor do these amendments, with the question as settled by this bill as to prior rights; it does not affect them in any way; it only affects the proposition that in time of scarcity, at times when there is not water enough to supply all that have located water from a common source, as to the distribution on those emergencies. These amendments set forth and make the concession that a preference shall be given for water in time of emergency, when there is not water enough to supply all; that there must be a distribution of it when all the rights cannot be complied with because the source has failed. And it provides that the right to the use of it for domestic purposes shall have the preference, under such restrictions as future legislatures may see fit to enact. The bill as readopted the other day, after stating the first right for domestic purposes, went still further and specified as to which should have the preference when manufacturing and irrigation are competing. The amendments here proposed, propose to make no distinction; but put water acquired and used for the purpose of manufacturing and for irrigation in the same boat, as it were; to make no distinction as was made in favor of domestic purposes, in reference to irrigation and manufacturing. That is the purport of it as I take it, and that is all these amendments affect the bill or the theory of it from top to botom. That is my understanding.

Now, I oppose those amendments, and I do it for this reason: that there is just as good argument in favor of making the distinction in preference of agri-

culture when agricultural and manufacturing interests are competing, as there is (as the gentleman who moved these amendments will concede) for domestic use being given the prior right. To make a familiar illustration—and if I am wrong I ask the movers of these amendments to correct me—in this way: There has been a ditch heretofore taken out of a stream, of 10,000 inches. It was the right and the purpose of the ditch owner to exhaust the entire strength of the stream. Now the first right he sells out of that, by the theory of this bill, this prior right attaches not only to the original locator and ditch owner, but also attaches to him who has had the prior use of it, and that becomes a vested right, as I take it, and just as secure as the right originally to the water. Now, there are 5,000 inches, we will say, devoted to manufacturing purposes, and the other 5,000 inches has been distributed in the farming community. It has all been taken and paid for by rental, and that prior right ataches to each one who has taken any per cent of that water and paid for it and used it. Now, here comes a scarcity; the usual flow is reduced to 5,000 from 10,000 inches.

Moved and seconded that a recess of twenty minutes be taken. Carried.

Session resumed.

Mr. HEYBURN. I move a call of the house.

(Motion seconded, and it was carried.)

Roll call proceeded.

Present: Allen, Anderson, Ballentine, Campbell, Clark, Coston, Crutcher, Glidden, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Maxey, Mayhew, McConnell, Melder, Moss, Pierce, Pinkham, Pyeatt, Reid, Sinnott, Shoup, Sweet, Whitton, Mr. President—29.

Mr. ALLEN. I was not here as the roll call was ordered, but I move that further proceedings under the call of the house be dispensed with. (Seconded.)

Vote and carried.

Mr. COSTON. I think I had arrived at the point where there was only water enough left in the ditch to supply the manufacturing interests, that having been

used prior, and by the theory of this bill having the preference. Now, then, if these amendments prevail it prohibits, as it were, or at least gives no power to the legislature to pass such laws as shall make a distribution of that water to save the orchards, farms, meadows and the homes of that agricultural community, which have acquired a vested right in the waters of that ditch to the use of those waters. With the reinstatement of those words "and for the same purpose" it would then only put, in cases of this kind, which provides for the distribution of water in an emergency, manufacturers in competition with manufacturers.

Mr. CLAGGETT. Those words in the amendment which is offered are stricken out.

Mr. COSTON. Yes, but as we come to some subsequent provisions of this bill we will find out that for agricultural purposes the words are again repeated, which puts all the rights of agriculture within that prescription. As I was going to say, under the theory of this bill as it will stand, as I understand it—and I ask cooperation, all I want is a fair understanding of it—in the illustration which I have attempted to make, even in that emergency when the waters of that stream were reduced to one-half of their natural and usual flow, it would give the manufacturer the undisturbed control of all the then waters from that source that exhaust the ditch. To those who are familiar with the great damage which would be done perhaps in two or three months, or less, in a drouth like this, when the work of years would be sacrificed, no apology is needed for giving domestic uses the preference. As competing with the three uses contemplated here, we are very free to concede that domestic use stands first. That now is disposed of, and the only question is as between manufacturing and agriculture. I claim there is as good argument in favor of the preference being given under the circumstances to agriculture, as there is in giving the preference to domestic purposes when all three are competing. Why? Simply because the loss

that will come from the agriculturalist being deprived of the use of that water is irreparable; there is no substitute for the use of water. With the manufacturer there is a substitute, and it is fast taking the place of water for the usual manufacturing purposes; that is, not to the variety of purposes for which it may be required, but for furnishing power.

Mr. ALLEN. Mr. Chairman, in order to confine this discussion more closely to the two propositions before the convention, I wish to read from Section 3 of the report of the committee on Public and Private Corporations, and to make a comparison; and this in answer principally to the question presented by Mr. Reid of Nez Perce county, and that is the theory upon which we are acting. "The legislature may provide by law for altering, 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 incorporators." That answers the question of Mr. Reid in regard to the ditch in his town. The same theory has been adopted in this committee, and now the only other question before the convention is the application of that rule to the use of water for irrigation purposes, and that is left with these restrictions, as stated in Section 3, under the limitations of the legislature. The legislature has power in an emergency, and when the water of any natural stream is not sufficient for the service of all those desiring to use the same — the legislature is granted the power to step in and regulate the questions which may arise under that emergency. I think the section as amended has no objections, and I shall vote to have it sustained as amended.

ARTICLE XV, SECTION 3.

Mr. WILSON. I call for the reading of the substitute. I still do not have a clear distinction between it and the original section.

The secretary read the substitute as heretofore set out.

Mr. CLAGGETT. It seems to me if the members of this convention, instead of indulging in criticisms, would sit down and study each one of these sections, they would find the whole thing as plain as a man's nose on his face. There ought not to be any misunderstanding as to the terms, conditions or meaning of any section in this bill. The committee, as it reported Section 3, which is the only one up for consideration, recognized the right of priority as between different locators or appropriators of water for any useful or beneficial purpose, whatever the purpose might have been. But to that they have made two exceptions. The first one was where there was not enough water to go around for all the appropriators, that those who used the water for domestic purposes, should have preference over all others; and those who used it for agricultral purposes should have preference over those using it for manufacturing purposes. In other words, when Section 3 was originally reported by the committee there were two preferred uses, and in times of scarcity one had to yield to the other, or in times when there was no thought of scarcity, because it is not limited, as stated by my friend from Ada, to cases of scarcity. Then upon that proposition coming in, an amendment was made by me, and adopted by the convention, making a third preferred use with regard to organized mining districts; and in those cases a man who had taken up water for mining purposes has the preference over those who have taken it up for agriculture. Now, bear in mind, those preferences are violations of the law of priority. There is no provision in this bill as it was originally, until amended the other day on the motion of the gentleman from Boise, for any compensation whatever. And the more of those preferences you put in there, the more you take away the right of prior appropriation. Now, I think, and I think everybody else thinks, that so far as domestic uses are concerned, they

should have the preference over all uses; but so far as the constitution is concerned I think we should stop there. If any preferences are to be made hereafter, they must be made pursuant to law, by the condemnation of the prior right which is devoted to another use. That is the substance of the whole thing. I am afraid of the practical operation of putting in this constitution, where we cannot change or amend it in any way by the action of the legislature, so many of these preferred uses, where when you come to work them out practically they will do injustice to a great many men. So far as Section 3 is concerned, the amendment reported by the committee is word for word taken from the constitution of the state of Colorado.[1] And the effect of the amendment now offered by Mr. Heyburn is simply to recognize the right of priority, no matter what the use was for, provided that it is a beneficial and useful purpose; except, that in the matter of domestic use it has the preference over all others. And I think that is as far as we ought to go in the constitution. The legislature will not be left powerless on these subjects.

Sections 5 and 6 refer to special cases; that is to say, where water has been taken up and appropriated for use, sale, rental and distribution for agricultural purposes only. It refers to nothing else and brings no other cases in here. Section 1 of the article declares that all water that is made the basis of profit, by sale, rental or distribution shall be deemed a public use and subject to the control of the state, and the right to collect rates is declared a franchise and can only be exercised in the manner provided by law. But this whole article does not affect private ditches or private water rights in any way, shape or form from the existing law as it is today, except it does subject all private uses and everything of that kind, no matter what the purpose may have been, to the preference of domestic use, which I think ought to be done.

1—Const. Colorado, 1876, Art. 16, Sec. 6.

Mr. GRAY. Suppose I dig a ditch, am I compelled to give it for domestic use, when it is done for my own personal purposes only?

Mr. CLAGGETT. Will the gentleman be kind enough to read the law, and stop asking so many questions. This use of water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference.

Mr. GRAY. I will leave it all to the law if you will let me.

Mr. McCONNELL. This discussion has assumed a different shape, as the opposite side has had an addition to its counsels. I am astonished by the argument of my friend Claggett. He used that on the committee, drafted it or copied it from the Colorado constitution, favored it in the committee and has favored it up to this time.

Mr. CLAGGETT. No, I have not.

Mr. McCONNELL. You have not urged any objection before.

Mr. CLAGETT. I favored the original section, but they have gone on and amended the section, and I want to get rid of that particular section, which gave rise to the amendments.

Mr. McCONNELL. Well, if this amendment is adopted I will then move to amend the title, and make it "an act entitled an act to donate the public domain to ditch companies." That is what it amounts to. If a gentleman who has priority of right in a ditch, which he has if he digs it, no law we propose to pass here will take that right away from him. But if he spreads that water out over these lands, as has been done in many instances in Nez Perce and Ada counties—

Mr. REID. (Interupting) If the gentleman will pardon me, the first section attacks the ditch companies and makes all their rights subject to public control.

Mr. McCONNELL. I am discussing what the effect will be if this section is adopted.

Mr. REID. The section will go in as a part of the law. The gentleman from Shoshone does away with the

trouble in my mind, and I shall vote for his amendment.

Mr. McCONNELL. Yes, I thought probably he would, too. After water has been diverted as it has in this county to agriculture, having already enough water for their purposes in manufacturing (as there is enough water to run a mill and two or three manufacturing enterprises which are being run by this ditch company) they have given a certain share of the water out to the country below. And you say here under the law you can take this water away from those parties whenever you want to manufacture.

Mr. CLAGGETT. We are discussing that Section 3, which has nothing to do with that proposition you are arguing. That is covered in Section 5.

Mr. McCONNELL. And that is the proposition which says, Priority of right shall have priority in everything except for domestic purposes.

Mr. CLAGGETT. But only as between persons to whom the water is distributed.

Mr. McCONNELL. This section says: (Section 3) "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied." Now, this: "Priority of appropriation shall give the better right as between those using the water." Now, then, does not a man have priority of right who took that water out and used it for manufacturing purposes? Haven't they priority of right over those who come in afterwards and propose to reclaim these lands if the ditch company is going to give them the water?

Mr. GRAY. Yes.

Mr. McCONNELL. Then if we adopt this amendment, haven't those people that we say have the priority a right to say "we want all this water to turn our mills," and the next year they can buy in those lands under cultivation at five cents on the dollar of their cost. I ask this convention to be very careful.

Mr. REID. Take Section 1. On this ditch you have around Boise, and the one we have around Lewiston, we

have all been buying and using the water several years. If the legislature enacts legislation under Section 1, can these ditch companies take away from us the right to use that water after it has been declared a public use and subject to legislation?

Mr. McCONNELL. That seems to be the object of this amendment. I am not an attorney, but I am talking as a citizen.

Mr. REID. I say if you leave Section 1 in there, those people that have been using this ditch can use it for agricultural and domestic purposes forever, if the legislature does its duty. That is my trouble, but that objection is removed. Lewiston and that country will be a desert unless we can control that ditch.

Mr. McCONNELL. And you should control it over manufacturing or any other purpose.

Mr. REID. Certainly; we use it for agricultural products, fruits and everything. And now, if the legislature comes in under Section 1 and enacts proper regulations and rules, we will get our water and also keep our rights.

Mr. McCONNELL. I tell you, gentlemen, under this section which these gentlemen ask to amend—he says it would give priority right and preference; and that ditch in Nez Perce county was dug for milling purposes, not agriculture, and used for milling purposes; and those men (or ladies, I think they are) who own that ditch can take that water and turn it on to the wheels of that mill and shut it off from the land if this becomes a law.

Mr. REID. They cannot do it.

Mr. McCONNELL. Then they will have to go into court and make a fight for it.

Mr. CLAGGETT. Let me call the gentleman's attention to the section that covers the whole thing. He says this ditch at Lewiston was built originally for some other purpose, and now the waters have been devoted to agricultural purposes, and if this amendment is made, so far as the different proprietors are concerned on that

stream, it will authorize the ditch company to take it away from the farmers. Now, let me call your attention to this: (Section 4.) "Whenever any waters have been, or shall be appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental or distribution shall be deemed an exclusive dedication to such use." But here is the question about Section 3. Suppose two men have taken a ditch out of the same stream, who is going to have priority as between those two ditches? I am not talking about renters or persons purchasing the water; that is protected in the other one. Are you going to leave it in that shape, and if I take a ditch out where there had nobody taken out an agricultural ditch, and I expend $50,000 or $100,000 to put up a manufacturing plant, and another man for agricultural purposes wants it, can he take my property without any compensation?

Mr. McCONNELL. Yes, this practically says so. I have heard two expressions which come to the same thing, since I have been in this convention (it was from a democrat); one says when a leading republican advocates something, you look out for it; there is a nigger in the fence. And I heard a republican say that about the democratic action. And so I say, as a rule when I find an attorney for a corporation advocating a certain measure, I look out for that.

Mr. CLAGGETT. Does the gentleman mean to say that I am an attorney for—

Mr. McCONNELL. Oh no, oh no.

Mr. REID. Does the gentleman mean to say that I am an attorney?

Mr. McCONNELL. Oh no, no sir.

Mr. MAYHEW. Does the gentleman mean to say that I am an attorney?

Mr. McCONNELL. Oh no, oh no.

(Amid laughter and confusion the discussion was interrupted for several minutes.)

Mr. McCONNELL. I am in favor of having this stand as it is.

Mr. REID. Well, the gentleman has seen fit to reflect on us. If any gentleman happens to be an attorney, the probability is that his opinions are not those for the good of the country. But as an attorney, I say such a reflection is out of order.

Mr. ALLEN. I call for the previous question.

Mr. McCONNELL. I think the gentleman is out of order.

Mr. WILSON. The next time the gentleman from Logan gets up —

The CHAIR. Mr. McConnell has the floor for three minutes yet.

Mr. McCONNELL. If this convention sees fit through these honorable gentlemen, who have a great respect for the voters, to give up these waste lands to ditch companies, let them be responsible to their own constituents when they go home. That is all I have to offer. If this amendment is adopted that is what it practically means.

Mr. HAMPTON. Mr. President—

Mr. McCONNELL. I second the motion for the previous question.

The CHAIR. The gentleman is out of order.

Mr. HAMPTON. I understood the substitute, which was first offered this afternoon, as read this morning, contained the words, "for the same purpose." I understand now from reading the section those words were stricken out. It seems to me those words, if they mean anything, or might be of any use in this section, should be there in order to be consistent with it. I understand the gentleman from Shoshone (MR. CLAGGETT) to say that the legislature would have under this section the power to pass legislation restricting the right to the use of water, as was indicated in the latter part of the section giving agricultural rights the preference. The legislature would have this power. And I want to ask if Mr. Claggett means to say that in case those words were stricken out it would have that meaning; if the legislature would have the power to prefer rights in

times of scarcity, in case the words "for the same purpose" were stricken out?

Mr. CLAGGETT. The bill as it is reported by the committee and stands today only has one section in it that refers in any way whatever to private rights or private uses. If I have a ditch taken out for agricultural purposes and use it on my own farm, and I am the first man to use it, this will protect that private right completely by recognizing the priority, so far as the priority is concerned; but under the provision, which was adopted in Section 14 of the Bill of Rights giving the right of eminent domain to the state to condemn private property for public uses in all matters which are necessary to the complete development of the material resources of the state, the legislature will have power to do it, but only by condemning and paying for the prior rights. And I see in the amendment offered by the gentleman from Boise yesterday, that with the exception of giving the priority to domestic use (and that even must be under limitations provided by law), no prior rights should be condemned and taken away for a preferred right unless the value of the property which is destroyed by it shall be compensated.

Mr. WILSON. I am in favor of the section as it originally read; but I am not in favor of the substitute for one reason only. I realize it is to the interests of this country that manufacturing establishments be built here and that manufacturing go on here; there is no question about that; but I think it is of paramount interest to this country that these arid lands be cultivated. This necessity does not arise except in southern Idaho. There will never be any controversy between those desiring water for mining purposes and those desiring water for agricultural purposes, unless perhaps in some of the placer mines on the Snake river, because where they use water for mining purposes in those mountain streams, it is not necessary to irrigate; the altitude is so great that little agriculture is carried on. But on these sagebrush plains I think the paramount

interest is that they be cultivated. If you want to have manufacturing establishments, other power can be used than water power, although that is cheaper and we ought to have it when we can afford to have it. But if we have to have it at the sacrifice of the right to irrigate the arid lands, then I say we better not have water power. These mountains are covered with timber, which can be floated down the streams and used for the purpose of generating steam power, and at not much greater expense than water power. But God does not sprinkle these plains, and so they are an absolutely barren waste, and without water never can be used. You can get wood down there to generate steam power, but you cannot do anything with the land at all unless you have the water to irrigate it. Therefore I think the preference should be given to agriculture.

Mr. CLAGGETT. Suppose at a point where a stream issues, or just below where the stream issues from the mountains, a man comes in today and digs a ditch and erects a manufacturing plant of any kind, and goes on and uses the water as a power. Now, suppose afterwards that the same water can be used for agriculture by depriving him of the power. Do you propose to take that man's right away from him without paying him for it, under the preferred right of agriculture?

Mr. WILSON. Yes, of necessity.

Mr. CLAGGETT. Yes, that is it.

Mr. WILSON. We exist under peculiar circumstances, and it is necessary that that be done; it requires a heroic remedy.

Mr. SHOUP. Allow me to ask you a question. Does the section allow a man to take this water away from a factory under circumstances like these; suppose I have taken out the water of a stream, and that it requires all of that water for my mill; and suppose there is a little piece of land, may not be more than three or four hundred acres, which the water that runs my mill is sufficient to irrigate, or might be a little more than sufficient, but it takes practically all the water to run

my mill. Now, Mr. Wilson comes in below me after I have had that factory ten years and employ a thousand people, perhaps, and he takes up this piece of land and makes me shut down my factory in order to give him that water, under this bill.

Mr. McCONNELL. No sir.

Mr. HEYBURN. Yes, that is what it would be.

Mr. WILSON. I think I have the floor, Mr. Chairman, I will answer that question. In the first place he does not stick to the facts. If there are only three or four hundred acres there it will only take three or four hundred inches, and that won't furnish power to employ ten men.

Mr. SHOUP. It may take 2,000 inches to run my mill, and if you take away 400 inches I would not have enough left.

Mr. WILSON. I would sacrifice that right. Understand me, gentlemen, we are not taking away any accrued rights now; could not if we would, would not if we could, because it would not be law. We are legislating fundamentally for the future; and I would put that in our fundamental law that he who builds a manufacturing establishment in the future builds it with that law before him, knowing that there may come a time when it is necessary to irrigate these arid lands, and the water may be taken from his establishment. I say the first interests of this arid country are agriculture, not manufacturing. There must be some wrong done somewhere; there must be some industry sacrificed out of the very nature of things. I say that it is essential to the interest and the paramount interests of this country that manufacturing be sacrificed rather than agriculture, because this is not a manufacturing country; we don't have raw materials to manufacture out of, and I doubt if we ever will have. We might manufacture some few things, but this is not a country like Pennsylvania.

Mr. REID. Don't we produce a great deal of wool? Couldn't we manufacture flour?

Mr. WILSON. Yes, but wool manufacturing establishments have no standing here yet.

Mr. REID. Doesn't the north part of the state produce large quantities of flax?

Mr. WILSON. Yes, but north of the Salmon River mountains this question of irrigation does not come up, except perhaps at Lewiston. This is where we have the right to speak; our voices ought to be heard. "Priority of appropriation shall give the better right as between those using the water." Yes, but give the priority of right to those using the water for agricultural purposes as against manufacturing purposes, for the reasons I have said, out of the very necessity of things, for the vital interests of the arid country. And I will tell you another reason why. In Colorado it is generally conceded they have the best laws relating to the question of irrigation of anywhere in the United States. They have made a thorough study of it; I have been over that state a little, and I have been particularly in the portions where they irrigate in and around Greely, and I know to what perfection the country which was naturally an arid country has been redeemed by this system of irrigation, the whole country is redeemed until land is worth $100 an acre for agricultural purposes alone, and I don't think we can do very much better than follow them.

Mr. ANDERSON. In threshing and rethreshing out this old subject there had been only one point that I have seen brought forward, and that is, that if we stop a sawmill or a woolen mill or any other kind of a mill for the purpose of distributing water for a few days to agriculturalists, we cause them to lose the profits they would make during those days; and according to Mr. Ainslie's amendment they are to be compensated for that by the farmers who get the water. On the contrary, if the farmers are deprived of their water for a week or two weeks, they work for years thereafter at a sacrifice. They have orchards growing that perhaps have trees seven or eight years old; the wheat fields may

be almost ready for the harvest. If they cannot get water on those trees at the critical time, their work is all gone. There is another point that might be mentioned, and that is that the mill owner in a small community might have his eye on the lands occupied by those farmers. By withholding water from them for a short time he would drive them out and make them sacrifice their land at any price he chose to pay for it.

Mr. GRAY. Mightn't the farmers have an eye on the mill?

Mr. SHOUP. The gentleman in discussing this question apparently is trying to make every member of this convention believe that these manufacturers are going to destroy this country entirely. Now, that is not the case at all. The factory can use this water for power, and the water is still left and still goes below to irrigate land just the same; there is no necessity for closing the factory down.

Mr. ANDERSON. But suppose the mill is below the farms?

Mr. SHOUP. If they can get the fall in the river, they can take it out somewhere else. When it is used for agriculture it is lost.

("Question, question.")

Mr. GRAY. I cannot see for my life why one class of people have got to have an advantage over another. If there is no wheat raised here, there will be no flour mills; but there are two flour mills right here run by water, one down the river eight miles. Now, these gentlemen propose, if some rancher down there wants that water he can shut it off. If there is no wheat raised, there will be no mills. When I go and dig a ditch, and I am first in right, that belongs to me, and I don't want any other man to say to me that I shall use it for some other purpose than the purpose which I say is a legitimate purpose and the purpose I want it for. This domestic use I am not opposed to; they can drink as much as they are a mind to, because the people in this country don't drink enough to do any harm. But out-

side of that, I say they have no better right to it than I, if I dig a ditch to run a sawmill or a grist mill or any other manufacturing plant; and I believe they are just as useful to the country as is this agricultural business that may be going on. You may take it in some portions of the country where there is really no agricultural land, and they may want to take that water —for what? As the gentleman from Custer has said, you take 200 inches of my water and then I haven't enough power to run the machinery to which I have appropriated it. If I have dug this ditch and spent my money, or a good deal of it, have I any right, or does it belong to some fellow down the creek there? Now, answer me that, and answer me it directly; does it belong to him or to me? I say that the agricultural interest is not the only interest in this country.

("Question, question.")

Mr. McCONNELL. I demand the ayes and nays on that question.

Mr. HEYBURN. I ask to have the substitute read.

The section was read: "Section 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of apropriation shall give the better right as between those using the water. But when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes, shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose."

The CHAIR. Is that the substitute offered by you?

Mr. HEYBURN. No sir, Mr. Ainslie's and my amendment was adopted. Mine was in reference to organized mining districts. I did not intend to offer this as a substitute, except in the sense that in an organized mining district, mining purposes should have the first right to the water.

Mr. McCONNELL. This strikes it all out.

Mr. HEYBURN. Very well, take it as a substitute for the section.

"Question, question."

The CHAIR. All those in favor——

Mr. McCONNELL. I call for the ayes and nays, Mr. President. I called for them some time before. I want to place these gentlemen on record.

The roll was called and the yea and nay vote taken with the following result:

Ayes: Ainslie, Bevan, Crutcher, Glidden, Gray, Heyburn, Lewis, Mayhew, Pierce, Pinkham, Reid, Shoup, Underwood, Vineyard, Whitton, Mr. President—16

Nays: Allen, Anderson, Armstrong, Ballentine, Blake, Campbell, Chaney, Clark, Coston, Hampton, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Maxey, McConnell, Melder, Myer, Moss, Pyeatt, Sinnott, Sweet, Wilson—26.

And the motion to adopt the substitute was lost.

Mr. McCONNELL. I move that we adopt the section.

Mr. GRAY. I move that we strike it out. (Seconded).

The CHAIR. All those in favor of adopting the section——

Mr. HEYBURN. Mr. Chairman, there is a motion to strike it out.

Mr. McCONNELL. I hope this motion will not prevail. I call for the ayes and nays on it. (Seconded).

The roll was called and the yea and nay vote was taken with the following result:

Ayes: Glidden, Gray, Heyburn, Mayhew, Pierce, Shoup, Vineyard, Whitton—8.

Nays: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Hampton, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Pinkham, Pyeatt, Reid, Sinnott, Sweet, Underwood, Wilson, Mr. President—34.

And the motion to strike out the section was lost.

Mr. McCONNELL. I move the adoption of the section as amended. (Seconded).

SECRETARY reads the complete Section 3 as amended and the same was finally adopted. Vote and carried.

Mr. REID. If that completes that section I move the convention resolve itself into committee of the Whole for the purpose of taking up the Salary bill.

Mr. McCONNELL. Why not finish this now?

Mr. REID. I thought it was. By taking this action we have disposed of that now, and it goes to the committee on Engrossment. I am waiting for the chairman to make the motion.

Mr. McCONNELL. I move that this now go to the committee on Engrossment, and be ordered to report it at two o'clock tomorrow afternoon, and made a special order for that hour. (Seconded).

The chair put the question and it was so ordered.

Mr. REID. I now renew my motion that the convention resolve itself into committee of the Whole for the purpose of taking up the Salary bill. (Carried).

Mr. ANDERSON. I now give notice of motion to change the rule limiting speakers to five minutes.

The CHAIR. Send it to the secretary.

COMMITTEE OF THE WHOLE IN SESSION.

ARTICLE IV., SECTION 19.

The CHAIR. I believe the amendment offered by Mr. McConnell to strike out "three thousand" and make the salaries of district attorneys two thousand was under consideration at the time the committee rose. The question is now before the house.

Mr. McCONNELL. In offering this amendment I did it in the interest of economy. As we are about to commence housekeeping I thought it would be policy for us to commence and run our little domestic machine as cheaply as possible the first few years of our state government. It is in the province of the legislature, as I understand it, to increase the salaries, if they see fit; but in the interest of economy at first I thought

we had better run our state government as cheaply as possible. And to relieve the minds of some members who may not be as familiar with the legal brain as I am, I believe I am authorized in saying that their traveling expenses are usually provided by corporations and transportation companies, and that very nearly all our prosecuting attorneys and judges have passes. It seems to be a general rule; so I don't think their expenses going from place to place are very much. They are very nearly all men of very economical habits anyway, it does not cost them very much to live, so I do not see why they should have their salaries larger than the governor or anyone else.

Mr. WILSON. I rise to a point of order. I have a motion there, which has been seconded, to strike out "district attorneys" and salary, and my motion will take precedence over this one, and we want to consider that one first.

Mr. REID. The gentleman also has an amendment in the same as the gentleman from Latah, to strike out "three thousand," and insert "two thousand"; and the only motion made was to amend this, and there is no motion to strike out. It was suggested that that matter go over, and pending that suggestion the house adjourned.

Mr. MAYHEW. I would like to ask the gentleman from Latah a question. He seems to think he is qualified to give a dissertation on lawyers. I would like to ask the gentleman what business he is engaged in.

Mr. WILSON. I call for a decision on my motion. My motion is to strike out "district attorney, $3,000" and someone made a motion to reduce it to $2,000.

Mr. REID. I insist there was no motion of that kind made, and if the clerk will refer to his notes he will find it was just as I suggested.

Mr. WILSON. My motion was in writing.

Mr. REID. Then I call for the reading of it.

SECRETARY reads: "Mr. Chairman, I move that the words "district attorneys each three thousand dol-

lars per annum," in line 12, Section 1 (19) be stricken out. (Seconded).

Mr. WILSON. The reason why I made that motion is because the gentleman is anticipating the judgment or action of the convention. The Judiciary committee has reported that there will be created the office of district attorney for each judicial district. There is now a bill creating a district attorney for each county. The gentleman seems to anticipate that this convention will do whatever that Judiciary committee said. I have the honor to be a member of that Judiciary committee, and I think we have made a report which the convention will not acquiesce in entirely on this question, perhaps not at all. We divided equally on one question, and I move to strike this out for the reason that we don't know that we shall have such an officer, and when that question comes I will be prepared to present my reasons why we should not have such an office and why no man can discharge the duties of such an office, and why the interests of the state will be sacrificed by creating such an office, and why the state treasury will be depleted by having such an office.

Mr. REID. Before the question is put, it is a new motion subject to discussion. The gentleman has uncovered his purpose, and I think his amendment for $2,000 was a strike at this office.

Mr. WILSON. I did not make the amendment for $2,000.

Mr. REID. Well, I understood you to, as well as the other gentleman. Now, his purpose is to anticipate the action of the convention. He says "We presume that the Judiciary committee report will be adopted." I presume no such thing. I am now, as a member of this committee on Salaries, looking after this bill, I with fifteen other gentlemen belonging to the Judiciary committee. I do not know whether you will adopt it or not. Whatever you do, I shall bow to it with a great deal of pleasure; but I want you gentlemen to vote with your eyes open. By striking out "district attor-

ney" he thinks then it will be easier to restore county attorneys. I have here an exact calculation; it will just make a difference to you in this territory of $27,000 if you restore them. Enough to pay for your entire judiciary system. Now, when you strike it out, strike it out with your eyes open. In other words, the gentleman does not want to leave it; when we come to that on the Judiciary bill we propose to meet him on it. I propose to show you by actual figures that it will just save this territory $27,000 by having district attorneys and not going to the other system. That is not before you, but he proposes to strike it out here, and then when you come to the Judiciary system he will have an easier chance to restore the county attorney business. You have been voting in the interest of economy, but my friend has sneered repeatedly at what I said in the interest of economy. I want it to be understood that he was for raising the salary of the governor—it may be he is a candidate for governor—he cannot be a candidate for district attorney, and therefore he is not interested in that at all, and so he proposes to make a lot of cheap political capital by assaults on attorneys.

The CHAIR. The gentleman is out of order.

Mr. REID. Did you say my time is out?

The CHAIR. No sir. I thought you took your seat.

Mr. REID. I did not. I have not yielded the floor. I just wanted to know why the chair called me to order.

Mr. WILSON. I rise to a question of privilege——

The CHAIR. Mr. Wilson, the gentleman from Nez Perce has the floor. I called the gentleman from Nez Perce to order because he was not discussing any question before the house, and was fast approaching a personal encounter with the gentleman from Latah.

Mr. REID. The question ——

Mr. WILSON. I rise to a question of privilege.

Mr. REID. I claim to have the floor, and I have not yielded it, and the only thing that can take me off the floor, if I do not yield it, is a motion to adjourn.

The CHAIR. I have stated, Mr. Wilson, that the gentleman from Nez Perce has the floor, but I will recognize you next.

Mr. WILSON. I rise to a point of order. Can I do that?

The CHAIR. The gentleman from Nez Perce——

Mr. WILSON. The gentleman is lacking in the elements of a gentleman, and he has no right to say what constitutes a breach of parliamentary etiquette, and he has got to answer personally to the gentleman from Latah, and there is——

Mr. MAYHEW. I call the gentleman to order.

The CHAIR. The gentleman is out of order.

Mr. WILSON. I have said what I wanted to.

Mr. REID. Yes, other gentlemen can bellow, but I shall always proceed with the proposition; and I am able to take care of myself with the gentleman from Latah or from Ada either. But the gentleman proposes under color of discussing an amendment to make flings at a particular class of men, as he has done today; and I propose to hold him right up to the scratch on that very point. He has gone out of the proprieties on this very occasion to charge men here with voting because they were attorneys. He has come in here and said we made a preference for lawyers—that members of this committee did—because we left their salaries at $3,000, and when he was refuted on the facts he comes back and sneeringly says that it is in the interest of economy. I don't propose to let gentlemen through irony use arguments based upon misstatement and keep still; but I shall always keep within the proprieties of the occasion. I say it is done for buncombe, and I say it because the manner in which it is done warrants saying it. This bill was prepared carefully, Mr. Chairman, after this committee had sat day after day in the interest of economy, and I say it will cost this territory $27,000 if this system is abolished. If the convention thinks we can get a good attorney to fill the bill for $1,500, to go around and do this work, I would accept the amendment

right at once; but the committee did not think so, and I am not authorized to accept it. Others not here, and the other gentlemen on the committee, have as much right to speak on it as I have. His amendment proposes to cut it down to $2,000, another proposition is to cut it out altogether. Speaking to both propositions, I say it is not wise to abolish the office, because when you go to the old system of county attorneys it will cost the territory $27,000, while by taking this system you will save that $27,000 to pay for your judges. And in our judicial system I don't think $2,000 is enough for an attorney. I think when he pays his expenses, hotel bill and others, incident to traveling the circuit of four or five counties, it will come down to $2,000 net salary. And as some gentleman remarked to me this morning, I don't think an attorney can do all this and keep his expenses within $500. We are not particularly stuck on these salaries, to use a slang phrase, and if you think you can get good lawyers for less, get them, and I will join the gentleman in economy, but I will not do it for buncombe. I don't care what the public or the convention thinks about it; the only purpose we have in view is economy, and that is what we ought to have. I did not criticise the gentleman's motives, but when he gets up and makes assertions of that kind, I propose to show that when we abolish this office of district attorney and return to the old system of county attorneys it will cost the state $27,000 which would be saved by adopting this system.

Mr. HEYBURN. I expect we have got to make a record on this. I wonder that no notice has been given that the ayes and nays would be called. I suppose they will call the ayes and nays, that gentlemen may make records; those records are very useful to ambitious men, but to nobody else; they care nothing about that. We are here to use our best judgments. We are now paying our district attorneys a little over $9,000 a year in our district out of the public treasury, in the district. I have just run through the state, and if Idaho

county is paying the maximum, we are paying them $9,500, but I cannot speak for that; the minimum however is $1,000, and of course they are paid that much. If we can reduce that $9,000 to $3,000 we are doing pretty well; and if $3,000 is an exorbitant salary to pay, it does not reflect any credit on the legislature that fixed the list of salaries, that is all.

The CHAIR. The question now is on the motion to strike out.

Mr. HEYBURN. I understand it, but there is also coupled with that a consideration of the propriety of striking it out because it is excessive. I propose to submit this proposition in answer to the argument that has been made that that is an excessive salary for anybody. It is proposed now to abolish the several district attorneys, one in each of our counties, five of them in our district, and consolidate the office in one man, and you propose to ask one man to do it for less than $3,000, that which you are paying $9,000 for now. If $3,000 is too much to pay, then we are being outrageously robbed at present.

Mr. AINSLIE. I desire to make a motion that the committee rise, report progress on this bill, and ask leave to sit again; for this reason, that the question of salaries on this bill would more properly come up after the action of the committee in convention upon the report of the Judiciary committee.

Mr. REID. We do not object to that, because I notice the judges come next, and the number of judges may depend on the salaries.

Mr. AINSLIE. I think it would be proper to dispose of the Judiciary article first; and I therefore move that the committee rise, report progress, and ask leave to sit again, and afterwards come back into committee of the Whole and take up the report of the committees on Livestock and Labor, and close those two articles this evening. (Seconded).

Vote and carried.

CONVENTION IN SESSION.

Mr. Claggett in the chair.

Mr. SWEET. Mr. Chairman, your committee of the Whole beg leave to report that they have had under consideration the article providing for salaries of public officers. They ask leave to report progress and sit again.

The CHAIR. If there is no objection, the report will be received and lie on the table. What is your pleasure?

Mr. AINSLIE. I move the convention now resolve itself into committee of the Whole on the report of the committee on Labor and the committee on Livestock. (Carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. Mayhew in the chair.

ARTICLE XIII.

The CHAIR. If there is no objection the committee of the Whole will take up the article on Labor.

Moved and seconded that the same be adopted.

SECTION 1.

Mr. ARMSTRONG. Mr. Chairman, I move to strike out the word "four" in line 4 and insert the word "two." (Seconded).

Vote and carried.

Mr. REID. I would suggest to the chairman of the committee, that the committee on salaries overlooked the making of any provision for the pay of this commissioner of labor, and it might be well to consider that.

Mr. CHANEY. Mr. Chairman, I move that we strike out Section 1. (Seconded).

Mr. ARMSTRONG. I would like to have the gentleman state his reason for striking out that section.

Mr. CHANEY. My reasons are that I cannot see that the people will be benefited by this board or bureau.

And for another reason that in all probability it will cost the people of the territory probably five or six thousand dollars, without any provision that I can see that we will be benefited in the least. Those in short are my reasons.

Mr. GRAY. And I cannot see for myself what benefit there is in it. If there is going to be any expense attached to this, I am certainly opposed to it, because I cannot see anything in it. I have looked it over, and looked it over, and I like the word labor, although I do not like to labor, but if it was doing any good I would support it. I cannot see any provision in this section to benefit the territory in any way.

Mr. AINSLIE. Mr. Chairman, I do not see any necessity of striking it out. There is no appropriation of money in here. If we make an appropriation of money in the Salary bill, then there will be time enough to put in an appropriation. Some person may take the office at a very small or nominal salary, and I think these statistics to be gathered by this bureau of labor will be very valuable, and I am opposed to striking it out.

Mr. ARMSTRONG. Mr. Chairman, there have been several states of the Union that have already appointed a commissioner of labor in connection with the United States Bureau of Labor established several years ago. He has made several reports and there can be a great deal of information gathered from the matter. It has been the desire of those whom I have the honor to represent here that there be a commissioner of labor established in this state in the interest of the state and I shall oppose any striking out of the section.

Mr. CLAGGETT. I hope sincerely this section will not be stricken out. Right at this particular time I do not know that there will be any great necessity for this section; but we are assuming that we are going to get into the Union as a state, and upon the strengh of our admission, that there is going to follow a very great development of the material resources of this territory. If that is so, we will very soon be confronted with problems of a very difficult nature relating to labor in

its various forms of employment and various exactions that may be imposed upon it, and the various exactions imposed by it upon capital. As a basis to enable the legislature to act wisely with regard to many different forms of legislation, which we will be called to act upon, it is necessary that all the information upon the subject that we can gain as to wages, as to hours of work, as to the manner in which labor is treated, and the manner in which labor treats capital also, shall be gathered together and reported as in this section provided, to the governor. It then becomes a reservoir of useful information upon which draft may be made from time to time as needed. And there is another thing about it, in considering the complicated conditions of modern society,—and how frequently these questions do arise in civilized communities, I think that those who are laborers, what are called laboring men (of course, we are all laboring men in our different ways, but those who are wage earners, as meant by this section) shall have the opportunity of being heard once a year through a commissioner, who will gather from the factories, mines and mills and all the various avocations of labor throughout the state, such information as bears upon their special interest, which is one of very great importance, and we should not cut them off from the opportunity of being heard in that formal and proper manner. It will save the state a great deal of trouble hereafter.

Mr. GRAY. Suppose it is left out, are they cut out then?

Mr. CLAGGETT. The office is cut out.

Mr. GRAY. But they can present their petition at all times, can they not?

Mr. CLAGGETT. The trouble with petitions is this: When they come up nobody knows whether they are the result of careful inquiry or investigation or not. The facts which will be recited in their petitions will be denied and the consequence is we will have no definite or reliable information to act upon; but if you have a commission whose special object it is from time to time

to keep run of all these matters, and when it is authorized to report to the governor, we have a collection of statistics which may prima facie be considered as reliable.

Mr. GRAY. You are deviating a little from your question of economy, cutting the judges and district attorneys down, cutting everything down, for something that some time in the future may be of benefit. I would say let the legislature provide it when the time comes.

Mr. CLAGGETT. I have not voted to cut anything down, and do not propose to cut one single salary down a single dollar that is reported by the committee on Salaries.

Mr. SHOUP. I wish to offer an amendment to this article before the vote is taken on striking the section out. I move to insert after the word "statistics" in line 1, the words "and immigration," and also insert after the word "statistics" in line 2 the word "immigration," and also to insert after the word "labor" in line 3 the words "and immigration." If this motion does not prevail I will offer that amendment. If it does, there is no necessity for it.

Mr. HEYBURN. Mr. Chairman, as member of the committee that reported this article I want to state briefly our reasons for reporting it. I recognize the fact that this may either be a very important bureau or it may be one utterly useless. It will depend in a large measure upon the efficiency of the officer appointed to fill this position. If it is to be a general statistical bureau, relating to labor and capital, and the relations that one bears to the other, it may be made very useful. As has been suggested by the gentleman from Shoshone, it will be a very useful source or a valuable source of information from which to draw statistics and facts and details for our legislature and by which they will be guided in dealing with those subjects. We have not recently had any very serious question between labor and capital in this territory. We may not have in years to

come, and yet we may have at any time. Those difficulties are constantly arising. It provides that this bureau shall be established, and that the commissioner of labor shall be appointed. I would have no objection to the amendment of Mr. Shoup, that it be a bureau of labor and immigration, if I was sure that those two subjects would harmonize. That is to say, that a person competent to fill one of those positions would be competent to fill the other. A gentleman of that peculiar turn of mind that fits him for the immigration bureau, as a rule is not sufficiently familiar or closely enough identified with the labor interests, and the interests of capital (because they are one and the same) to fill both of these positions. We have men especially fitted for an immigration bureau that I think would not be very valuable in this particular line.

Mr. SINNOTT. As a member of a labor organization, I hope the motion to strike Section 1 will not prevail. Labor in itself is noble and holy. By labor is brought forth the fruits of the earth; by labor is brought forth everything which we enjoy, and which contributes to our happiness and prosperity, even to the ditch of the member from Ada, which he so warmly advocates sometimes.

Mr. GRAY. Suppose it is struck out. Does it prevent labor?

Mr. SINNOTT. I know it does not prevent labor. And it does not prevent labor from being heard. But as heart is to the body so is labor to capital. If the heart stops beating, the body dies. If labor stops, the world itself will eventually stop, and suffer death all around. We have here provisions for the benefit of capitalists; there has been no demur, no objection to that. I see even a committee on Livestock, and it will eventually bring in some sections and articles legislating for the benefit of livestock. I don't think there will be much objection there. I am very certain it will receive the approbation of a great many here, and a great many who will vote against anything for the benefit of

the laboring classes will certainly support anything for the benefit of horses and cattle. They think horses and cattle are better in their eyes than a man or a woman who works and labors. A man's horses and cattle represent so many dollars and cents to him, but the white serf slave or the black serf slave is only a person, and when he or she dies he can get another, and the cheaper he gets them the better.

"Question, question."

The CHAIR. The question now before the convention is striking out Section 1.

Vote and lost.

The CHAIR. The question is now upon the amendment of the gentleman from Custer.

SECRETARY reads: Insert immediately before the word "labor" the word "immigration" where the word "labor" occurs in lines 1, 2 and 3. Shoup. (Seconded).

A viva voce vote was taken and the chair being in doubt, a rising vote was taken, which resulted, ayes 19, nays 12, and the amendment was carried.

The CHAIR. The question is now upon the adoption of the section as amended.

Moved and seconded that the same be adopted.

Vote and carried, and the section was adopted.

SECTION 2.

Section 2 of the article was read.

Mr. CLAGGETT. I would like to ask the chairman of the committee one question, whether the idea of this section is this: That where men labor for a private individual ten hours a day and receive five dollars a day wages, whether when they are working for the state they are expected to receive five dollars a day for eight hours work.

Mr. ARMSTRONG. The idea was that there should not be more than eight hours work on state or municipal work. It is a section adopted in nearly every constitution in the United States—the later constitutions. This clause has been adopted in many constitutions.

Mr. ANDERSON. I move to strike out the section. (Seconded.)

Mr. SINNOTT. I call for the ayes and nays.

The CHAIR. The gentleman is out of order; you cannot call for the ayes and nays in the committee of the Whole.

Mr. CLAGGETT. I asked the chairman of the committee in good faith. I want to know what the meaning of this thing is. I think the question is not answered. If the ordinary employment of men in private employment is ten hours a day, and they receive so much, I want to know whether the intention is that when they work for the state they are to receive the same pay for eight hours' work. If it is so, I am opposed to the section, and shall vote in favor of striking it out, for the reason that I do not believe the state should have any pets of any kind whatever, and that if a man is going to work down here, has to go down here and employ labor for any kind of employment, and can get a man for ten hours a day for three dollars or four dollars or five dollars a day, I believe that when that man works for the state he should give the state just as good and honest a day's work as when he gives it to the individual.

Mr. SHOUP. My understanding in regard to this is that so far as the United States work is concerned, the rule there is the same as it is in this bill, that eight hours shall constitute a day's work. Yet, if the employes desire to work ten hours a day they are allowed to do so, and get extra compensation; but where they only work eight hours, they get compensation at the same rate as if they work ten hours. That I believe is the rule of the government.

Mr. HEYBURN. I would state to the gentleman the intention of this section. It is, that whatever the going wages are for common work, that persons who work for the state or municipal corporations shall receive that wages and work eight actual hours of labor; perform eight actual hours of labor. That is to say, if

they work, it will require them to work nearly nine hours, because if they work eight hours they are not allowed the time when they quit work for their noon lunch or dinner, and that is the intention of this section, that they shall receive the going wage for a day's work, for that many hours work.

Mr. CLAGGETT. Well, will you please answer the question I asked. Suppose that the ordinary number of hours work in the community is ten hours for which the party receives $3.00. Is this proposition that he shall receive $3.00 and work eight hours only for the state?

Mr. HEYBURN. That is the proposition as I understand it.

Mr. ARMSTRONG. That is the proposition exactly; that is the idea exactly.

Mr. CLAGGETT. In other words, that the state to the extent of this particular matter is to give a bonus to all work done for it, which the private citizen does not have.

Mr. REID. I would ask the gentleman if that would not depend on the contract; if the state makes the contract wouldn't it depend on the contract between the parties as to what they would pay?

Mr. WILSON. I think this section properly construed means this: that if a man is employed by a city or municipality or municipal corporation to work one day at $3.00 a day or $5.00 a day or $10.00 a day, and nothing more is said about it than that, he shall work eight hours and no more and no less. It does not mean that he shall work eight hours for the usual and ordinary wages at all, there is nothing said about wages; but it simply means that if he contracts for a day's work it is fixed by the fundamental law that a day's work shall be eight hours.

Mr. REID. I would state, Mr. Chairman, that this question was had up in the District of Columbia and afterwards made a national law, as said by the gentleman from Shoshone. Of course, it would not affect

any law that had been passed previous to the adoption of the constitution; this would not be retroactive in its effect. Therefore when the state made a contract it would be governed by the same rules as individuals. That is, it would have to pay whatever it agreed to pay. And as stated by the gentleman of the committee, if no time was set and no number of hours agreed on as to what would constitute a day's work, it would mean eight hours, no matter what the price. But the state would simply bargain with parties with its eyes open, that eight hours was a day's work.

Mr. HEYBURN. Mr. Chairman, I understand that for all classes of labor there is a fixed and general price. For instance, a brick-layer receives so many dollars a day in the community; so with the carpenter or any other mechanic. And if a municipality employs a man by the day at these wages, they are required to work only eight hours. That is as plain as I can make the answer to the gentleman.

(" Question, question.")

Mr. HAMPTON. I take it that one object of this section is or should be a sort of entering wedge, as it were, to enforce or bring about the custom of eight hours of labor among laboring people. I believe this is enough for any man to work hard, and if the state will adopt the idea that eight hours is sufficient for a day's labor, it will have the effect of introducing such a custom among other people, and for that reason I am in favor of it.

(" Question, question.")

The CHAIR. The question is on the motion to strike out section 2. (Vote and lost.)

The CHAIR. The question is now upon the adoption of the section.

Moved and seconded that the section be adopted. Vote and carried.

SECTION 3.

Section 3 read, and it is moved and seconded that it be adopted.

Mr. REID. I would like to ask a question. Would that word "convict" before labor prohibit town commissioners or county commissioners under judgment of the court from working criminals on public streets, or simply apply to persons confined in the penitentiary?

Mr. HEYBURN. It would apply to any person who had been convicted and was serving a sentence. If they were convicted they would be convicts. It would not apply to persons who were working out fines for misdemeanors against a city government, I think; that is to say, it would not apply against the chain gang.

Mr. REID. Sometimes persons are incarcerated for the costs, and may be released on working them out, paying them in that way. Frequently that is the judgment of the court, and in our city we frequently work them on the streets to work out costs and fines. I would like to have the gentleman put in some word or phrase that would exclude any misunderstanding about that, so that it would apply simply to convicts in the penitentiary.

Mr. CLAGGETT. It is plain that ought to be done, because there is not a country jail now in the country where you can work the chain gang at all. It won't do to say the committee did not intend it; we must judge the effect of it by the language. All convict labor outside the prison grounds is prohibited. Now suppose the state should get in this penitentiary 200 men or even 150 men; and the state should go into the business of building large canals, as it undoubtedly will own some land that may be fit for agricultural purposes. Why should not the state take those convicts, put them in summer camps and let them do its work in the construction of those canals? Why shouldn't they be allowed to do any kind of work for the state outside of the prison walls? The intention of this section was, I presume, to prohibit the idea of having prison labor in the penitentiary brought into immediate competition with ordinary labor in the different employments outside of the prison walls; but the language is so extremely

broad it practically amounts to this, that neither in the county, municipality or state prison itself can we utilize the labor of those convicts in any way, shape or form, and I therefore think the section should not be passed until we can amend it in some way.

Mr. HEYBURN. I hope it will not be opposed. The suggestion made by the gentleman from Shoshone, that the state might employ convicts in the work of building irrigation ditches is exactly what this is intended to strike out. It is intended to prevent the state convicts from coming in competition, in the fields of labor, with ordinary labor. And if that is a wise measuse, then this should not be stricken out and should not be opposed. The field of labor is none too broad; it is limited enough, and if you take three or four hundred convicts out of the state prison to employ them on irrigation ditches, you deprive the legitimate field of labor of just that much of its opportunity to earn a livelihood, and it is intended to strike out just such things as that. It is necessary to employ those convicts in some way within the prison walls or within the prison grounds; but it is not intended by the provisions of this article that they shall come in direct competition with other persons who are seeking labor.

Mr. WILSON. I have an amendment, which I think meets the objection raised.

SECRETARY reads: Mr. Chairman, I move to add to Section 3 the following: "except in cases of conviction for misdemeanors.' (Seconded.)

Mr. REID. I move this substitute for the section.

SECRETARY reads: "All labor of convicts sentenced to the state prison outside of the prison grounds is prohibited."

Mr. WILSON. I will accept the substitute.

Mr. REID. It simply confines this to convicts in the penitentiary. Men sentenced in police courts or district courts for misdemeanors can be made to work it out and save the county's cost. This confines it simply to convicts, and I am willing not to go as far as

the committee and say I am opposed to the work of convict labor on the streets in competition with honest labor. If the state is going to carry on any industries for convicts, let it be within the prison walls, and cheap labor ought not to be brought out from the penitentiary walls and put in competition with honest labor. This simply confines their labor within the walls.

Mr. GRAY. I have only this to say, Mr. Chairman, I cannot see the real point. It is not that I wish labor should be in conflict with honest labor; but it is a benefit to the prisoner, it is a benefit to the state. You might as well say he should not do any labor inside the prison walls, which would conflict with it; he could not make shoes, could not make harness, or anything of that kind. I cannot see any point in it. I believe in allowing them to labor. It is better for the convict, better for the state, and I believe it is the correct reasoning. You are talking about economy at one end, and at the other end you say you want no economy at all. You don't want to have them earn anything to pay for the expenses of their keeping. I say yes; and it is a great deal better for them, they will come out better men, it keeps their heads in better shape. I had something to do with it, and I know a great deal about it; if you keep them employed you make a great deal better men of them. I can't see why you say they shall not labor outside the prison walls, like this rock-laying —

Mr. REID. Will the gentleman allow me to interrupt him. The language expressly says prison grounds. It comes from a section—

Mr. GRAY. The rock does not come from the prison grounds. The prison has nothing to do with it.

Mr. WILSON. Isn't there a reservation up there?

Mr. GRAY. Yes, but those rock are not taken from there. I know where the limits of the prison grounds are. Those rock were not taken from there.

Mr. WILSON. I thought they were.

Mr. GRAY. No sir, they were not. I know where

the limits of the prison grounds are. But where they are getting them now is outside of that; and that is the labor that brings them.

Mr. COSTON. Mr. Chairman, I shall oppose this section and all the amendments, which propose to prevent the convicts in our state prisons at the present time from being worked outside the prison grounds. I shall not do it because I lack sympathy with outside labor, or because I propose to put those who are on the outside in competition with convict labor. It is for this reason: the present condition of our prison is very crowded. We shall need in the early history of the state, if we are so fortunate as to become a state, greatly enlarged accommodations. We may need greater accommodations than we are able to have or otherwise would have unless we could utilize prison labor, and procure those accommodations cheaply by the use of this convict labor. In order to accomplish this it will be necessary that these prisoners should be worked outside of the prison grounds. I think this is premature, to incorporate any such section as this, with our difficulties as they now are. Consequently with or without the amendments I shall vote against the section.

Mr. REID. Mr. Chairman, with the permission of the gentleman who accepted my substitute (MR. WILSON), I will withdraw the substitute and accept the amendment proposed by the gentleman from Shoshone.

Mr. HEYBURN. I offer an amendment.

SECRETARY reads: Amend Section 3 by adding after the last word "except in cases of persons working out costs and fines imposed in case of misdemeanors." (Seconded.)

Mr. HEYBURN. Now, Mr. Chairman, it seems to me that ought to meet the objection fully, urged by the gentleman that there should be some provisions for persons who are sentenced to work on the chain gang, to work out fines and costs. The amendment that was sent up by Mr. Reid did not include convicts in the

county jail, although under the present condition of affairs in this territory those convicts as a rule are not sentenced to labor; yet the time undoubtedly will come when under state government they will be sentenced to labor, and they should be confined to labor in jails.

Mr. WILSON. I understand by that amendment, if a man is sentenced to jail twenty days, not fined at all, you could not make him work. I like my amendment better than that.

Mr. REID. Suppose the judgment of the court is that he shall be imprisoned twenty days; what right have the county authorities to work him? That is not a part of the punishment. It never is, I conceive, under any judgment, a part of the system that the man shall work. The judgment is he shall be imprisoned until he pays the fine and costs, and then he may work that out, and this covers that. But if the judgment is that he simply be imprisoned, there is no power in the world to make him work.

Mr. WILSON. We have in this city an ordinance which provides for the chain gang, and if a man is sentenced twenty days he may be worked during that time, and still in jail. And it is right; it ought to be so; that is they only way you can get even with these old drunks. I insist on my amendment.

Mr. CLAGGETT. Mr. Chairman, it seems to be conceded on all sides that the prison gang or the chain gang should be preserved. That is to say, that county and municipal convicts should be allowed to work on the public streets. Now, I will ask this question: If that is true with regard to the county or the town, what difference does it make with regard to the state? I can see very well how anybody living in Boise, how any workman here in this particular town, should object and properly object to having these prisoners rented out to different contractors, or hired out to private individuals to do work on their ranches and farms, because that would completely destroy the means of

making a living on the part of people who have that kind of labor for sale, so to speak, in this market; and that ought to be stopped. I lived in a town in Montana where they did that, and inside of eighteen months there wasn't a workman to be found; all the little labor, working of gardens, hoeing of beets, potatoes, etc., was furnished by convict labor from the penitentiary. And that I apprehend is what the chairman of this committee wants to get rid of. But I do say the state should not be confined in this manner, and that whenever the state should go into any public works where great numbers are employed, it ought to have the opportunity of employing this labor supported for the direct benefit of the state and of the people. On Vancouver Island in British Columbia they have 400 or 500 men confined; and I know at least 500 miles (the exact number I do not remember) of magnificent highways that have been built without any expense whatever to that government all over the island; built by the convict labor of the state. I therefore offer as a substitute for the section the following: "All convict labor of convicts confined in the state's prison shall be done within the prison grounds, except where the work is done on public works under the direct control of the state." I want to apply to the state and in the state the same right that every county and municipality insists upon applying to itself. (Seconded.)

The CHAIR. Is this offered as a substitute for the section?

Mr. CLAGGETT. Yes.

The question was put by the chair.

Mr. GRAY. I just want to ask the gentleman a question. Would that prevent our police operations?

Mr. CLAGGETT. Why, certainly not. It says in express terms, "all convict labor of convicts confined in the state's prison," and goes no farther—shall be done inside the prison walls, except on public works under the direct control of the state; they cannot loan

them out to private individuals at all, and they ought not to be contracted out.

The CHAIR. The secretary will read the substitute.

SECRETARY reads: "All convict labor of convicts confined in the state's prison shall be done within the prison grounds, except where the work is done on public works under the direct control of the state."

Mr. HEYBURN. I understand that substitute will be for the amended section. That amendment was by the committee, which I sent up.

The CHAIR. I am under the impression the substitute takes precedence of all.

("Question.")

Vote and carried.

SECTION 4.

Section 4 read, and it is moved and seconded that it be adopted. Vote and carried.

SECTION 5.

Section 5 read, and it is moved and seconded that it be adopted.

Mr. AINSLIE. I desire to offer an amendment to Section 5 by continuing it as follows: "unless he has declared his intention to become a citizen of the United States."

Mr. SINNOTT. I second that amendment.

Mr. CLAGGETT. And then he ceases to be an alien. He is entitled to the protection of the government wherever he goes, which is what is called a denizen.

Mr. GRAY. But you don't claim, Mr. Claggett, that when he declares his intentions he becomes a citizen?

Mr. CLAGGETT. No sir. But I say he ceases to be an alien. He is in that halfway condition between alienage on the one hand and citizenship on the other.

Mr. GRAY. Whereabouts is he then?

Mr. CLAGGETT. He doesn't belong to either.

Mr. GRAY. Half-way between?

Mr. CLAGGETT. Yes, at a halfway station between. And the history of the United States is that in many cases the government of the United States has ordered out its military or naval forces for the protection of men who have declared their intention, and have gone back to their homes where they came from, and where it was claimed they were subjects of the old country; but our government said, No, they have declared their intention to become citizens of the United States and are entitled to the protection of the laws of the United States. They have ceased to be aliens.

Mr. Gray. They are entitled to certain protections, but not entitled to all. I think the amendment of the gentleman from Boise is correct.

Mr. WILSON. I rise to inquire whether that would not prohibit Chinamen from working out their road tax. I want to know, because we work 400 Chinamen here. I want to know if that prohibits Chinamen working out their road tax on the street.

Mr. HEYBURN. I would state to the gentleman that it means just what it says, that no alien—we will accept the amendment, of persons who have declared their intention to become citizens—shall be employed on any public work; but if it is public work you cannot employ any alien.

Mr. REID. The chairman has accepted the amendment and I move its adoption as amended.

Mr. ANDERSON. I move to strike out the words "or municipal."

Mr. AINSLIE. I have a substitute for Section 5.

SECRETARY reads: Substitute for Section 5: "No person not a citizen, or who has not declared his intention to become such, shall be employed upon, or in connection with, any state or municipal works."

Mr. ANDERSON. If I meet with a second I will move to strike out "or municipal." (Seconded.)

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

Mr. ANDERSON. I will withdraw the amendment.

The question was put by the chair upon the adoption of the substitute. Carried.

Mr. REID. I offer the following sections as additional:

SECTION 6.

SECRETARY reads: Section 6. The legislature shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject matter of their labor.

SECTION 7.

Section 7. The legislature may provide for courts of arbitration, which shall have jurisdiction to settle and adjudicate the differences between laborers and their employers. (Seconded.)

SECTION 6.

Mr. REID. I do not know but what under the general statute the legislature would have power to provide adequate liens, but I have noticed it in some constitutions; it is well enough to put it in and put it in the form of "shall do it;" it makes it compulsory then upon them to do it and provide a proper mechanic's lien. It is a short section, it won't encumber the constitution much, and it is well enough to emphasize it in that way. I will ask to have the secretary read Section 6 again. (The section was read.) I will add "Laborers and material men," which will give men who furnish material as well as mechanics this protection.

Mr. SHOUP. Wouldn't the legislature have power to do that without the constitutional authorization?

Mr. REID. I think so; but there we make it obligatory upon them by saying they shall do it.

Mr. SHOUP. It is already in the territorial law.

Mr. REID. If I was sure that the state would adopt

the territorial statute; but I want to emphasize it in this article. I think possibly they could do it.

The next section is not exactly in the form I would have it. The reason I intended to draw it differently was, after or during the consideration of the report of the judiciary committee, it would embody then the idea that was incorporated in the statute passed by the lower house of congress under what is called the John J. O'Neill act, that provided for courts of arbitration for settlement of differences between laborers when strikes occur. Whether this is adopted or not, I shall present, when the bill comes up for adoption in the house, if it does not come up this evening, when I have time to prepare it in suitable form, a little different section from the one now submitted. That embodies the idea, but the phraseology is not what I wish it. It is this. We have now two large railroads in this territory. Sometimes there are strikes. Now, instead of these long lockouts and troubles, it is provided for a commissioner of labor. The legislature may provide that this commissioner of labor, together with somebody else, shall decide these differences, and let industries move along without let or hindrance. This was introduced by Mr. O'Neill who was their spokesman there and their great friend, and this passed the house; but I believe the senate has never taken it up and acted upon it. It provides for courts of arbitration to which both parties may submit their matters of controversy, and have speedy and amicable adjustment thereof without these long delays and so much trouble and breaches of the peace; it is looking to that end. It does not provide any certain court or any certain powers, but gives the legislature general power, if in its wisdom it sees that that may become necessary hereafter to establish a court of that sort. I submit it to the convention, and if the idea is a good one, and it will vote upon it, we can, if it is not exactly in the proper phraseology draw it properly hereafter. That part of it which could be adopted could be referred to the Judiciary committee,

to draw up the proper section, if the gentlemen of the bar think it covers it. If they don't think so, but favor the idea, we can clothe it in proper language. It does not make it obligatory, but clothes them with that power to provide courts of arbitration to adjudicate and settle these differences.

Mr. GRAY. I will oppose both sections. I believe the proper method is the courts. While I have great respect for the opinion of the gentleman, who has made this suggestion, yet to a lawyer it looks a little peculiar. As far as mechanics' liens go, I am in favor of them to a certain extent; but I am in favor of them just so far as they are in our state today, and no farther. I don't want it so that a man who is having his house or anything else constructed will ever have to pay more than his contract price, and the laborer must look after himself. I am afraid this gives them too much authority. As our statute now is it seems to me it covers everything. It is an innovation, giving a laborer any right to go beyond looking after the man that employs him; but we have gone this far in our state, and say to him, "Just so long as there is anything coming to the principal contractor, just so long you shall have every dollar that is coming to you, but you shall not make those men go beyond that." I dislike this kind of matters being put into a constitution. As I have tried to say before, let our legislature do something. I will say positively as to that seventh section, I will oppose it under all and every circumstance. I don't want but the one side of course; and then it seems there might be power given even to the injury of the working-man, and I want them the same as everybody else.

("Question, question.")

SECRETARY reads Section 6 as proposed.

Moved and seconded the same be adopted. Vote. Division was called for; rising vote, 24 ayes and 6 nays; and the section was adopted.

SECTION 7.

SECRETARY reads Section 7 as proposed.

Mr. SWEET. I hope the gentleman will provide us with something that is more comprehensive. While I am in favor of the principle, it seems to me it does not settle anything after all.

Mr. REID. I will not insist upon it now if it is understood it can come up in convention. It is not in the form I would like to have it.

Mr. CLAGGETT. I would like to have the gentleman explain what he means by the word settle. Does he mean that the constitution shall authorize the legislature to create a court of arbitration, which shall have jurisdiction to hear, determine and adjudicate, and then execute all its decrees and judgments between employees and employers?

Mr. REID. No sir.

Mr. CLAGGETT. If you mean to recommend boards of arbitration, who shall hear and recommend and carry the thing out in that form as the boards of arbitration are always understood, that is one proposition; but the way you have it now you have a special court provided for to take charge of the whole question of all controversies and settle them. To settle them means making a final end of them.

Mr. REID. As I stated when I submitted it to the convention; it was not exactly in the form I desired, and subject to legal criticism, which I would like to hear, and then it can be shaped correctly. The word settle is rather a broad term, but the word limiting it might be left out and the word adjudicated. Courts of arbitration; they always carry with them the idea that anybody can go into those courts when they go there willingly. When you speak of arbitration, it is something a man consents to. If you establish a court of arbitration, and a man goes in there and accepts the terms and rules as prescribed by the legislature, then when his rights are adjudicated he is bound by that; that is what I mean, and that is what was meant when it was introduced in the house of representatives and discussed there for several weeks. It was claimed there

that the decrees would not be binding, and finally they altered the bill, shaping it so. The other day when some members of the committee on Labor applied to me for it, I thought it had passed the senate, and referred to the first session of the 49th congress. But I find upon examination that it only passed the house and went to the senate and never has passed there. I intended to go to the library and get it this evening, and tomorrow before we reached the consideration of the judiciary bill I thought we could consider it; but we jumped over that, and took up this, so that I did not have time to look it up. I propose to get the language of that bill, because it was discussed and finally referred to the judiciary committee of the house, and they reported a bill which covers it, and it simply provides that the legislature has authority to provide courts of arbitration and hold them open, and say to either party: "If you will come in when these differences arise, and submit your rights to this court under the rules prescribed by the legislature and all that, then its adjudication shall be binding."

Mr. CLAGGETT. That is, provided the parties voluntarily appear.

Mr. REID. Well, they could not come in any other way. However, if we pass over this matter informally with the right to substitute in convention, I will draw one at leisure. You can adopt this article with the understanding that there is to be a substitute offered, and then you can vote down the substitute.

Mr. GRAY. Couldn't I do that if I make an amendment and submit it to you and Mr. Heyburn?

Mr. REID. Certainly you can, but you could not do it under a court of arbitration, because the Judiciary article prevents it. But that is what they want to do, is to meet that difficulty.

Mr. GRAY. We have a statute now for arbitration.

Mr. REID. That is where persons get in a controversy; but when the state comes in, as it did in one instance, and made the commissioner of labor of the

United States one party, and made the circuit court judges another party, it gave it that dignity and importance and fairness, that the moment those questions arose, before the strike commenced, before the harm was done, parties would submit it and have it adjudicated before any damage arose to anybody. And we want to provide this machinery, call attention to it, so that when these troubles commence, both may go into court, and not select arbitrators outside and leave it to them, as in the case of private individuals.

Mr. HEYBURN. I move the article be adopted as a whole. (Seconded.)

SECTION 5.

Mr. SHOUP. I desire to ask the gentleman to withdraw his motion a moment, and ask unanimous consent to have the substitute for Section 5 read again. I think it ought to be amended.

Mr. HEYBURN. I will withdraw my motion for that purpose.

The CHAIR. Section 5 or the substitute therefor has been adopted.

Mr. SHOUP. I have unanimous consent to have it read again.

SECRETARY reads: No person, not a citizen, or who has not declared his intention to become such, shall be employed upon or in connection with any municipal works.

Mr. SHOUP. Now, a person can be a citizen of the state of Idaho, and not be a citizen of the United States. I think it should be as broad as the statute of the United States, and I therefore move to amend by inserting the words "of the United States" after the word "citizen."

Mr. AINSLIE. I don't see how he can be a citizen of the state without being a citizen of the United States. Under the Suffrage and Election article we have defined what a citizen is.

Mr. CLAGGETT. That is for the mere purpose of

voting. The criticism which was made by the gentleman from Custer is well taken. A child just born is as much a citizen of the United States as one who has lived in the country, born in it and lived in it a hundred years, provided it was born in the Union. The fourteenth amendment to the Constitution of the United States provides that; goes on and declares that all persons born within the jurisdiction of the United States, shall be citizens of the United States and of the states in which they live. But there can be such a thing as a citizen of a state who is not a citizen of the United States. A state, if it saw fit, could make Chinamen citizens of the state, but they would not be citizens of the United States.

Mr. SHOUP. I move to amend by consent, by the insertion of the words "of the United States."

Mr. GRAY. I rise to a point of order.

Mr. SHOUP. We are in committee of the Whole.

The CHAIR. If there is no objection the amendment will be received.

Mr. AINSLIE. I will accept the amendment.

The CHAIR. The amendment is accepted and the clerk can insert the words "of the United States."

Mr. HEYBURN. I now renew my motion to adopt the whole article. (Seconded.)

The CHAIR. Do you understand now that you have adopted Section 7?

Mr. REID. No, that it has just gone over to be acted on in convention.

ARTICLE XIII. ADOPTED.

The CHAIR. All in favor of adopting the article as a whole say aye; contrary no. (Vote.) It is carried.

Mr. HEYBURN. I move that when the committee rise, it report this article to the convention, and recommend that it be adopted. (Seconded and carried.)

ARTICLE XVI.—LIVESTOCK.

The CHAIR. The question now before the committee is the report of the committee on Livestock.

SECTION 1.

SECRETARY reads Section 1, and it is moved and seconded that it be adopted.

Mr. ALLEN. I would like to offer an amendment. Strike out the word "shall" in the fourth line after the word "legislature" and insert the word "may." It might not be necessary, but it is to give the power to the legislature to prescribe that system. It might require an expensive system when it is not necessary. (Seconded. Vote and carried.)

The CHAIR. The question is now upon the adoption of the section as amended.

Moved and seconded the section be adopted.

Vote and carried.

Mr. McCONNELL. I have another section I wish to offer.

SECRETARY reads: "The legislative assembly shall by law prescribe the manner, terms and conditions, upon which domestic animals may be permitted to graze upon the unoccupied public lands of the state, or of the United States within this state, and shall by law so regulate the subject of pasturage upon such lands as to preserve as far as practicable the value of the range, and prevent injury to such lands. But nothing herein shall be so construed as to authorize the passage of any law inconsistent with the laws of the United States relating to the settlement, occupancy, use, or disposition of the public domain."

Mr. McCONNELL. I move the adoption of the article. (Seconded.)

Mr. HEYBURN. Mr. Chairman, I move as a substitute for that motion, that it be referred to the Judiciary committee. (Seconded.)

Mr. CLAGGETT. I rise to a point of order, that in

the committee of the Whole you cannot refer anything to another committee.

Mr. REID. Before the vote is put I would like to know by what authority the state could control the use of the public lands of the United States. It provides in there that we shall regulate the grazing of public lands. It says public lands of the United States within the state.

Mr. McCONNELL. Mr. Chairman, this is a matter that the constituents of my friend from Nez Perce are as much interested in as my constituents, or any who live in what is known as the Pan Handle in this territory. The chairman reminds me that he lives up there too. We are, as might be said, during the latter months of summer, robbed by stock being driven in from Washington territory, especially sheep. There are a great many poor people, who have settled along the base of the Coeur d'Alene mountains, and those who are settling in there today have to settle upon lands that are pretty largely timbered; there may be small pieces of prairie land; they go in there for the purpose of carving out of those woods homes for themselves, and they have perhaps one or two cows, or a pair of cayuse horses, that they expect to pasture outside of their fields during the summer months. But along comes a gentleman from Washington territory, who claims he has paid his taxes down there, and is not entitled to pay any taxes in this territory; he comes in the month of June or July and drives his sheep by the thousands alongside those little farmers, eats out their pasture, every spear of it, so there isn't anything left for a cow or a horse or anything; then drives on to another settlement and eats that up. And the object of this article is to provide some means by which the legislature can protect our own citizens. The legislature so far has been powerless to do it. They passed a law that no band of sheep should be allowed to camp or come within two miles of any man's house,[1] which has been decided by

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[1]—Sec. 1210 Rev. Stat.

all attorneys not to be good law; in fact, they have not attempted to enforce it in our county, and I don't think they have in the county of Nez Perce. I have had this matter prepared by a legal gentleman at Moscow, and it was thought this would reach the matter so that the legislature might enact a law to protect our people. If there can be another article devised to reach the matter better than this, I am willing; but I don't think we should pass it by. I think we should do something to protect the poor settlers, because the man who comes in now to take up a farm along the base of the hills has to take a bare farm, because the best are all occupied.

Mr. REID. The reason I ask the gentleman is this. This constitution has got to go up for the inspection of congress, and we have in this a clause by which we propose to regulate the lands of the United States. We have trouble in our country at this moment; at one time we thought it was going to result in serious trouble. Agents from Washington came and ordered all the cattle off from public lands. We have allowed the Indians' cattle to come over on to the lands, and furnish them a market for those they raise, and the white men naturally think their cattle ought to range on the reservation. But the government agent thought differently and ordered them all off. That is creating trouble there now. If the territory cannot control the public lands, what right would the state have? After those public lands are turned over to the university and the schools and all that sort of thing, it is all right; but the question is, can we, as a state, control the public lands? I would like to have the regulating of it, and if we can do it, I will vote for it; if we cannot, let us not put it in.

Mr. ALLEN. I am somewhat familiar with the question, have heard it discussed at national conventions of stock men and several such conventions. The courts have ruled that the state has no power over the grazing facilities upon public lands. But I think it

would be proper for the committee on Federal Relations perhaps to express in some form that the police power of the state shall be exercised over the government lands, especially in those respects where contagious diseases are found and difficulties arise from stockmen violating the rights of settlers.

Mr. REID. Do I understand you to say that the stockmen in their conventions decided they had no control over the United States lands?

Mr. ALLEN. No, the gentleman misunderstands me. I was present while this matter was discussed, and I say that the courts have ruled that the states have no power over government lands. But I say that I think an expression perhaps might be had which would define the police power of the state upon these public lands. That I think should be done.

Mr. CLAGGETT. I would like to ask the gentleman from Logan what courts have made any such decision?

Mr. ALLEN. I think it is the second judicial district in Wyoming territory.

Mr. CLAGGETT. That might be; we have had a great many territorial judgments for which there is no law. The United States sends out in these territories a lot of gentlemen who don't seem to consider that the territories have any power at all. They come here as a sort of representatives of the United States. Now, so far as this provision is concerned, which has been offered by the gentleman from Latah, I undertake to saw there is not the slightest straw in the way of its regulation. "The legislative assembly shall by law prescribe the manner, terms and conditions, upon which domestic animals may be permitted to graze upon the unoccupied public lands of the state, or of the United States, within this state." Now, when we come to get at this, it is a simple proposition, and ought not be passed over hastily. When we get to be a state we will occupy an altogether different position from what we occupy now. Then, as to these public lands within

the limits of the state, so far as they are concerned, the United States becomes a private proprietor. Armed, it is true, by the provisions of the Constitution of the United States with the power to make all needful rules and regulations respecting the territory and other property of the United States. But I will assume that the United States has made no needful rules or regulations; will anyone undertake to say that the state has no power to protect the rights of the United States in its own courts as a private proprietor?

Mr. ALLEN. Police power?

Mr. CLAGGETT. No sir, no police power about it. It cannot in any way take away, it cannot pass any law inconsistent with the laws of the United States; neither can it pass any law that will undertake to control the lands, because that would be inconsistent with the laws of the United States. But here is an immense amount of land lying within the boundaries of the state, which belongs to the United States as a private proprietor, and the United States fails to pass any law with regard to preserving the pasturage. I say the state has not only the duty to do it, but the duty to do it as a citizen of the United States; that is, in the sense of being a private proprietor, to preserve this pasturage being destroyed unnaturally and wastefully in different portions of the territory. As I said before, I cannot see a single bit of trouble with regard to the legality of the action. If there is anything there in conflict with the laws of the United States, as a matter of course this provision excepts it, and you can pass no law upon the subject. Take the case put by my friend from Latah where there are these little holdings of twenty or thirty or forty acres in a gulch. He may not have enough land to make a farm by itself in the gulch, but on the hillsides adjacent there is pasturage. Here comes in a man with a large band of sheep, horses or cattle, and drives them right to the man's door, and eats up the pasturage on the man's own land. I say it is competent for the state to regulate

those matters, and say upon what conditions this grazing upon the public lands shall be had.

Mr. REID. We had a case just in point. Mr. Maxwell, the district attorney, indicted a man for sheep grazing on the public land. It was brought up in court and the indictment dismissed on the ground that it was unconstitutional, in violation of the statutes, and that the territory could have no control whatever over the lands of the United States; and that any law the state made regulating the usage or occupation of the lands of the United States was entirely void and of no validity whatever.

Mr. CLAGGETT. That is the authority in the territory.

Mr. REID. I don't see how the state will be clothed with any more power than the territory. We have police regulations. Any crime committed on the public lands or Indian reservations, so far as the police power of the territory is concerned, it is all right. I am heartily in favor of the proposition, but I am afraid of it from the legal point of view—that we will be criticised for legislating about matters for which we have no right to legislate. If it is a fact that just because the United States has a tract of land here and makes no regulations regarding it, the state has a right to do it, then that is all right. I want them protected. I want them protected in this pasturage; but for the reasons mentioned I doubt if the state has the power. If we can do it we ought to do so, but I have not seen anything in the constitution that will give the state any more power than the territory has.

Mr. CLAGGETT. Let me ask the gentleman a question. If the United States has personal property which is stolen within the boundaries of the state, can the state make that a penal offense, and send it to the jurisdiction of the state court?

Mr. REID. That is the police power.

Mr. CLAGGETT. Not any more than any other power it exercises. Might it not go ahead and provide

that the United States may, if it sees fit, bring an action of replevin to return the property?

Mr. REID. Certainly.

Mr. CLAGGETT. Is that an exercise of police power?

Mr. REID. No.

Mr. CLAGGETT. Then I say when we get to be a state the state becomes the private proprietor of these lands; it ceases to be a local sovereign.

Mr. REID. Does the gentleman claim the same class of laws govern the commission of crimes as the policing and maintaining of the public lands?

Mr. CLAGGETT. Certainly I do. I mean to say there are certain powers, which may be exercised by the United States and by the states concurrently, and they do not conflict necessarily at all; and I mean to say when the United States has ceased to be the local sovereign in said state, when it is here as a landed proprietor those lands are subject to the use of the state, provided it is not in conflict with any of the laws of the United Staets. Why, haven't we done it? What is your possessory land act? Have we not, and has not every territory in this Union, provided for the taking up of possessory claims upon public lands before ever they have been surveyed, and that possessory right given all the protection of the law before the United States stepped in with the homestead and preemption land filings? And is not all our land throughout this territory upon the public domain unoccupied dependent on your territorial law, and yet according to the argument suggested the territory would have no power in the premises, because these are United States lands until the patents issue for them. Nevertheless, we provide for their protection, and give causes and rights of action in our courts, and parties are constantly coming in with questions about your possessory rights, of every sort, and sue and get judgment for the protection of them—the whole thing is a total nullity as against the United States.

Mr. REID. Yes, that is the point I make; whenever it comes in conflict with the United States on any right or title whatever, it has to be governed by the supreme authority of the United States.

Mr. CLAGGETT. So it does.

Mr. REID. And that is the point I make now. If the United States owns the land, if the title is in it, any law we might make as to who shall graze upon it—we might as well say who shall rent it—the United States may permit us to do it; and if they do, all right. But the point I make is this: Where they own the land or are entitled to its use or occupation, if we go on and say we can prescribe the use of it, say who shall graze on it, and that is in violation of the rights of the United States, if they choose to pass statutes upon it, the state law would fail. That is the point I make.

Mr. CLAGGETT. The gentleman does not understand the position I take about this matter yet.

Mr. REID. I certainly do not.

Mr. CLAGGETT. It is very clear you do not. What I say is this: That in the absence of laws passed by congress with regard to the question of pasturage, it is competent for the state to regulate the question of pasturage. It may not regulate it as against the party who wants to go upon the land for the purpose of getting title, either under homestead or preemption law. But as to those unoccupied lands not covered by any settlement whatever, or where nobody desires to settle, in the absence of United States regulations, all the latter will claim is that position of a landed proprietor, and the state is not only given the right, but it is a duty that belongs to it, to preserve that pasturage from destruction, and it can be done under state regulation.

A MEMBER. Will the laws regulating the land of the United States be changed under the state, or will the same laws hold good as now?

Mr. CLAGGETT. The laws will remain the same. But if the gentleman turns to the rules in the depart-

ment he will see that grazing is permitted upon the unoccupied part of the domain.

A MEMBER. Secretary Teller when he was secretary of the Interior ruled that the public lands were open and free to all alike. That ruling has been sustained by every secretary down to the present; and if that is the case, I cannot see why we cannot legislate here in regard to anything pertaining to grazing on government land.

Mr. REID. We can't do it.

Mr. AINSLIE. I don't think the position taken by the honorable gentleman from Shoshone is tenable, and I refer him to Section 2, Article IV. of the Constitution of the United States. The passage of a law by the legislature in pursuance of the amendment offered by the gentleman from Latah would be granting special privileges to citizens of the State of Idaho different from the privileges and rights enjoyed by citizens of other states. It is preferring the citizens of Idaho as to their rights upon the public domain that belongs to the United States, as against citizens of another state. Section 2, Article IV. provides: First, that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Now, if the citizens of Idaho Territory have no right to graze their stock on the public lands, if they are nothing more than trespassers, they cannot pass a law by their state legislature preventing the citizens of another state from grazing their stock upon them.

Mr. CLAGGETT. But we can subject them to the same conditions and terms as our own people.

Mr. AINSLIE. Then there is no need of adopting this amendment, because they would have the same rights as our own citizens would have. You cannot pass any constitutional article by this body that would discriminate between the rights of citizens of Idaho and Washington, or Oregon. And as I understand the object of this amendment, it is to authorize the legislature to pass some restrictive legislation favoring the citizens of

Idaho, or the actual residents of Idaho, as against those who live across the line in some other territory.

Mr. McCONNELL. No sir.

Mr. AINSLIE. Well, that is the line of argument the gentleman took, and I say it would be in violation of the Constitution of the United States.

Mr. McCONNELL. The same law would protect them from the citizens of their own territory; but at the present time there are no large sheep owners in northern Idaho, and they are only driven in. But this would protect them from large sheep owners in this territory just as well. I don't think a man with a large band of sheep has the right to go through among the weaker and poorer people and eat out their ranges and farms.

Mr. REID. I call attention to one fact——

The CHAIR. (Interrupting) There are a good many gentlemen who have discussed this question over and over, and——

Mr. MYER. I move the committee rise, report progress and ask leave to sit again. (Seconded. Vote and carried).

CONVENTION IN SESSION.

Mr. President in the chair.

Mr. MAYHEW. Mr. President, your committee of the Whole instructs me to make the following report: "Mr. President, your committee of the Whole have had under consideration the reports of the committees on Labor and Livestock, have come to no conclusion thereon, and ask leave to sit again. Mayhew, Chairman."

Mr. ALLEN. I thought the report of the committee on Labor was adopted.

The CHAIR. It was. Mr. Sweet, the chairman of that committee, is not here. There was a section pending in the article on Labor, and for that reason it was reported back to the convention with the recommendation that it be adopted. The section offered by the gen-

tleman from Nez Perce is left open for further consideration and adoption.

Mr. MAYHEW. I made the report as I did because they desire to take up this question again, either in committee of the Whole or in the house.

The CHAIR. The committee of the Whole reports on the report of the committee on Labor, that it has not completed its labors and asks leave to sit again. If there is no objection that report will be received and lie upon the table. What will be done with the other report?

Mr. MAYHEW. I don't understand, Mr. President. The last article, you will remember, we had not completed, and the other was not completed because the gentleman desired to offer additional amendments to it.

Mr. REID. It was understood though we might take it up in convention.

The CHAIR. The motion was made by the gentleman from Shoshone that as far as it had gone the committee recommended its adoption, leaving it still to be considered with reference to the additional section.

Mr. MAYHEW. Then I will amend my report by saying that the committee has had under consideration the article on Labor, and report the bill back, and recommend its adoption in the convention.

SECRETARY reads: Your committee of the Whole have had under consideration the report of the committee on Labor and reports as follows: Sec. 1. Strike out "four" and insert the word "two" therefor; also insert the word "immigration" before the word "labor" where it first occurs and insert the same word before the word "labor" in lines two and three. Adopt Section 2; adopt the substitute for Section 3; adopt Section 4 and substitute for Section 5, and adopt Section 6.

Mr. MAYHEW. The gentleman from Nez Perce desires to offer a substitute in convention.

Mr. REID. I move the report now lie on the table to be taken up at regular order. (Carried).

Mr. McCONNELL. I move the convention take a recess until eight o'clock this evening.

Mr. MAYHEW. I amend that by moving we adjourn until nine o'clock tomorrow morning. (Seconded).

ARTICLE XV.— IRRIGATION—JOURNAL RECORD

The CHAIR. The chair is informed by the secretary that the report of the committee on Agriculture, Irrigation and Manufacturing was made on Saturday and passed upon by the convention, voted upon, and the yeas and nays recorded, and ordered referred to the committee on Revision and Enrollment, and that all the proceedings had this afternoon were entirely unnecessary. And he desires to be relieved from the necessity of keeping any record of what transpired as to that matter today, inasmuch as no changes were made in the bill. If there is no objection the secretary will omit the proceedings with regard to that article today.

It is moved and seconded that the convention now take a recess until 8 o'clock p. m. To that an amendment is offered by the gentleman from Shoshone that we adjourn until tomorrow morning at 9 o'clock. (Carried). Adjourned until 9 o'clock tomorrow morning.

July 30, 9:00 o'clock A. M.

TWENTY-SECOND DAY.

Convention called to order by the President.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Standrod, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Batten, Beane, Beatty, Brigham, Crook, Gray, Hagan, Hammell, Harkness, Hendryx, Howe, Lamoreaux, Lemp, McMahon, Morgan, Poe, Pritchard, Robbins, Salisbury, Steunenberg, Stull, Woods.

Mr. CLARK. Mr. President, I move we take from the secretary's table the report on Military affairs and finally consider it.

Mr. BALLENTINE. I have received a letter this morning stating that the whole country in the immediate neighborhood of where I live is on fire, and I ask indefinite leave of absence.

There being no objection, leave was granted.

MOTION TO LIMIT SPEECHES

Mr. ANDERSON. In accordance with the notice given yesterday, I now move that the speeches of members on this floor hereafter be limited to five minutes. (Seconded).

The CHAIR. You had better put it so that the rules be so amended as to strike out ten minutes and insert five minutes.

Mr. ANDERSON. I will put the motion in that way.

Question was put by the chair.

Mr. HEYBURN. Mr. President, it seems to me we had better consider what we are doing in this matter. There are one or two important measures to consider, and if it was necessary to have the limit extended for the other measures considered, I think we had probably better retain the rule as it is until after we are through with the important business, and leave it simply to the consciences of members. I don't think I ever exceed five minutes myself; but you propose in a day to two to take up the judiciary bill, and I don't believe it is wise at this time to cut the time down to five minutes, unless there is a special reason for it.

Vote and carried.

ORDER OF BUSINESS

Mr. MAYHEW. Motion has been made, Mr. President, to take up the Military or Militia Bill.

The CHAIR. The gentleman from Ada in making that motion accompanied it with the statement that it

would take only a minute or two to complete it. The chair has knowledge of the fact that the gentleman from Logan, Mr. Armstrong, desires to offer an amendment, which he has not as yet got thoroughly drawn.

Mr. CLARK. I will withdraw my motion then.

Mr. MAYHEW. I would like to inquire how long it is going to take to prepare that amendment. I think we are getting behind, and we should make some effort to get through with this convention this week, but if we keep on we shall be here two months. That has been lying on the president's desk nearly two weeks since it was reported by the committee of the Whole, and if any member desired to offer an additional section I should think two weeks' time would be sufficient to prepare it, and I am opposed, as one of the members of this convention, to delaying it a single moment.

The CHAIR. There is nothing before the convention. That motion was withdrawn.

Mr. MAYHEW. I renew the motion then, and move that we take up the Militia bill and consider it in convention.

The question was put by the chair.

Mr. SHOUP. Mr. President, I desire to give notice to the convention that tomorrow morning I shall ask the convention to take up the Bill of Rights that has been lying on the table.

Mr. MAYHEW. Why not take it up today?

Mr. SHOUP. Two members of that committee are absent who will return tonight, Mr. Morgan and Mr. Standrod.

Mr. CLARK. Mr. President, there is an order on file, is there not, to have the Bill of Rights printed before it comes before us again?

Mr. SHOUP. Yes.

Mr. CLARK. We could not take it up very well today anyhow.

The CHAIR. The recollection of the chair with reference to that matter is, that the Bill of Rights has

been considered in convention and sent to the committee on Engrossment.

Mr. SHOUP. No sir, it was ordered reprinted with the amendments nearly a week ago. It has not been considered.

Mr. GRAY. I believe everything in the Bill of Rights was considered in the committee of the Whole, but the Preamble, if I am not mistaken. I know we had that matter up for consideration in committee of the Whole long before Mr. Morgan and others left the convention.

ARTICLE XIV.— MILITARY AFFAIRS.

The CHAIR. The chair will have to call the convention to order. The secretary will read the report on Military Affairs.

Mr. CLARK. I would simply like to inquire if it is the intention of the gentleman from Custer to give notice that he will call up the Bill of Rights tomorrow, whether it is printed or not.

The CHAIR. The chair can give the gentleman no information on the subject; it is immaterial. The gentleman has his right to give his notice.

The secretary will read the first section.

SECTION 1.

SECRETARY reads Section 1. Moved and seconded that Section 1 be adopted.

Mr. PEFLEY. I have an amendment to offer.

Mr. MAYHEW. I would like to ask if this is an amendment that was offered in committee of the Whole, or is it a separate and independent amendment?

Mr. PEFLEY. It is an amendment to Section 1.

Mr. MAYHEW. Was that amendment offered while we were considering it in committee of the Whole?

The SECRETARY. It was not.

Mr. MAYHEW. Then I object to it under the rules.

The CHAIR. The amendment that was offered by the gentleman from Boise has not yet been acted upon

by the convention. Notice was given, but never has been brought up. Consequently the convention is proceeding under the old rule. The chair rules that it is in order.

SECRETARY reads: Except such persons as are disqualified by Section 4 of Bill of Rights from holding office and the right of suffrage.

Mr. WHITTON. I second the motion.

Mr. PEFLEY. Mr. President, I simply wish to say that I don't think it is hardly fair to disqualify a man from having or holding office or anything of that kind, and at the same time oblige him to bear arms for the defense of the homes of persons who disqualify him.

Mr. REID. I would like to hear it read.

The amendment was again read by the secretary.

Mr. MAYHEW. I am opposed to the amendment being incorporated in that bill for this reason, which I desire to state briefly without any argument. Men in the United States have rights protected by the laws of the state and of the government independent of the right and privilege of suffrage. They are permitted to preempt and homestead land. Permitted to do many other things as other citizens, and protected by the laws of our country; and they are only disqualified from voting on account of pernicious habits, such as polygamy and bigamy. Notwithstanding they are prohibited from voting under this law we have engrafted here, still I am in favor of their bearing arms as well as anybody else for the protection of their lives, homes and property. (Vote, and amendment lost).

SECTIONS 2, 3 AND 4.

Sections 2, 3 and 4 are successively read, put to vote and adopted, without debate or amendment.

Mr. AINSLIE. I understand the vote was taken on the proposed amendment to Section 1, and voted down, but Section 1 was not yet adopted.

The CHAIR. Yes.

SECTION 1.

Mr. AINSLIE. I move the adoption of Section 1.

Motion seconded. Vote and carried.

Mr. ARMSTRONG. I desire to offer an additional section.

SECTION 5.

Section 5 read, and Mr. Mayhew moves its adoption.

Mr. PIERCE. I understood there was a substitute for Section 5 that was adopted when this bill was passed in committee of the Whole, and I ask the secretary if such is not the case.

The SECRETARY. No sir, there were a number of amendments proposed to this section, and the thing got to such a pass finally that Mr. Taylor moved to table all amendments, substitutes and everything, and everything was tabled under that motion. I was under the impression there was a substitute adopted, but I have given it a very careful examination, and I know there was nothing.

Mr. AINSLIE. I have kept a record of those things, and it shows that it was adopted as originally printed.

The SECRETARY. Yes, that is it.

The CHAIR. The question before the convention now is the motion made by the gentleman from Shoshone, Mr. Mayhew, that the section as read be adopted as a whole. (Seconded. Vote and carried).

SECTION 6.

The CHAIR. The gentleman from Logan, Mr. Armstrong, proposes an additional section, which the secretary will read.

SECRETARY reads: Section 6. No armed police force, or detective agency, or armed body of men, shall ever be brought into this state for the suppression of domestic violence, except upon the application of the legislature or the executive, when the legislature cannot be convened.

Mr. AINSLIE. I move the adoption of that amendment, and I believe in it. We have had enough of Pinkerton's private squads of men ranging through the west. I see Montana[1] has adopted the same thing, and I think it is a good thing.

The CHAIR. I will call attention to the words "private detective agency." If the gentleman from Boise will examine the amendment and see that it cuts off the employment of private detectives for the detection of individual crime. I don't think it was the desire of the gentleman from Logan to include that.

Mr. CLARK. Read it again. (Section read).

Moved and seconded that the section be adopted. Vote and carried.

Mr. MAYHEW. I move that the bill be now referred to the committee on Engrossment.

The CHAIR. It will be referred to the committee on Engrossment under the rules. It requires no motion.

Mr. CLARK. I move it be put upon its final passage at 2 o'clock this afternoon. (Carried).

ORDER OF BUSINESS

Mr. MAYHEW. Mr. President, I would like to inquire now what articles have been reported back to this convention that have been considered in committee of the Whole, now lying on the clerk's desk.

The SECRETARY. There is Number 1, report on Preamble and Bill of Rights; No. 5, report of the committee on Executive Department; No. 6, report of the committee on State Government, Public Buildings, etc.; No. 8, report of the committee on Municipal Corporations; No. 9, report of the committee on Education, Schools and University Lands. The article on Bill of Rights has been ordered printed, and the printers have not returned the copy. It has been in their hands several days.

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[1]—Art. 3, Sec. 31, Montana Const. 1889. But the words "or detective agency" did not appear in the Montana section.

Mr. SHOUP. Mr. President, I ask the gentleman, having the Executive report in charge, if that report cannot now be taken up.

Mr. AINSLIE. I am willing it should be at any time.

Mr. MAYHEW. Mr. President, I move that we take up these bills now lying on the secretary's desk in their order to be considered by the convention.

Mr. HEYBURN. Except the Bill of Rights.

Mr. MAYHEW. Well, I am opposed to men going away from the convention and staying two or three days and expecting us to wait until they get back. I am in favor of forcing the printers to report them back. They have had it three or four days.

The SECRETARY. They got it the same day the order was made.

Mr. MAYHEW. If we keep on this way I am satisfied that this convention will never get through with this business.

Mr. HEYBURN. I second the motion.

The CHAIR. It is moved and seconded that all the bills considered in committee of the Whole and referred back to the convention and now lying upon the speaker's table be taken up and acted upon by the convention in their order.

Vote and carried.

The CHAIR. The secretary will take the first one that was reported back. The secretary informs the chair that the amended copy of the Bill of Rights as amended by the convention is in the hands of the printer.

Mr. HEYBURN. I move we pass the Bill of Rights and take up the next one.

The CHAIR. If there is no objection the Bill of Rights will be passed for the present.

ARTICLE IV.—EXECUTIVE DEPARTMENT, SECTIONS 1, 2, 3, 4 AND 5.

SECRETARY reads Section 1, 2, 3, 4 and 5, and each

is voted upon separately and adopted, without debate or amendment.

SECTION 6.

Section 6 read, and it is moved and seconded that it be adopted.

Mr. AINSLIE. I move to strike out the last clause, "The senate may, etc., sit with closed doors," as it was included in another article.

Vote and carried.

SECTIONS 7, 8 AND 9.

Sections 7, 8 and 9 are separately read and adopted, without debate or amendment.

SECTION 10.

Section 10 was read.

Mr. MAYHEW. Mr. Chairman, I was going to suggest an amendment to this section. The words "ten days" should be changed to "five days," because ten days is one-sixth of the session of the legislature.

Mr. AINSLIE. We have no objection on the part of the committee.

Mr. MAYHEW. Then if there is no objection in the convention I move that it be changed from ten days to five days.

Mr. AINSLIE. Where you have short sessions of the legislature I think five days is long enough myself.

The CHAIR. If there is no objection the secretary will substitute the word "five" for the word "ten" in line 11.

Moved and seconded that the section as amended be adopted. Vote and carried.

SECTIONS 11, 12, 13, 14, 15, 16, 17 AND 18.

Sections 11, 12, 13, 14, 15, 16, 17 and 18 are separately read and adopted, without debate or amendment.

SECTION 19.

Section 19 was read.

Mr. McCONNELL. I have an amendment.

SECRETARY reads: Amend Section 19 by striking out in lines 14, 15 and 16 the words "no officer named in this section shall be eligible to or hold any other office of the state, except regent of the university of the state, during his tenure of office."

Mr. McCONNELL. We have provided here that they shall hold the office of regents. But we have provided otherwise that they shall be commissioners of lands, commissioners of penitentiaries, and board of examiners. There are three other offices prescribed that they shall hold, and there may be other commissions the legislature would like to create, and by appointing these gentlemen members of the commissions it will save the expense, and I think there is no need of having those lines in there. I move the adoption of the amendment.

Mr. SHOUP. I desire to offer an amendment.

SECRETARY reads: Amend Section 19 by striking out in lines 14, 15 and 16 the words "no officer mentioned in this section shall be eligible to or hold any other public office except regent of the state university, during his tenure of office.

Mr. SHOUP. I will withdraw my amendment; it is the same as the other.

Mr. AINSLIE. I don't know whether that could be termed to impose another position upon an officer, thus making him hold another office. It is like a probate judge being ex-officio clerk of his own court. The office of regent of the university doesn't carry any salary with it, and I think these exceptions might perhaps be put in as it was adopted by the committee of the Whole and was incorporated in the article to prevent them holding any other office that had any emoluments attached to it, to confine them strictly to their duties. Those are nothing but honorary offices. I think it might be amended by putting in these exceptions.

Mr. McCONNELL. There might circumstances arise under which the legislature would wish to appoint

either one of these gentlemen to some other office, which would be merely an honorary office as these are. If there is any way to get around it so as not to tie the legislature up, I would be willing; but we have already provided for these offices, which are the largest offices, in this, and I think it is well enough to strike those lines out. I don't think the people in this territory would like any man to have a second office in which there was emoluments.

Mr. AINSLIE. He might be appointed to some other office.

The question was put by the chair and a viva voce vote was taken. A division was called for which resulted, 25 ayes and 5 nays, and the amendment was adopted.

Mr. HAMPTON. I would suggest that by unanimous consent the word "legislature" in the eighth line be changed to "house of representatives."

The CHAIR. There is no objection and the change will be so made by the secretary.

Mr. MAYHEW. I suppose here is the proper place and time to fill up these blanks for the salaries.

Mr. SHOUP. The salary bill has not yet been considered in convention.

Mr. MAYHEW. If we follow it up here, that ends the chapter, doesn't it? This is only as to the executive, I suppose.

Mr. SHOUP. The committee on Revision can do that.

Mr. MAYHEW. Not without the consent of this house as to what it shall be.

Mr. REID. I will ask unanimous consent in order that we may complete this. The object of the gentlemen going into convention was to complete it, and I ask unanimous consent that we may proceed now with the Salary bill and consider it in convention as in committee of the Whole and complete the Salary bill we were on yesterday, and fill up these blanks. It was understood and so determined by the convention when

this bill was up before, that these blanks should be filled after the consideration of that bill. I don't know why we should postpone the salary bill any further. We are about half through with it, and I think we can complete it in half an hour. We might go on and fix the salary of the district attorney, and then if you abolish it we can go back and amend this or drop it out. But we will get our work in order, and I ask unanimous consent to take up the salary bill and complete it and fill these blanks, and then proceed with the next.

Mr. WILSON. I rise to a point of order. I understand we must consider these articles in committee of the Whole.

Mr. REID. Then I suggest to the gentleman to just consider enough of the Salary bill to fill these blanks up as we go along. We left the section unfinished.

Mr. WILSON. Can we proceed in convention to consider it?

Mr. REID. We can if nobody objects.

Mr. ALLEN. I would like to offer an amendment to this section in line 21, following the word "general,"[1] add the words "Commissioner of Immigration."

Mr. MAYHEW. I will ask the gentleman if there is any such officer provided for in the constitution.

Mr. ALLEN. We adopted in the Labor article yesterday an amendment in regard to immigration and labor statistics and an officer to be called, as I understand, "Commissioner of Immigration and Statistics."

The CHAIR. The gentleman from Nez Perce asks unanimous consent that the convention do now consider so much of the Salary bill as relates to offices whose salaries are mentioned in the pending measure. If there is no objection it will be so considered and the pending bill laid aside for that consideration. The secretary will please lay aside this bill and take up the other one, No. 13.

The secretary will read those paragraphs of Section

1—In second line from the end of the section as it now stands.

19, which leave the salaries in blank, in their order, beginning with the first one and disposing of that, and then the next.

SECRETARY reads: The governor at ——— dollars per annum.

Mr. REID. I move that that be filled by the insertion of $2,500. (Seconded).

Mr. MAYHEW. I move to amend and make it $3,000. (Seconded).

The chair put the question on the amendment to fill the blank with $3,000.

A viva voce vote was taken and the chair being in doubt a rising vote was taken resulting in ayes 26, nays 13, and the amendment was carried.

Mr. REID. Now, Mr. Chairman, I demand the ayes and nays on this; we want a record.

The secretary proceeded to call the roll.

Mr. ALLEN. Mr. Chairman, as I understand this is simply for the first term.

Mr. REID. Yes, the bill provides; it is just the report made by the committee on Salaries. The legislature may increase it at any time, but the Salary bill proposes $2,500, and the amendment is to raise it to $3,000.

Mr. ALLEN. But this is one term only.

Mr. MAYHEW. Yes.

Mr. ALLEN. I am in favor of making the justices of the supreme court and the governor the same; but I am opposed to paying too high salaries permanently. I vote No.

Roll call:

Ayes: Anderson, Armstrong, Bevan, Blake, Campbell, Clark, Crutcher, Gray, Hampton, Harris, Hays, Heyburn, Hogan, Kinport, Lemp, Maxey, Mayhew, McConnell, Melder, Moss, Parker, Pinkham, Shoup, Wilson—24.

Nays: Allen, Ainslie, Ballentine, Cavanah, Chaney, Coston, Hasbrouck, Jewell, King, Lemp, Myer, Pefley, Pritchard, Pyeatt, Sinnott, Sweet, Underwood, Vineyard, Whitton, Mr. President—20.

The secretary reads: Secretary of State, ———— dollars per annum.

Mr. REID. I move that be filled as reported by the committee on Salaries, at $1,800. (Seconded).

Mr. MAYHEW. I move to amend by putting it at $2,000.

Mr. SHOUP. There seems to be some misunderstanding in this convention as to the power of the committee on Revision. If we insert here what these salaries are of these officers, I see no necessity of repeating it in the Salary bill. If it is in the Salary bill I see no necessity of having it here. It is simply saying the same thing twice.

The CHAIR. It is moved and seconded that the salary of the secretary of state be fixed at $1,800, and to that is an amendment that it be made $2,000.

Mr. REID. And on that amendment I call for the ayes and nays.

The secretary called the roll.

Mr. HEYBURN. Before voting I would like to make inquiry of the committee whether any provision is made for clerks for the secretary. I understand the present secretary of the territory requires at least two clerks, and sometimes more, and I find no provision for clerks. If none is made, then the salary should be more; if there is a provision made, perhaps this is sufficient.

Mr. REID. So far as the salary was concerned it only provided salaries for those officers named in the constitution. I think the legislature will have authority to provide for the payment of clerks just the same as for clerks for the other officers.

Roll call:

Ayes: Ainslie, Allen, Armstrong, Bevan, Blake, Gray, Hays, Heyburn, Hogan, Lemp, Maxey, Mayhew, Moss, Parker, Shoup —15.

Nays: Ballentine, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Hampton, Harris, Hasbrouck, Jewell, King, Kinport, Lemp, McConnell, Melder, Myer, Pefley, Pierce, Pinkham, Pyeatt, Reid, Sinnott, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—29.

And the amendment is lost.

The question was then put upon filling the blank with the words 1800. Vote and carried.

SECRETARY reads: State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction, ———— dollars each per annum.

Mr. REID. I would state that the committee on Salaries have made different salaries for those officers, and I move to insert for state auditor $1,800. They provided $1,000 yesterday for state treasurer; $1,500 for attorney general. To make the question divisible, I move that the salary of state auditor be put at $1,800. (Seconded. Vote and carried).

Mr. REID. I now move that the salary of the state treasurer be put at $1,000, as determined by the convention on yesterday.

Mr. CLARK. I move to amend and make it $1,500.

Mr. REID. I accept the amendment, as it was originally reported by the committee.

The question was put by the chair and a viva voce vote taken. The chair being in doubt a rising vote was taken which resulted as follows: Ayes 18; nays 24, and the motion to fix the salary at $1,500 was lost.

Mr. REID. I move that it be fixed at $1,000.

Mr. CLARK. I move that it be fixed at $1,200.

Mr. REID. The convention determined $1,000 yesterday, and I hold fast to that.

The chair put the question upon the amendment and a viva voce vote was taken. The chair being in doubt, a rising vote was taken, which resulted as follows: Ayes, 19, nays 25.

The question was then put upon the original motion to fix the salary at $1,000. Vote and carried.

SECRETARY reads: Attorney general and superintendent of public instruction ———— dollars each per annum.

Mr. REID. I move that the report of the committee be adopted fixing the salary of those two officers at $1,500 each.

Mr. WILSON. I move to amend to make the salary of the attorney general $2,000. We don't want the state to be forced to put a $1,500 man against a $10,000 man when it is a corporation.

The CHAIR. Will the gentleman divide his motion?

Mr. REID. Yes, the first officer is the attorney general. I move that his salary be $1,500. All I have to say is that we discussed it yesterday, and the convention after debating it put it at $1,500, and the committee reported it at that. I don't feel disposed to accept the amount; if the convention chooses to change it, all right.

Mr. MAYHEW. While this discussion was going on yesterday I took no part in it. But it strikes me that in an important office such as the attorney general of the territory, being a salaried office, we should make the office respectable and that the person who fills it should be a respectable attorney. I insist that the duties to be performed by the attorney general when we become a state require that he should have at least $3,000, and I will give my reasons why briefly. The attorney general of the territory has to be the adviser of all the state officers; he will be required to examine not only records and authorities but give written opinions for the different departments. It will be his duty to defend all cases in behalf of the state; to prosecute all criminal cases appealed from the different district courts to the supreme court. He will be required, as it is provided in the Judiciary bill, that there shall be four terms a year of the supreme court, to attend all those terms, which will require almost the entire attention of the attorney general. Any person who accepts that position must give up in fact practically his entire business in his profession to that which is required on the part of the state. I say, Mr. President, taking everything into consideration, we are cutting down the salary of the officer who is one of the most important in the state. And as was said by Mr. Sweet, these corporations that are now and will be in the state will have the ablest at-

torneys they can find anywhere in the state to prosecute their business and their cases. If we give a reasonable salary to some respectable lawyer, a man of ability and character, we can have this office filled, and he will be able to cross lances with those attorneys who represent the large corporations. So far as I am concerned, I don't care what any other member of this convention thinks; I say it is a disgrace and a shame even to put the salary at $2,000 for the attorney general, and I think any lawyer who has any regard for his own profession and for that high office should be willing to make it $2,000 at least. It ought to be $3,000.

Mr. HARRIS. I move to amend the amendment and make it $2,500.

Mr. MAYHEW. I will second that amendment with pleasure.

Mr. SHOUP. I will call the attention of the convention to the fact that the attorney general is also a member of the board of pardons; he is also on the state prison commission. In my opinion $2,500 is little enough salary for him.

The CHAIR. It is moved and seconded that the salary of the attorney general be fixed at $1,500, to which is an amendment fixing it at $2,000, and to that is an amendment to fix it at $2,500. (Vote. A division was called for).

Mr. MAYHEW. I call for the ayes and nays on that question.

Roll call:

Ayes: Ainslie, Anderson, Bevan, Blake, Gray, Hampton, Harris, Hays, Heyburn, Hogan, King, Maxey, Mayhew, Melder, Parker, Pinkham, Shoup, Sweet, Wilson—19.

Nays: Allen, Armstrong, Andrews, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Hasbrouck, Jewell, Kinport, Lemp, Lewis, McConnell, Myer, Moss, Parker, Pierce, Pyeatt, Reid, Sinnott, Underwood, Vineyard, Whitton, Mr. President—26.

The question was then put on the amendment to the amendment to fix the salary at $2,000.

And the amendment was lost.

Mr. MAYHEW. I call for the yeas and nays.

Roll call:

Ayes: Ainslie, Allen, Anderson, Armstrong, Ballentine, Campbell, Bevan, Crutcher, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lemp, Maxey, Mayhew, Melder, Moss, Pinkham, Pyeatt, Shoup, Sweet, Underwood, Vineyard, Wilson, Mr. President—31.

Nays: Cavanah, Chaney, Clark, Coston, McConnell, Myer, Parker, Pefley, Pierce, Reid, Sinnott, Whitton—12.

And the salary was fixed at $2,000.

Mr. REID. I move to insert for the salary of the superintendent of public instruction $1,500 as reported by the committee on Salaries.

Mr. SWEET. I would like to ask Mr. Reid if the traveling expenses are provided.

Mr. REID. Yes, whenever he travels, as are the lieutenant governor, attorney general and others.

Motion seconded. Vote and carried.

Mr. HEYBURN. I move to strike out in line 7 all after the word "annum" down to the end of the sentence in line 9; that is, the following: "The lieutenant governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the sessions of the legislature." I moved to strike it out of the Salary bill yesterday, and it ought not to be in both places.

Mr. REID. When these blanks are filled in, the Salary bill will not appear in the constitution at all.

Mr. HEYBURN. If it is not going to be in the Salary bill, you are going to have a little difficulty there that can probably be adjusted by the committee, but there are things in this Salary bill that must necessarily go in the constitution, because there is the authority of the legislature to provide for traveling expenses.

Mr. REID. That is in this section also. It can be put in the Salary bill.

Mr. HEYBURN. It will require a change to be made. It has not been provided for in the other bill so far.

Mr. REID. But it was suggested by consent you could leave it out.

Mr. HEYBURN. Then I withdraw my motion.

Mr. REID. I now move the adoption of the section as amended with the blanks filled.

The CHAIR. I suggest that the secretary read the section in full as amended.

Mr. ALLEN. I would like to offer an amendment that the word "which"——

The CHAIR. That has been struck out by consent already.

Mr. ALLEN. And that the words "Commissioner of Immigration and Statistics" be added as provided for yesterday.

The CHAIR. As provided for yesterday on the Labor bill, the word "shall" was stricken out and the word "may" inserted, leaving it optional whether the legislature would create that office or not.

Mr. ALLEN. I thought that was made obligatory; that was my impression.

The CHAIR. Yes, I think you are correct.

The secretary reads the whole section.

Moved and seconded that the same as amended be adopted.

Mr. ALLEN. There was an amendment some time ago to the section.

The CHAIR. The chair heard no second to the amendment.

Mr. ALLEN. I call for the reading of the amendment.

SECRETARY reads: I move to insert the words "commissioner of immigration and statistics" after the word "general" in line 21 Section 19.

Mr. REID. I second the motion in order to speak to it. I would ask the gentleman to withdraw that in order to offer it when the article on Labor comes up. We are going to have no separate salary bill, and as these offices are created it would be better to have the salaries fixed in it. I have just conferred with the chairman

of the committee on Labor, and it is proposed to insert his salary when we get to that article. If the gentleman will withdraw his motion we will insert it there and it will be harmonious.

Mr. ALLEN. I will withdraw it.

Mr. REID. I offer the following amendment in line 20 after the words "payment of:" Strike out "mileage" and insert "actual expenses." The reason I do it is this. He can now only get pay for his mileage; it does not include hotel bills, and he might be on a tour of six weeks visiting schools and organizing county institutes, and this act would provide for his railroad fare; but for his hotel bills there would be no provision, and they might consume his entire salary. I know it was the object of the committee on Salaries to pay him all his actual expenses. So I move to strike out "mileage" in line 20 and insert "actual expenses." (Seconded).

Mr. MAYHEW. Isn't that rather a broad term, "actual expenses?" He might make out his bill to cover all his whiskey bills, if he happened to be a man of that character.

Mr. REID. I will amend it by saying "actual and necessary expenses." We have to lodge some discretion with an officer, and when he files his bill he will be required, like a salesman, to itemize his expenses, and if whiskey or any improper expenses are included, that man would not be superintendent of public instruction of our state any more, I think. But I will amend it and say actual and necessary expenses.

Mr. AINSLIE. There is only one objection to that, under Section 18, that if the legislature allows them mileage, I never saw a mileage account yet, but what gave more than actual expenses.

The question was put by the chair and a viva voce vote taken, and a division called for. On the rising vote, 24 ayes and 9 nays, and the amendment was adopted.

Mr. REID. I move the adoption of the section now as amended. (Seconded).

Mr. HEYBURN. Before that is done I desire to send up an amendment.

SECTION 18.

SECRETARY reads: Amend Section 18 by striking out all after the word "law" in the third line.

Mr. HEYBURN. Mr. Chairman, under the Judiciary bill which has been reported——

The CHAIR. The chair will have to rule that the amendment is out of order except by unanimous consent. It has been passed upon and adopted in convention.

Mr. HEYBURN. We are now upon a motion to adopt the whole article, and I take it I may offer an amendment. I understand the motion is for the adoption of the article.

Mr. REID. No sir, it is to adopt Section 19.

Mr. HEYBURN. Then I will withhold the amendment until we consider the whole article.

The vote was taken on the motion to adopt Section 19 as amended, and it was carried.

Mr. AINSLIE. I now move the adoption of the article as amended. (Seconded).

Mr. HEYBURN. Now, I renew my amendment to Section 18, which is to strike out all after the word "law" in line 3. The reason is that in the report of the Judiciary committee, Section 11 (10), it is provided that "the supreme court shall have original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the legislature for its action." This Section 18 provides that "they shall also constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law. And no claim against the state, except salaries and compensation of officers fixed by law, shall be passed upon by the legislature without

first having been considered and acted upon by said board." We should make rules to be considered by this board and the supreme court, and we ought to confer jurisdiction upon one body or the other. If we are going to vest it in this board, there is no necessity to vest it in the supreme court; and if it is to be vested in the supreme court, there is no necessity to have it vested in this board. There is no necessity to hear those claims twice. It deprives the legislature of the power to pass upon them until they have been passed upon by this board under Section 18. Section 11 (10) of the Judiciary committee provides that the supreme court shall act in this matter.

Mr. AINSLIE. If the gentleman will examine the sections in the Judiciary article and the one in this article, he will find no conflict at all. Section 18 only makes them a board of examiners, "with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law." In Section 11 (10) the party who has claims against the state can commence suit in the supreme court. "The supreme court shall have original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory." Now, these claimants originally can commence suit in the supreme court, and then the matter must be certified to the legislature, and it will allow it. The supreme court in Section 11 (10) of the Judiciary bill is exactly like the court of claims in Washington. In the treasury department they have different powers; the first, second, third and fourth auditors, and comptroller of claims, etc.; and all claims go to one of these officers. If the examiner for instance is the comptroller, and he rejects the claim, the claimant then has the right to sue in the court of claims to recover the amount. And that is the condition here. The governor, attorney general and secretary of state constitute a Board of Claims, and if they allow it there is no neces-

sity to go into court, if they reject it, then they go into court.

The CHAIR. There is no second to the amendment. and it is out of order unless the gentleman wished to move to reconsider. Does he wish to reconsider it?

Mr. HEYBURN. I do not.

The CHAIR. Then the chair must rule that it is out of order.

Mr. HEYBURN. I would like to know if the chair rules that when an entire article is before the convention, it is not in order to move to amend it under the rules?

The CHAIR. The chair rules that the convention in proceeding upon any article section by section, when a section is adopted it expresses the sense of the convention, and after having passed the section by its adoption you cannot without unanimous consent or a motion to reconsider go back to any section which has been adopted.

Mr. HEYBURN. That has not been the rule enforced in the body heretofore.

The CHAIR. That is the understanding of the chair, and whenever the present occupant has occupied the chair that has been the rule. Else there is no sense in adopting it section by section. It is moved and seconded that the article as a whole be adopted. (Vote and carried).

The CHAIR. The article will now be referred to the committee on Engrossment for engrossment. What time will the committee fix for the final reading of this article?

Mr. AINSLIE. I will ask that it be put tomorrow at two o'clock. (Carried).

The CHAIR. The secretary will now take up the next bill.

ARTICLE X.— PUBLIC INSTITUTIONS. SECTION 1.

SECRETARY reads Section 1 and it is moved and seconded that it be adopted. Vote and carried.

SECTION 2.

Section 2 was read.

Mr. CAVANAH. Mr. President, I move to insert the word "twenty" in the second line in place of "ten."

Motion seconded and question put by the chair.

Mr. REID. Mr. Chairman, I hope the amendment proposed by the gentleman from Elmore, Mr. Cavanah, which was incorporated in the original report of the committee, will be adopted, and let us go back to twenty years. And I do it, sir, because as I conceive, the reasons for it are in the interests of Idaho. We want our capital to be the most beautiful, the wealthiest and most attractive city in the state. Here are all the elements of a great city; it is in a beautiful valley; we daily witness the improvements made by turning water upon it; we see the enterprise and thrift of her citizens; and if you have it inserted in the constitution that at the end of ten years the capital may be removed, what inducement or encouragement will there be for capitalists or anybody else to invest in public or private improvements? We know it requires many years to complete such works. We want, for instance, great water works to irrigate these plains, so this valley can be turned into beautiful parks, and drives, and everything of that sort. We want to encourage the citizens who reside here now, and who may come hereafter, to erect palatial homes, so that our capital city may be as attractive as any in the west. And as to its situation, who can desire more? We from the north and northwest come down here and meet you gentlemen from the southeast, which is just half way, as you will see if you look at the map; and when I shall return to my home and tell our people of the prospects we have for admission, and all I have learned and seen about Idaho, and the hopes and encouragement for the future, that which will give me more joy is the assurance—I put it beyond all doubt—is the assurance, that within the next two years a railroad will go right up Snake river to Lewiston, and out

through the northwest. That is all I can say about it now. The plans are laid and it will be consummated, and then we can come to this city in five or six hours; you gentlemen from the southwest can do the same. And even now I can leave here tonight and day after tomorrow morning I will be in Lewiston, when it used to require half or two-thirds of the week. The railroad facilities will connect us, the northwest with the southeast. And why should we have it understood that our capital shall be a football? We may want it up north, and you may want it in the southeast, or other gentlemen may want it further down south. Let us determine that the capital shall stay right here. I have found that the intelligence of Boise, the enterprise and hospitality of her citizens, will always afford us a generous welcome and a pleasant sojourn, so let us all pull together, and let us have it understood that our capital for at least a quarter of a century, shall remain in Boise. Then if her good citizens, who have been so hospitable and kind and patriotic, do not show themselves worthy of our capital—don't show that they intend to make this a beautiful city and an attractive capital, and worthy of this new state and her developing resources, then we can come in and by a vote of the people move it elsewhere, to some place that will make it what it ought to be. But I think, at least, we ought to give them the assurance that if they will make investments and render this valley and this city beautiful and attractive, and everything of that sort, and we hold out those inducements to them for a quarter of a century, we will be repaid by having one of the most beautiful cities of the west; Portland and Spokane cannot excel Boise in resources; here are enterprise and capital, and I believe these people will make our capital the pride of Idaho. But if we leave it for only ten years, and have it understood in all our state politics that this shall be a local question, like Mormonism or annexation, to disturb our politics and our people, what inducement will there be to capital to come here and invest in parks, water works,

gas works, street railroads and everything of that sort? I hope every gentleman of the north will give his vote to let this capital stay here at least a quarter of a century, and encourage and induce this people to beautify and adorn their city.

Mr. McCONNELL. I heartily endorse what my friend from Nez Perce has said on this question. One item that entered into the question of annexation was the difficulty of access to the territorial capital; but now then that difficulty has been removed. We are, as the gentleman says, within twenty-four hours of Boise City; we are as near as the people in the southeastern part of the territory. This is the central location, and as the subject of irrigation, which we had under discussion yesterday, is a subject which will interest the people in the future, perhaps more than any other, in the development of its agricultural resources, people coming here will naturally come to the capital; and in what point of the territory can they see the results of irrigation so well demonstrated as here in this city? Gentlemen, I hope you will adopt this amendment.

Mr. AINSLIE. As a resident of southern Idaho, I desire to congratulate the people upon the generous sentiments uttered by the two gentlemen who have preceded me, representing that portion of the territory that has appeared to be dissatisfied ever since the removal of the capital from Lewiston in 1864. I am glad to see that the feeling of union and harmony that has been evidenced by the statements of these gentlemen, has met with a hearty response by the people of southern Idaho. Although not a resident of this county and town, I take pride in this section of the territory, and I hope, as the gentlemen have so generously come forward and offered to extend the time that the capital may be located here, that every county in the territory represented on this floor will concur with the generous sentiments uttered.

Mr. MAYHEW. After listening to the distinguished speech of the distinguished gentleman from Nez Perce, all I have to say to that is, let us lay aside all feeling

and sing that good old song "Haste to the Wedding." I shall vote against it.

Mr. McCONNELL. Let Brother Mayhew start the tune.

Mr. HASBROUCK. Mr. President, I too hope this amendment will prevail. I do not think it ought to be located for ten years. I have lived a long time in Boise City, and so far as I know, there is not another place in the territory, nor probably ever will be for the next quarter of a century, so well adapted to be the capital of this state as Boise City. I would have been in favor of making it the permanent seat of government, but I do not suppose I could get a second to that proposition, therefore I hope the amendment will prevail. I have no idea it will be taken to Weiser, and if it cannot, I don't want it taken anywhere else.

Mr. CAVANAH. I make this motion, Mr. President, solely in the interest of economy. I am glad to hear our people of the north speak so highly of our country here, although I do not live in this country. If it is left ten years, in less than four years they will begin to agitate the removal of the capital in the legislature, and for that reason I am in favor of locating it in Boise City for twenty years.

"Question, question."

The CHAIR. It is moved and seconded that the word "ten" in the second line be stricken out and the word "twenty" inserted. (Carried).

Moved and seconded that Section 2 be adopted. Carried.

Section 3.

Section 3 read, and it is moved and seconded that it be adopted. Vote and carried.

The CHAIR. The chair understands that by unanimous consent the word "legislature" in all cases is substituted for the words "legislative assembly."

SECTION 4.

Section 4 read, and it is moved and seconded that it be adopted. Vote and carried.

SECTIONS STRICKEN OUT.

The SECRETARY. The committee recommended the striking out of Sections 5 and 6.

Mr. AINSLIE. I move that the report of the committee be adopted. (Seconded).

Vote and carried.

SECTION 5.

Section 7 (5) read, and it is moved and seconded that it be adopted. Carried.

SECTION 6.

Section 8 (6) read, and it is moved and seconded that it be adopted. Carried.

SECTION 7.

Section 9 (7) read, and it is moved and seconded that it be adopted. Carried.

Mr. CAVANAH. I move the adoption of the article as read as a whole. (Seconded. Vote and carried).

The CHAIR. The article is adopted and referred to the committee on Engrossment. What time will be fixed for its final reading?

Mr. CAVANAH. I move it go over to final reading at three o'clock tomorrow. (Seconded).

Mr. MAYHEW. I move that it be reported back this evening at eight o'clock.

The CHAIR. The chair will ask the chairman of the committee on Engrossment as to whether it can be prepared by that time.

Mr. AINSLIE. I don't think it can be prepared by that time.

Mr. HASBROUCK. I think so.

The CHAIR. The chairman informs the chair that

it can be reported at eight o'clock, but that would be a matter more with the engrossing clerk than with the committee. I don't think however, that the committee has any more matters before it than can be engrossed by that time. Will the committee be able to act upon it at that time?

Mr. HASBROUCK. I think so.

The CHAIR. The motion is made that the time be fixed for final reading at three o'clock tomorrow, and an amendment is offered fixing eight o'clock this evening. The question is on the amendment. (Vote). The amendment is lost. Those in favor of fixing tomorrow at three o'clock say aye; contrary no. (Vote.) The motion is carried. The secretary will read the next article.

ARTICLE XII.— MUNICIPAL CORPORATIONS.

The SECRETARY. The next article is No. 8, the report of the committee on Municipal Corporations.

SECTION 1.

Section 1 read and it is moved and seconded that it be adopted. Carried.

The SECRETARY. There was a motion to strike out Section 2.

SECTION STRICKEN OUT.

Mr. REID. I move that the report of the committee of the Whole to strike Section 2 out be adopted. (Carried).

SECTION 2.

Section 3 (2) read, and it is moved and seconded that it be adopted. Carried.

SECTION STRICKEN OUT.

Mr. AINSLIE. I move that the report of the committee striking out Section 4 be adopted. (Seconded. Carried).

SECTION 3.

Section 5 (3) read, and it is moved and seconded that it be adopted. Carried.

SECTION 4.

Section 6 (4) read, and it is moved and seconded that it be adopted. Carried.

ARTICLE XII. ADOPTED.

Mr. AINSLIE. I move the adoption of the article as a whole as amended. (Carried).

The CHAIR. It will be referred to the committee on Engrossment.

Mr. MAYHEW. This being a short article and not many amendments to it and as it can soon be engrossed, I move that it be engrossed and reported tomorrow morning at nine o'clock. (Seconded).

Mr. HASBROUCK. I would like to ask whether the convention would like to have these articles engrossed in their order. If that is a fact, I think tomorrow morning at nine o'clock would be too soon to report this. If it makes no difference as to their being reported in their regular order I am not opposed to the motion.

Mr. MAYHEW. I notice the motion prevailed that the article just passed be reported tomorrow at three o'clock. I don't desire to make any objections to it because it seemed to meet with the approbation of some of the gentlemen; but the fact is the engrossing committee and engrossing clerk will have ample time to report this tomorrow morning at nine o'clock. It is a short article and the sooner we have it done the better. If the gentlemen had considered a moment they would have seen very readily that this matter which was to be reported tomorrow at three o'clock could have been reported at nine o'clock just as well as at three. We can get through that much quicker.

The CHAIR. In response to inquiry made of the chairman of the committee on Engrossment, the chair

will state that the secretary will keep a record of the order in which these various bills have been set and time fixed for final reading, and up to date there has been nothing that would interfere with the report tomorrow morning at nine o'clock. The others have been put at two and three o'clock. It is moved and seconded that the article just adopted be made a special order tomorrow morning at nine o'clock for final reading.

Vote and carried.

The CHAIR. The secretary will read the next bill.

ARTICLE IX.— EDUCATION AND SCHOOL LANDS.

The SECRETARY. That is Bill No. 9.

Mr. McCONNELL. No. 9 has already been considered in convention.

Mr. MAYHEW. I think it has too.

The SECRETARY. The journal shows it was considered in committee of the Whole yesterday and the final section has been ordered printed, which was disposed of and reported back, but no action taken upon it. It has not been considered in convention yet.

SECTION 1.

Section 1 read and it is moved and seconded that it be adopted. Carried.

SECTION 2.

Section 2 read, and it is moved and seconded that it be adopted. Carried.

The SECRETARY. Strike out Section 3.

SECTION STRICKEN OUT.

Mr. McCONNELL. I move that the report of the committee of the Whole be adopted to strike out Section 3. (Seconded. Carried).

SECTION 3.

Section 4 (3) read, and it is moved and seconded that it be adopted. Carried.

SECTION 4.

Section 5 (4) read, and it is moved and seconded that it be adopted. Carried.

SECTION STRICKEN OUT.

The SECRETARY. The committee recommended striking out Section 6.

Moved and seconded that the report of the committee be adopted. Carried.

SECTION 5.

Section 7 (5) was read, and it is moved and seconded that it be adopted. Carried.

SECTION 6.

Section 8 (6) was read.

Mr. REID. I now offer again the amendment offered by Mr. Clark of Ada, and on that I call the ayes and nays; "Provided that nothing herein contained shall be considered to prohibit the reading of the Bible in the public schools in any commonly received version," and I shall also call the ayes and nays on the amendment last read.

The convention adopted that amendment in Washington the other day, that no political, sectarian, denominational or other book could be used in the schools; but you might consider a history to be political, and that would exclude histories. Now, I do not contend that we should teach party politics, but the word political has a broader significance than partisanship. If you exclude every political work, for instance, you cannot introduce political economy in those schools and teach it under that. Works on political economy are prescribed in every school.

Mr. WILSON. Do you claim political economy is a political work?

Mr. REID. I certainly do.

Mr. WILSON. It is not any more than astronomy or geography or chemistry.

Mr. REID. We have a science of government, and the children ought to be taught it; it is not democratic or republican politics, but there are works on politics and the science of government as we teach it and practice it every day, which children in schools and academies ought to be taught. And that amendment, as I take it, cuts that out.

Mr. SWEET. I would like to say to the gentleman from Nez Perce in support of the position he takes in that respect, that I myself was a student in an institution where the students and the regents of the university got into personal difficulty over the works used on political economy. They were using Perry's works, and it is as you know a free trade book. The protective members of the board of regents insisted that it was teaching the students of the university free trade, and they got into a row over it, and I don't know whether they are out of it yet or not.

Mr. REID. Yes, and Mr. Wayland used to teach that slavery was provided for in the constitution; and after the war he took the other ground, and then they excluded it from some institutions but kept it in others, but there are certain works, for instance, certain histories in the north and in the south, too, that are recognized, Goodrich's and others, that are accepted by everybody.

Mr. MAYHEW. Do I understand you to move to strike out the word "political?"

Mr. REID. No sir, I am speaking to these two amendments.

Mr. MAYHEW. Well, I understand the gentleman's discussion is a political discussion. I would be in favor of striking that out.

Mr. REID. I have called for the ayes and nays, and I reserved the right to do it the other day when the question was on its reading. Mr. Hasbrouck offered that amendment the secretary has just read, that no political, denominational, or sectarian work should be read. And I call the attention to what the word "po-

litical" means, and I also call the ayes and nays on the amendment offered by Mr. Clark of Ada.

Mr. WILSON. I take issue with the gentleman from Nez Perce as to whether or not political economy is a political work. It is not a political work at all, and every college and university in the United States teaches the free trade theory of political economy, except one, and that is Cornell University. It is a notorious fact that every college and university of the United States of any standing at all that has political economy taught there, teaches the theory of free trade absolutely, but Cornell University presents both sides. Yet, it is not a political text book. It is not a political question within the contemplation of the amendment of this word political. *Political* means there, synonomous with the word *state*; not the science of political parties. Free trade and protection are not political questions. They are questions of government taught one way or the other in the schools, almost uniformly in one way in these United States; but they are not political questions and would not come within that inhibition, and I think it ought to be there.

The CHAIR. The chair will have to rule that this discussion is out of order, for the reason that there is nothing now before the convention except the amendment by the gentleman from Nez Perce renewing the amendment offered by the gentleman from Ada, Mr. Clark. It will be in order if any question should arise with reference to adopting the amendment reported by the committee of the Whole, which was offered by the gentleman from Washington.

Mr. REID. I demand the ayes and nays on both, and my friend from Shoshone moved to strike out "political," and I call attention of the gentleman from Washington to the fact that if you strike out the word "political" the last section covers the balance of it, "sectarian or denominational."

The CHAIR. The motion before the house at present is with regard to the report of the committee of the

Whole on the amendment offered by the gentleman from Washington. The only thing before the house is the adoption of the amendment offered by the gentleman from Nez Perce.

Mr. AINSLIE. What is that amendment?

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.

Mr. WILSON. On that I have a word to say. The ayes and nays are called on that question, and I am glad of it. Not because the Bible is not all right, but because it is not the place for it in the public schools. We don't propose to teach any religious tenets or sectarian doctrines there. The question whether the Bible is a sacred book, I am not able to answer. Some have decided it is and some have decided it is not; but whether it is or not, I am opposed to reading it in the public schools, because a great many of our people are opposed to the Bible as it would be read in the public schools, and those people are our taxpayers, and they object to it and do not send their children to school if it is read there. Not because the Bible is not all right, but because it is not the place in the public schools for it.

Mr. MAYHEW. I am in favor of the amendment of my friend from Nez Perce for one reason, just because my friend says he is going to put us on record. A very impressive record this is going to be in the convention. Now, if it is understood by the record that I have got to establish the fact here that I am not a pagan, Buddhist, Mormon nor Mohammedan, but that I am a Christian, I am willing to go on record that I am a Christian. That is all there is about it.

Mr. REID. This amendment does not require the Bible to be read in the schools, but allows communities that wish the Bible to be read or desire to have it done. Under this section as it is adopted, just as the superintendent of public instruction has done once before, they can exclude the Bible on his ruling, but under this amend-

ment if any teacher wants the privilege of reading the Bible in the school he may have it. If they decide not to do so that is all right. But I don't want any law passed so that a Christian community in this territory may not have the privilege of having the Bible read in schools; that is, the commonly received version, without comment, if they want to have it done.

Mr. HAYS. I shall vote against this amendment. I do not believe, Mr. President, that there is a gentleman in this convention who has a higher regard for the Bible than myself. Yet, I vote aginst this amendment for the reason that if it is carried, it will create dissension in the public schools of our state. That will certainly follow, for while there are a great many who believe in that book, there are a great many who do not. And when you pass a law allowing it to be read in the public schools, parents, who do not believe in the Bible will object, and parents who do believe in it will want it read, and that is where the dissension comes in. You will have more trouble than you ever dreamt of. You can't satisfy all, nor you won't satisfy any. It will be a continual pulling and hauling against it. Some will want it and other will not want it, then there is dissension. You will have it throughout your public schools, not only in your universities, but in your common schools. We have enough trouble now, and we will have more trouble after this amendment is adopted. I shall therefore vote against it.

Mr. MAXEY. There are many men that have views contrary to the teachings of the Bible; but who is asking that the Bible be excluded from our public schools? Is it the denominations representing the Christian church? Is it the Mormons? Who is it that is asking the exclusion of the Bible from the common schools? How are the children, Mr. President, to learn the great moral lessons, especially the children of those men who would exclude the Bible from the common schools, and also from their homes? How are their children to get the moral lessons, for instance, "Thou shalt not steal,"

"Thou shalt not kill;" Thou shalt not commit adultery;" "Thou shalt not bear false witnsess?" Where do they learn those lessons, gentlemen?

Mr. HAYS. At Sunday school.

Mr. MAXEY. But are you to have Sunday schools? These gentlemen that object to the Bible, not only in the schools but at home, how are those children to obtain those lessons? What denomination can object to the ten commandments; and how are the children to obtain those moral lessons?

"Question, question."

Roll call:

Ayes: Allen, Anderson, Ballentine, Campbell, Chaney, Clark, Glidden, Kinport, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Pinkham, Pyeatt, Reid, Underwood—18.

Nays: Ainslie, Armstrong, Cavanah, Coston, Crutcher, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Moss, Parker, Pefley, Pierce, Sinnott, Shoup, Sweet, Vineyard, Whitton, Wilson, Mr. President—25.

And the amendment was lost.

Mr. SWEET. I have an amendment.

SECRETARY reads: Provided that nothing herein shall be construed to prohibit the reading of those portions of the Bible of any version as inculcate lessons of morality.

Mr. REID. I second the motion.

Mr. SWEET. I do not care to make any argument in favor of this substitute, beyond the facts stated the other day. At the time this amendment and substitute was before the house. This substitute is the one offered by you, Mr. President, at that time. I desired to vote for it then, but it was passed before I knew it. And still I don't believe teachers should be permitted to teach the Bible and teach promiscuously, and say what they do believe of the various religious doctrines taken from that book; at the same time I don't think there can be any harm in permitting teachers to read a moral lesson.

Mr. MAXEY. I have an amendment to that section.

Mr: MAYHEW. I desire to say a word in relation to the amendment.

The CHAIR. What is the amendment? We will take these amendments up and dispose of them one by one.

Mr. MAYHEW. Mr. President——

Mr. REID. The rules require that all amendments be put in, and then you vote in the order in which they are considered. Some amendment might be offered which would influence our vote on another amendment. I think we are entitled to have them all read before we vote.

The CHAIR. There is no objection to it except as a matter of convenience.

Mr. CAVANAH. Mr. President, as a matter of convenience, I wish to make a motion that all these motions be laid on the table, and that the section as originally reported by the committee on Education be adopted. (Seconded).

Mr. SHOUP. Allow me to make a suggestion to the gentleman. If this motion prevails, the matter proposed to be amended will go with it on the table.

Mr. MAYHEW. I desire to simply——

"Question, question, question."

SECRETARY reads: Amend Section 8 (6) to read at the close of the section: "But nothing shall be construed in this article as prohibiting the teaching of the ten commandments."

Mr. MAYHEW. How about Christ's sermon on the mount? He might have inserted Christ's sermon on the mount, and at Galilee.

The CHAIR. The first question is on the adoption of the motion of Mr. Sweet.

Mr. HARRIS. I move it be laid on the table.

Mr. WILSON. I am opposed to that, because I think it casts reflection upon it; it virtually says that portions of the Bible are not moral lessons; and I don't believe a teacher could discriminate between those which are and those which are not moral lessons.

Mr. HARRIS. Mr. President, I move that the amendments be tabled.

Mr. REID. I hope this matter will not take that course. We have been offering amendments here to different articles. There seems to be a disposition——

The CHAIR. The motion is not debatable.

Mr. REID. I demand the ayes and nays.

The CHAIR. The question is, that the motion as amended by Mr. Sweet will lie upon the table, and the yeas and nays are demanded.

Mr. McCONNELL. I would like to have you decide whether that will carry the section with it.

Mr. MAYHEW. It does.

Mr. AINSLIE. I think I can get a motion that will reach those things; a motion to indefinitely postpone all pending amendments, and call the previous question upon the section as it stands.

Mr. REID. I make a point of order, that there is a motion pending to lay on the table.

The CHAIR. The original motion by Mr. Harris to table the amendments, carries the main question with it.

Mr. HARRIS. I will withdraw the motion.

Mr. REID. I object to the withdrawal of it.

The CHAIR. The motion cannot be withdrawn except by consent. The secretary will call the roll.

Roll call:

Ayes: None.

Nays: Ainslie, Allen, Anderson, Armstrong, Ballentine, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck ,Hays, Heyburn, Jewell, King, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Parker, Pefley, Pierce, Pyeatt, Reid, Sinnott, Shoup, Sweet, Underwood, Whitton, Wilson, Mr. President—39.

Mr. CAVANAH. Now, Mr. President, is my motion in order, that all those other amendments be laid on the table, and the section as originally reported from the committee on Education be adopted? And on that I call the previous question.

Mr. MAYHEW. I would like to ask the gentleman, do you desire to defeat the section formerly read, or do you desire simply to defeat the amendments? Your motion will defeat the section; it will all be laid on the table.

Mr. CAVANAH. I will withdraw it then.

The CHAIR. The chair suggests that the shortest way to get rid of this matter, there being considerable feeling on both sides, and the most equitable way, is to take up the amendments and vote on them.

Mr. AINSLIE. I propose that we take up the amendments and vote them down if it takes all day. It is wasting the time of the convention, they have been voted down twice; but if the gentlemen desire to consume the time of men here on nothing but religious crankism, we will vote them down.

Mr. MAYHEW. I call the previous question.

The CHAIR. The question before the house is, the adoption of the amendment offered by Mr. Sweet.

Mr. REID. I make a point of order, that when we considered this in committee of the Whole I reserved the right to call the ayes and nays on the question of the gentleman from Washington; and no call for the previous question or anything else can prevent the consideration of that in the convention, under the rules. We have had the ayes and nays on one proposition, but not on the other. Now the gentleman gets up and calls this religious crankism. When we considered the Legislative bill and the Irrigation bill, the gentleman offered numerous amendments, and was not cut off with any feeling. This is a great moral question, it is one we have to go before the people on; but it is not so much that question as whether or not in these public schools we can teach our children moral lessons. It is a question whether the people of this state are to contribute their taxes to schools from which, you say by your vote, they shall exclude moral lessons. My friend said it was a question of taxation, and for that reason he did not want the Bible in it. Well, if they have to dictate

that we cannot teach our children moral lessons, then I don't want to be taxed to support them. I claim the right under every state government in the country, with the Constitution resting its foundation upon the very principles incorporated in that Book, to have the lessons of morality taught, and I don't propose to be cut off in our rights here as long as we can maintain them, by any appeal to passion, or sneering, that this is religious crankism or anything of the sort. I want this question to receive the same consideration and fairness that other questions have received here.

Mr. SHOUP. May I ask the gentleman if he claims the right to offer this amendment after it has been considered in committee of the Whole?

Mr. REID. I certainly do under the rules, and the chair held that this convention has been going out of order, that there wasn't but two questions you could vote on; one was the amendment offered by Mr. Clark and the other was the amendment offered by Mr. Hasbrouck; on which I reserved the right to call the ayes and nays. All the other amendments are entirely out of order, the way I construe the rules, because we considered it in committee of the Whole and you offered all the amendments you wanted to; and when you get back to the convention the only amendments, I take it, under our rules, that you can consider are those that have been acted on in committee of the Whole; and the only reason you can consider them is that you may call the ayes and nays.

Mr. SHOUP. How can you in the convention——

Mr. MAYHEW. (Interrupting) Is there no way under the rules here—if not, it strikes me I don't understand them—to cut off this debate and bring it to a direct vote? I have heard speeches here about the Christian religion that do not add anything to my faith in it or detract anything. Our minds are made up on it after these long debates in support of reading the Bible. It seems to me the convention is opposed to it.

I am satisfied, at least. I desire to have the debate cut off.

"Question, question."

Mr. MAYHEW. I call the previous question. (Seconded.)

The CHAIR. The chair heard no seconds before to that call. The question is now upon the adoption of the amendment offered by the gentleman from Latah, Mr. Sweet. Upon that the gentleman from Shoshone, Mr. Mayhew, demands the previous question. The question is now, shall the main question be put. (Vote). The ayes have it. The question is now upon the adoption of the amendment offered by the gentleman from Latah. Upon that question the ayes and nays are demanded.

Mr. HEYBURN. I ask the gentleman from Latah what section he desires his amendment to.

Roll call:

Ayes: Allen, Anderson, Ballentine, Campbell, Chaney, Glidden, Hampton, Kinport, Lewis, Melder, Myer, Moss, Pinkham, Pyeatt, Reid, Sweet, Underwood, Mr. President—18.

Nays: Ainslie, Armstrong, Bevan, Cavanah, Clark, Coston, Crutcher, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lemp, Maxey, Mayhew, McConnell, Parker, Pefley, Pierce, Sinnott, Shoup, Vineyard, Whitton, Wilson—26.

And the amendment is lost.

The question then recurred upon the amendment of the gentleman from Ada, Mr. Maxey. The secretary read the amendment. Amend Section 8 (6) by the addition: "but nothing shall be construed in this article as prohibiting the teaching of the ten commandments."

The vote was taken and the amendment rejected.

Mr. AINSLIE. I now move the previous question.

Mr. REID. I make the point of order that the question of Mr. Hasbrouck's amendment has not been had on the call of the ayes and nays. I move now that the convention do not concur in the amendment recommended by the committee of the Whole on the motion of the gentleman from Washington. And on that I call for the ayes and nays. (Seconded).

The CHAIR. It is moved and seconded that the convention do not concur in the amendment recommended by the committee of the Whole on the motion of the gentleman from Washington, Mr. Hasbrouck. And on that question the ayes and nays are demanded.

Mr. REID. I ask that the amendment be reported before we vote.

SECRETARY reads: 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.

Mr. AINSLIE. Now, as I understand it, if we vote for this motion, it is equivalent to rejecting the amendment offered in the committee of the Whole.

The CHAIR. Yes.

Roll call:

Ayes: Allen, Ballentine, Campbell, Clark, Glidden, Hampton, Kinport, Lewis, McConnell, Myer, Pinkham, Pyeatt, Reid, Shoup, Sweet, Underwood—16.

Nays: Ainslie, Anderson, Armstrong, Bevan, Cavanah, Chaney, Coston, Crutcher, Harkness, Harris, Hasbrouck, Heyburn, Hogan, Jewell, King, Lemp, Maxey, Mayhew, Melder, Moss, Parker, Pefley, Sinnott, Vineyard, Whitton, Wilson, Mr. President—27.

And the amendment is lost.

The CHAIR. On the motion of the gentleman from Nez Perce that the convention do not concur in the amendment recommended by the committee of the Whole, the vote stands: Ayes, 16; nays, 27. And the motion of nonconcurrence is lost.

Mr. AINSLIE. I now move that the report of the committee of the Whole be adopted so far as Section 8 (6) is concerned. (Seconded. Carried).

SECTION 7.

Section 9 (7) read, and it is moved and seconded that it be adopted. Carried.

SECTION 8.

Section 10 (8) read, and it is moved and seconded that it be adopted.

Mr. MOSS. I would like to ask that the words "public school" be stricken out and "state" substituted, in order that it may be in conformity with the previous part of this section, as well as other parts of the article. Will it be necessary to offer an amendment?

Mr. McCONNELL. The committee will consent to that.

Mr. REID. I would like to inquire of the committee if by that amendment, and also by Section 9 (7), the control of the university lands is not put in the hands of the state commissioners—land commissioners; whether the university lands are taken away from the Board of Regents and put in the hands of the land commissioners?

The CHAIR. The question is upon adopting the amendment. (Vote). The ayes have it. The question is now upon the adoption of Section 10 (8) as amended. (Vote and carried).

SECTION 9.

Section 11 (9) read, and it is moved and seconded that it be adopted. Carried.

SECTION STRICKEN OUT.

The SECRETARY. "Strike out Section 12."

Moved and seconded that the action of the committee be approved and that Section 12 be stricken out. Vote and carried.

SECTION STRICKEN OUT.

The SECRETARY. "Strike out Section 13."

Moved and seconded that the action of the committee be sustained. Carried.

SECTION 10.

The substitute for Section 14 (10) read, and it is

moved and seconded that the substitute be adopted. Carried.

SECTION STRICKEN OUT.

The SECRETARY. "Strike out Section 15."

Moved and seconded that the action of the committee be sustained. Carried.

SECTION STRICKEN OUT.

The SECRETARY. "Strike out Section 16."

The CHAIR. If there is no objection the same disposition will be made. There is no objection, and it is so ordered. The secretary will read.

SECTION 11.

The SECRETARY. I would like to call the president's attention to the fact that the printers in printing Section 17 (11) have got it different from the original section in two particulars. They have used the word "real estate."

Mr. MAYHEW. That came in under the amendment of Mr. Heyburn.

The SECRETARY. Yes, and the printer made mistakes in the printing, and the convention acted upon it yesterday in my absence; and the only question is, the original section as it was written was: "The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state or United States 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."

Mr. MAYHEW. There is an amendment or a substitute to that section offered by Mr. Heyburn.

Mr. McCONNELL. That was voted down.

Mr. MAYHEW. Well, I desire to hear that amendment read again.

The SECRETARY. There should be inserted the words "other than university lands arising from the disposition of university lands belonging to the state;" that was done yesterday.

The CHAIR. It is moved and seconded that the substitute as amended by the committee of the Whole, and reported to the convention, be adopted.

Mr. McCONNELL. I want to have it understood now, does the secretary keep the copy we pass, or the copy they pass in the printing office?

The SECRETARY. The copy as printed I send in.

The CHAIR. The printing office has no authority to change matter passed by the convention.

Mr. HASBROUCK. The secretary read the section in this manner: "other than university lands arising from the disposition of" etc. I would like to know whether it is funds or lands.

The CHAIR. I would suggest that the words "other than funds arising from the sale of university lands" will be put in there, which will cover the point exactly.

Mr. McCONNELL. The committee will accept that.

SECRETARY reads the section as corrected: "The permanent educational funds, other than funds arising from the disposition of university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state, or on state or United States 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 CHAIR. The question is now upon agreeing to the report of the committee of the Whole recommending the adoption of Section 17 (11) as read. (Carried).

ARTICLE IX. ADOPTED.

Moved and seconded that the article be adopted as a whole. Vote and carried.

The CHAIR. The article is adopted and referred to

the committee on Engrossment for engrossment. What time will be fixed by the convention for final reading?

Mr. MAYHEW. I move it be engrossed and reported back tomorrow morning at nine o'clock.

The SECRETARY. It cannot be done; it is too long.

Mr. HASBROUCK. I will amend the motion, that it be put upon its final reading Thursday morning at nine o'clock. (Seconded).

Mr. MAYHEW. I hope that will not be done. If the engrossing clerk cannot come up to the occasion, I shall certainly move that we have an additional assistant. If you keep putting these things off, gentlemen, we shall not get through for two or three weeks. I know I have got to get away this week, and I want to lend my feeble aid to the completion of this constitution as long as possible. I move it be reported back tomorrow morning at nine o'clock. (Seconded).

Mr. HASBROUCK. I don't believe it ought to be ordered back before Thursday. I have no idea this convention will get through by that time.

Mr. MAYHEW. I move that there be elected or appointed now by this convention an additional clerk on engrossment. Let us get through; if one can't do it, let us have half a dozen.

The CHAIR. Does the gentleman withdraw his motion to fix the time for final reading at nine o'clock tomorrow morning?

Mr. MAYHEW. No, I do not.

The CHAIR. Then the motion to elect another engrossing clerk is out of order. It is moved and seconded that the article just adopted be reported for final reading tomorrow morning at nine o'clock. The gentleman from Washington moves an amendment, that it be made a special order for Thursday morning at nine o'clock.

Mr. CLARK. I want to introduce an amendment to fix the time at half past two o'clock tomorrow. We have one reading for two o'clock, and one for three

o'clock, and probably the clerk can get this ready by half past two.

The CHAIR. The question is first on the amendment to the amendment, to fix the time at half past two tomorrow afternoon. (Carried).

Mr. McCONNELL. I move the convention take a recess until two o'clock this afternoon. (Carried).

AFTERNOON SESSION, *July 30, 1889.*

ORDER OF BUSINESS

The CHAIR. I think it is proper to make a statement to the convention about the present condition of business, so you may all know just how the matter stands. All of the reports of the committees, which have been considered in committee of the Whole some time ago, and laid aside upon the speaker's table without going upon the calendar, have now been disposed of. There are now to be disposed of four reports, which have been reported back to the convention, to each one of which there is pending one additional section. I refer to the report of the committees on Livestock, on Labor, on Public Indebtedness and on Private and Public Corporations; and those additional sections, one to each report, being disposed of, and referred to the engrossing committee, will leave to the convention only four subjects. Those are, the report of the Judiciary committee, Revenue and Finance, Apportionment and Schedule. The chair makes the statement at this time so as to notify the members of the convention, and particularly the members of the committees on Schedule and Apportionment, that in all human probability unless those committees report and report very soon we will be out of business tomorrow.

Mr. VINEYARD. Mr. Chairman, I would ask if it be in order, if those various sections put into those reports that are still undisposed of, which you have mentioned, could be considered in the convention.

The CHAIR. That has already been ordered; they are now before the convention.

Mr. VINEYARD. I move that we take up the first one of them not disposed of.

The CHAIR. The chairman of the committee on Public and Private Corporations is not present.

Mr. VINEYARD. Then let us proceed to the next one.

ARTICLE XVI.— LIVESTOCK.

The CHAIR. It is moved we take up the article reported by the committee on Livestock, as it was acted upon yesterday and reported back to the convention by the committee of the Whole. (Carried).

SECTION 1.

SECRETARY reads Section 1, and it is moved and seconded that it be adopted. Carried.

The SECRETARY. There is an additional section, offered yesterday by the gentleman from Latah, Mr. McConnell, as Section 2, as follows:

PROPOSED SECTION 2.

"The legislative assembly shall by law prescribe the manner, terms and conditions upon which domestic animals may be permitted to graze upon the unoccupied lands of the state, or of the United States within the state, and shall by law regulate the subject of pasturage upon such lands as to preserve as far as practicable the value of the range and prevent injury to such lands; but nothing herein shall be so construed as to authorize the passage of any law inconsistent with the laws of the United States relating to the settlement, occupancy, use or disposal of the public domain."

Moved and seconded that the section be adopted.

Mr. ALLEN. Mr. President, in regard to the discussion had as to the words "United States lands," I shall move as an amendment that the word "United States" where it first occurs be stricken out.

The CHAIR. On yesterday when this question came up, and when the power of the state was questioned

with reference to this matter, I supported very strongly the idea that the state had the power, and on that proposition I have not changed my opinion. However, lest any member of the convention may have assumed, while I was contending for the power of the state, that I was in favor of the adoption of this amendment, I wish to say now that I never have been in favor of putting it in the constitution, for the reason that the state will have the power anyway without putting it in the constitution, and by putting it in it may to a certain extent cause a question to be raised in Washington City when the constitution is presented. I make this statement so I may not be misunderstood. Is there any second to the amendment of the gentleman? (Seconded).

Mr. SHOUP. Mr. President, I move that the section be stricken out.

Mr. HEYBURN. I second the motion.

The CHAIR. This is offered as an additional section. It is moved that the section be adopted. (Vote). The noes seem to have it. It is lost, and the amendment is rejected.

Mr. McCONNELL. Mr. President, is there anything on the regular calendar? If not, I move that we resolve ourselves into committee of the Whole.

The CHAIR. We are already considering a question in convention. What shall be done with the report of the committee on Livestock?

Moved and seconded that the same be adopted. Vote and carried.

The CHAIR. The article will go to the engrossing committee to be engrossed. What is your pleasure?

Mr. HASBROUCK. I move that this now be passed to final reading tomorrow morning at two o'clock.

Mr. HASBROUCK. The committee on Engrossment is ready to report.

ARTICLE XIV.—MILITARY AFFAIRS.

SECRETARY reads the report as follows:

Boise City, Idaho, July 30, 1889. Mr. President:

Your committee on Engrossment have carefully examined the article in relation to Militia and Military Affairs and find the same is correctly engrossed. Hasbrouck, Chairman.

The CHAIR. If there is no objection, the secretary will read the engrossed bill.

The secretary reads the article.

The CHAIR. The question is now upon the final passage of the article as read. The secretary will call the roll.

Roll call:

Yeas: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Kinport, Lemp, Lewis, Maxey, McConnell, Myer, Moss, Pierce, Pinkham, Pyeatt, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton—32.

Nays: None.

And the article was adopted and referred to the committee on Enrollment and Revision for incorporation in the constitution.

ORDER OF BUSINESS

The CHAIR. What is your pleasure, gentlemen?

Mr. McCONNELL. I move we resolve ourselves into committee of the Whole for the further consideration of the report on Salaries of Public Officers. (Seconded).

Mr. HEYBURN. Mr. President, I move an amendment, that there be included in the business of the committee of the Whole, the report of the committee on Public and Private Corporations, the report of the committee on Public Indebtedness and Subsidies, so that we may have all those matters before us without rising.

The CHAIR. Those matters have all been considered and reported back to the convention already, with the reservation of the right to offer the additional sections in the convention, with the exception of the one covered by the motion of the gentleman from Latah.

Mr. HEYBURN. Then I hope the gentleman will

yield and allow the convention, before resolving itself into committee of the Whole, to dispose of those matters, so that those bills may be engrossed, and come in the convention, to save time.

Mr. McCONNELL. I think the committee on Engrossment has got all they can do.

Mr. HEYBURN. They have increased the committee. We want to finish the business of the convention this week, and we have only four days more.

Mr. McCONNELL. I will submit.

Mr. VINEYARD. Was not that my motion, or didn't it prevail without a motion awhile ago, that all those matters be taken up, and that it is before the convention now to take up those sections? I move we proceed to the next section.

ARTICLE XI.—PUBLIC AND PRIVATE CORPORATIONS.

The CHAIR. Yes, I think that was the original motion. The secretary will read the report of the committee on Public and Private Corporations as reported by the committee of the Whole to the convention.

Mr. AINSLIE. I would suggest that this salary bill would not properly come up here until we get through with the Judiciary bill tomorrow.

SECRETARY reads Section 1.

Mr. HEYBURN. Mr. President, the convention has acted on everything in that report except the single section, which was passed over to be reported on.

SECTION 6.

Mr. ALLEN. Mr. President, by consent of the chairman of the committee, I shall ask to present one amendment, which simply defines the language in Section 7 (6). I will offer this amendment in line 12 after the word "state," to add the words—

The CHAIR. (Interrupting) We are proceeding in convention regularly for the reading of this bill section by section.

Mr. HEYBURN. Mr. President, I understand that

everything in this article has been disposed of except Section 21, which was laid over at the request of the chairman of the committee.

The CHAIR. So the chair is informed.

Mr. HEYBURN. And no amendment is in order to any other section. It has been passed on and adopted by the convention.

Mr. MAYHEW. So far as offering this amendment to Section 7 (6) is concerned, I desire that it may be offered, and if it will meet with unanimous consent, it may be inserted.

Mr. HEYBURN. It will take a motion to suspend the rule.

Mr. MAYHEW. Couldn't we have it done by unanimous consent?

The CHAIR. Is there any objection to the suspension of the rule?

Mr. HEYBURN. We would like to hear the amendment first.

Mr. ALLEN. The amendment has been agreed to by the chairman of the committee, thinking it would give a clearer idea to the section. After the word "state" in line 12, Section 7 (6), add the following: "the shorter distance being included within the longer distance." It is simply a phrase taken from the Interstate Commerce Bill, which explains the limitations and intent and purpose of that phrase or paragraph.

The CHAIR. Are there objections to entertaining this amendment? If there are none, the amendment will be considered as being before the convention, provided it is seconded.

Mr. MYER. I second the amendment.

Mr. McCONNELL. I would like to hear it read.

(The amendment was restated by Mr. Allen as above.)

The CHAIR. Reduce it to writing and send it to the clerk's desk. Now, gentlemen, you have heard the amendment read. Are you ready for the question?

Mr. AINSLIE. I would like to have that explained. We have been over this bill pretty closely, and if there

are any important amendments they should have been brought up at that time. I don't understand the object of it.

Mr. ALLEN. The object, as I understand the meaning of the language, is this: It is simply to make more clear, and to bring it within the restrictions enforced by the Interstate Commerce Bill, and use the same term, which is used in that law, as that clearly defines the exact meaning and status of this restriction. I thought there could be no objections to it, or I would not have offered it; and I think it would define it.

Mr. AINSLIE. Read the section as it proposes to change it.

Mr. SHOUP. The gentleman evidently refers to Section 4 of the Interstate Commerce Bill, which reads:

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance:"—[24 Stat. L. 380].

Mr. ALLEN. That was the intention.

Mr. PINKHAM. I call the attention of the gentlemen of the convention to the reading of the section proposed to be amended, immediately preceding: "No railroad, or transportation or express company shall be allowed to charge, collect or receive, under penalties, which the legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers, to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state." The same meaning is carried in the section as that which the gentleman proposed to substitute, only it is expressed in

different language. There is not a particle of difference that I can see.

Mr. AINSLIE. Mr. President, it seems to me this section is about as clear as it can be drawn; I don't think the language can be improved upon by the suggestion of the gentleman from Logan. I don't see where his amendment strengthens it anywhere. It may leave a loophole somewhere.

Mr. ALLEN. "The shorter distance being included within the longer distance," is the language of the Interstate Commerce Bill.

Mr. MAYHEW. My attention was called to this amendment, and I told him if he thought it made it any more explicit, I had no objections to it being inserted, and I do not see that I have any objections to it. I do not see that it makes any difference to the section.

Mr. HAYS. I want to have the gentleman explain the difference.

Mr. ALLEN. If the gentleman will allow me a moment, I can explain the situation by a little draft, as I understand it. Two points on a straight line being given, the present language covers this exactly; that is, the freight traffic between those points. But in the development of other lines there are frequently times when there are two lines reaching the same point or practically crossing this point, and reaching *this*, in which they have a little more circuitous route. It was simply to define between the two points, which would cover additional lines; that is, parallel competing lines. It was for that purpose and that only, because I thought there might be a complication in regard to that language, that this suggestion was made. It certainly does not change the purport of it.

Mr. AINSLIE. Now, you make a bend a little farther around than that, a competing line that runs round some other town; now run to the same point, starting right from the bottom end of your line, and make a line around—

Mr. ALLEN. Oh, no, I will show you.

Mr. AINSLIE. (Continuing the diagram) Here you have a railroad running from here to here, and there is another town out here, and they buy out this competing line and run around here; it is a longer route than this straight route, and if you want your freight shipped from here to here, they will ship it around the short way and charge you as much as they would away around there. That is where this amendment comes in, and I am opposed to it.

Mr. ALLEN. Well, that is not the full intent. The point is this: there is a complication of conditions which might arise, in which there might be another branch from this point.

Mr. MAYHEW. I think that ends the amendment, Mr. Chairman, if there is objection to it.

Mr. ALLEN. Certainly, I don't ask it unless there may be no objection. I simply submit that it defines the section.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Logan. The convention gave unanimous consent to its entertainment. (Vote.) The motion is lost, and the amendment is rejected.

The secretary will read the additional section reported by the chairman of the committee on Public and Private Corporations.

SECTION 18.

Section 21 (18) read, and it is moved and seconded that it be adopted. Carried.

ARTICLE XI. ADOPTED.

Moved and seconded that the entire article be adopted. Vote and carried.

The CHAIR. And it is referred to the committee on Engrossment. What time shall be fixed for the final reading.

Mr. VINEYARD. I move that it be reported for final reading at half past three tomorrow. (Seconded.)

Mr. PINKHAM. Is this a very long article? As

there is as much as the Engrossing committee can do, I move it be reported back on Thursday morning at 9 o'clock.

EMPLOYMENT OF ADDITIONAL CLERK.

Mr. MAYHEW. I hope that motion will not prevail. I insist again on what I said this morning, that if this engrossing clerk cannot perform the duties required of her in a shorter time, that we have an assistant clerk, and let us get through with this. If we have to put it off until Thursday morning at nine o'clock, that only gives us two or three days after this for the reading and getting through the committee on Revision. We can just as well have it done tomorrow at two o'clock as not if we will provide the convention with an assistant clerk. I have always observed in legislative bodies, Mr. President, that at the close of the meeting we have to have an additional enrolling clerk and frequently an additional engrossing clerk. It is always done, to employ some person to assist in the performance of that duty, and I don't see why we cannot do it.

Mr. AINSLIE. I would suggest that the employment of an assistant engrossing clerk at $5.00 a day is a good deal cheaper than to pay $5.00 a day to sixty members, and it will save us two or three days perhaps.

The CHAIR. It is moved and seconded that the final reading of the article just read be fixed for tomorrow afternoon at half past three o'clock. To that an amendment was offered that it be fixed for Thursday morning at nine o'clock. (Vote.) It is lost. The question is now upon ordering it to final reading tomorrow at half past three o'clock. (Vote.) It is carried. It is in order to bring up the question as to increasing the force of clerks.

Mr. McCONNELL. I move that the chairman of the committee on Engrossment procure such additional help as may be necessary from time to time to facilitate the work of this convention. (Seconded.)

Mr. AINSLIE. I will ask the mover to accept the

amendment, that it be at the same compensation per day, as the present engrossing clerk receives. (Carried.)

ARTICLE VIII.—PUBLIC INDEBTEDNESS AND SUBSIDIES.

The CHAIR. The clerk will now read the report of the committee on Public Indebtedness and Subsidies.

Mr. VINEYARD. Are we not now considering this additional section?

The CHAIR. On this article the convention has not passed on any part of it. The committee of the Whole recommended it with a reservation in regard to offering an additional section which has been made. The secretary will read the article as reported back by the committee of the Whole.

The chair will state, so far as this report is concerned, that he is informed by the assistant secretary that the amendments were kept by the chief secretary, and are of such a character that it will be necessary for him to be here; the assistant secretary is not familiar with it. If there is no objection the consideration of this report at this time will be laid aside.

PROPOSED SECTION 6.

Mr. HEYBURN. We might come to the consideration of Section 6.

The CHAIR. If there be no objection, Section 6 as proposed, that is, the additional section, will be read by the secretary.

Mr. MAYHEW. I move the adoption of that section.

Mr. AINSLIE. Mr. President, I offer an amendment to the fourth line from the bottom after the word "redemption" to insert "by sealed proposals." If you put it at open bids, there will be a ring of scrip owners, so that it won't do any good. We had a similar law in my county of Boise a few years ago[1], where only about my county of Boise a few years ago, where only about twenty-five per cent went into the redemption fund, and

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[1]—There were several revenue acts passed by the territorial legislature at different sessions applying only to Boise county, and each repealing previous legislation.

warrants were drawn on the general fund at six per cent. We had so much in court expense; so much general fund; and twenty-five per cent, I think in the redemption fund. We provided that when there was so much in the redemption fund, it could be added to by the treasurer, and then advertise for sealed proposals; but parties holding scrip against the county could hold it longer and draw ten per cent interest, and might have to wait five or ten years. But they had the privilege of bidding by sealed proposals, offering to fund their warrants at a certain per cent discount. And we redeemed about $100,000 of our indebtedness at fifty cents on the dollar, about four years after this law went into effect; and then the ring of scrip holders came down to the legislature and got them to strike out those words "by sealed proposals." Now, I move to insert the words after "redemption" "by sealed proposals." (Seconded.)

The CHAIR. It is moved and seconded that after the word "redemption" in the fourth line from the bottom, the words "by sealed proposals" be inserted. Are you ready for the question?

Mr. HEYBURN. Mr. President, there are several amendments on the table now, and I would suggest some of them depend upon whether or not those I have sent up shall be adopted. I will ask the clerk to read them.

SECRETARY: (Reading) Amend by inserting after the word "school" in the third line, "road, bridge and hospital." Amend Section 6 by inserting before the first word "one-half of it."

The CHAIR. The matter is now pending on the amendment of the gentleman from Boise.

Mr. AINSLIE. I desire to change the place of inserting that, so as to make it read better; to come in after "therefor," in the sixth line above.

Moved and seconded that the words "by sealed proposals" be added after the word "therefor" in the sixth line from the bottom. (Carried.)

SECRETARY reads: Amend by inserting after the

word "school" in the third line, "road, bridge and hospital."

Mr. SHOUP. I would like to inquire if that section applies to county warrants that are now outstanding. I understand the state will assume all the liabilities of the territory. Does this apply to warrants already issued, or to those to be issued after we become a state?

The CHAIR. The chair can only refer the gentleman to the amendment. The chair has no power to interpret amendments.

Mr. SHOUP. I did not ask the question of the chair; I asked it for the benefit of the convention.

Mr. GRAY. I understand that the committee on Schedule will provide, whatever the indebtedness of the territory is now, or any obligations it may have, shall be preserved. The committee on Schedule has provided for the payment of everything that has ever been contracted by the territory up to the time of the taking effect of this constitution.

Mr. HEYBURN. Mr. President, I believe the question is now on the proposed amendment to insert after the word "school" in the third line the words "road, bridge and hospital."

The CHAIR. I will ask Mr. Sweet to take the chair, as I offered this amendment.

Mr. Sweet in the chair.

Mr. REID. I have an amendment.

SECRETARY reads: Amend by striking out the words "county purposes" and insert in the second line the words "ordinary county expenses." Add after the word "derived" the words "for these purposes."

Mr. CLAGGETT. Mr. President, the theory of the section we are now considering is that all special funds in the county shall be abolished, with the exception of the fund for school purposes. We all know what difficulty we have, that there will accumulate under fixed statutes, in a given fund a large surplus, and some of the other funds will be left so short as to leave the county practically with no fund in those regards. The

object of this is to leave the school fund intact and have that a special fund, and the only one; and place all the revenues coming into the county treasury, after deducting the amount going to the state, and what ought to be done (and for which I will offer an amendment at the proper time), deducting also the amount that may be needed to pay the interest on any outstanding bonded debt of the county, and the ordinary current expenses of the county—that all these funds shall go in there, so that the county commissioners, having power and charge of the whole matter, may arrange those funds from time to time to suit the necessities of the various conditions of the county. So far as the hospital tax is concerned, I think it would be a very great advance on the part of our legislature to abolish it altogether. For if there is a county hospital in any county in this territory that is worthy of the name, I would like to know where that county is situated. If that fund is, as a general proposition, anything at all except so much money, which is practically squandered and by which the people get no good as a hospital tax, specially levied for that purpose, I would like to know where it is. I have never heard of any county where it has ever been of any consequence whatever. And right here where there are large sums every year paid for hospital services, whenever anybody gets sick and requires care, the custom is to ship him out of the territory into a foreign territory to receive proper medical treatment, but that does not come in here. The theory of the bill so far as this matter is concerned, is to put the whole funds, except the school fund, under the control of the county commissioners, and let them pay all the current expenses of the county, and then take whatever is left—and there will be some left, because you will bring it right down to a cash basis—and apply that to the redemption of the outstanding warrants of the county.

Mr. HEYBURN. Mr. President, I introduced this amendment because I did not think it would be just to take taxes collected for road funds, to keep public

roads in repair, and throw it into the general fund where it may be entirely absorbed for some other purposes, and leave no fund at the disposal of the county for keeping its roads and bridges in repair. It is just as important to keep the roads and bridges in repair as it is to keep up any other part of the public expense, or its property in repair. And if you do not amend this section so as to except the road fund or the bridge fund, then you will find you will have no means of providing for keeping them in repair, because this fund is to be applied, whenever there is a surplus over actual expenses of running the county, to the purchase of bonds, and leaves no option to the county commissioners to take any portion of it for roads and bridges. It simply shuts them out. If anybody can tell me how the roads and bridges can be kept in repair if you adopt this section, I should be pleased to have him do it. The hospital tax in our county is used in this way: when the indigent poor are to be provided for, our county commissioners hired somebody to take care of them. We have buried a number of people under those circumstances in our county, and there is scarcely a time when there is not some person being taken care of by the county. Very old or crippled people wander into our camps, and failing to make a livelihood, they have to be taken care of. We should not put ourselves in a position where we could not do it if public necessity requires it. We should always leave that door of charity open and the fund raised for that purpose should not be taken to buy bonds, or for any other purpose. I think those funds ought to be kept sacred in the county.

Mr. MAYHEW. I understand, Mr. President, it is not proposed in this Section 6 to interfere with anything at all, so far as this constitution is concerned, with the injured and sick or the invalids of the county, at present.

Mr. HEYBURN. It is; it strikes right at that exactly.

Mr. CLAGGETT. Oh no.

Mr. MAYHEW. If that is the purpose of the amendment I should vote against it.

Mr. HEYBURN. If the gentleman will permit me, it says all taxes except the school taxes shall be devoted to these two purposes: first, the payment of the county expenses, and, second, the purchase of bonds. So that it does not matter what the intention of it is; that is the effect of it, and there cannot be any other interpretation put upon it.

Mr. MAYHEW. I understood the gentleman who first addressed the convention upon this subject to say that he believed the legislature in the future should not provide any law for a hospital fund for the county; and he goes on to say they are generally shipped out. I have observed in the county which I represent a great many persons who come here and are taken sick, and are provided for by the funds of that county, and they are not sent out. Our county has quite a number of patients at different times that are taken care of by the county, and I think always should remain there, and funds should always be on hand to take care of them. The people should be generous and kind enough to take up persons who are unfortunate, that have no money to provide for themselves in sickness, or when they meet with serious accidents. I shall not support the amendment to Section 6 if that is the purpose.

Mr. CLAGGETT. My colleague has wholly misstated the whole proposition, and misstated my remarks. As we have it now, we have a special hospital fund, a special hospital tax that goes into a special fund; and the needs or necessities of the poor people of the county who receive injuries and so on are relieved to the limit of that fund; and when I said they had to be sent away, they had to be sent away because the fund itself was insufficient. The county commissioners cannot increase the fund. The consequence is we have no adequate care in any shape or form of the indigent, sick, maimed, halt and blind; and for the purpose of not abolishing the funds themselves, but abolishing the

disposition of the funds, I propose to put them all into one common fund so that the commissioners of the county can handle them; and if the hospital fund is less than needed they can take from this fund which constitutes a part of the county expense provided in this section to be paid, and so they can transfer from one fund to another in order to be actually able to meet the exigencies and requirements of the county government. That is what this amendment refers to. I wish the committee would read it. It takes in every one of the expenses now provided by law to be covered by special funds, and they can transfer them.

Mr. VINEYARD. And paid out of the current fund?

Mr. CLAGGETT. And paid out of the current funds in cash; and if your hospital fund is insufficient, as it is at times, then in order to meet all of its requirements, where it can be spared from other funds the county commissioners can transfer it. They cannot do it now, cannot transfer anything; they are all tied up on these special funds.

Mr. SHOUP. This bill provides that all county expenses, except for school purposes, shall be paid out of the funds for cash. If that is done, if you pay everything in cash, how will there ever be any warrants outstanding?

Mr. CLAGGETT. It will operate in just this way, if the committee will oblige me; if there are no outstanding warrants, and there is a surplus on hand in cash, it remains in the treasury to meet the expenses of the ensuing fiscal year; so the county commissioners having this cash asset on hand can diminish the levy for that year. On the other hand, as long as there are outstanding warrants, then this surplus in the treasury is to be applied to the redemption of those outstanding warrants on sealed proposals in the manner described here.

Mr. SHOUP. What about warrants already standing out?

Mr. CLAGGETT. By special taxes to be levied for the purpose of their redemption, if there is no surplus fund that will accumulate after the payment of the county expenses in cash. The whole object and drift of the matter is to put our county governments on a cash basis. The saving to the taxpayers and the counties in the aggregate will be worth more and amount to more than twice the cost of your state government and it is the strongest card you can present to the people of this state for the adoption of this constitution.

Mr. PARKER. Mr. President, so far as I am concerned I am in favor of running county governments on a cash basis. In a county like this where the circulating medium is so scarce, it is impossible. We collect taxes in the months of November and December, and in order to provide a cash revenue for the expenses of the current year we have to keep in the county treasury a sufficient fund to pay these current expenses every quarter. Now, as the law stands today the commissioners meet four times a year, or every quarter, and they allow all bills against the county government, salaries and other expenses, hospital fund and everything else. Now, as I told you, we only collect our taxes in the fall of the year, and that will imply of course that we must pay to the county treasurer in October, November and December a sufficient fund to be kept in the treasury to pay the county expenses for the coming twelve months. Now, Mr. Chairman, that is impossible in a country like this, because we haven't got the circulating medium here to do it. Further than that, it is an injustice to take this money out of the pockets of the people and let it lie idle in the treasury all that time, and there isn't a county in the territory today that is situated to do it. Now, under this amendment, if it is carried, there will be money lying idle in the treasury a whole year, and when there is money in the treasury it will be put up at auction; it is a species of financial repudiation, and this money in the county

treasury is to be advertised and bid for. Now, Mr. President, what would we think of a business man who had some of his paper outstanding, and when he had any money to put into his treasury in the ordinary course of business, he advertised in the papers for people to present their obligations? Why, it is equivalent to repudiation, because it is like a man discounting his own paper. It is not safe business, and what is not safe business in the individual I don't think is safe business for the county organization. I shall oppose this amendment.

Mr. REID. This is a very important matter, and if the chief purpose of the gentleman introducing it was to relieve debt-burdened counties, I should support it heartily; but I don't think it does that, and I think it will encourage, as my friend Mr. Parker says, repudiation, and will always keep county warrants down. It will be understood when county warrants are issued under this provision—although I think, with the gentleman from Custer, you cannot issue warrants, but must pay in cash, but if you do issue warrants—the effect will be that every man who takes a warrant will think, "Well, now, I will eventually get ninety-five cents," and speculators will put this phase on the subject, and the consequence is a county warrant will never be worth more than that. I think when a county issues its paper it ought to be worth a hundred cents. Now, let us read this: "All taxes collected for county purposes." Now, that might include the ordinary expense fund if it was not for the language that follows: "and all county revenues from whatever source derived." I hold in my hand the levy we made in Nez Perce county this year: current fund, 60; school fund, 60; county hospital, 5; road fund, 20; then the per capita, and then the special tax to pay on the bonds. Now, under the law those taxes are kept separate and the treasurer keeps track of each fund. That is the way it was apportioned last year. He goes on and gives the amount under the bridge fund, ordinary county fund so much,

and keeps an account with each and apportions the warrants. That keeps each fund separate and apart. Now, the proposition of the gentleman is to put it all in hotch-potch and have just one county fund. Suppose there are some debts for a special purpose, an unusual purpose; that ordinarily would wait if there was not money enough to pay it. Here is the road tax, everybody expects to be paid promptly, and the hospital fund —he seems to make light of the hospital fund, but I find in this county it is really much better than it is in the east; you don't need hospitals in every county, for you don't have enough poor and sick to take care of. Where a poor person is unable to take care of himself the commissioners hire some hotel or private person to take care of him instead of building a county hospital, and I think it is better to have a separate fund. Levy a tax and keep it distinct and separate, instead of having one common fund. What would be the result? As the gentleman says, you have got to keep enough money in your treasury the whole year round to pay expenses. You don't know what they are going to be; you make an estimate when you levy your tax now. Some unusual calamity may happen, your expenses will go over the amount of the taxes levied. Then what is the consequence? You issue warrants. Well, you have got to pay them in cash, but suppose you do have to issue warrants, then if you issue warrants to a certain amount, right away it will be understood as soon as the money gives out and warrants are issued, that none of them will be paid except at ninety-five cents. What would be the consequence? Right away the men throughout the country, who do the work, not the speculators, but the men who ought to be paid right down, when there ought to be no shaving unless it is ninety-eight or ninety-nine cents—right away warrants will drop to ninety-five cents or under; and who will get the benefit of it? Why, the sharks and speculators who are shaving paper. My friend from Idaho takes the proper view of it, I think, when he says it amounts to publishing

to the world that the county will repudiate its own debts. How can it do that? Any county that gets five or ten thousand dollars in debt can neglect to levy enough taxes to pay that debt. Then, you say, we will mandamus them. But you have put a provision in the constitution which says they may hold back and advertise. In the first place I believe it is unconstitutional because it gives them the right to impair the validity of contracts, and it goes out to the world that we have provided in our constitution that the county authorities may advertise, and they being the tax levying power, they furnishing the means to meet the county obligations, in a measure force the people holding warrants to take less than their face value. And they ought not to be clothed with that authority. If it would keep counties from getting in debt, that would be all right. I think we have done that; if we have not, we ought to pass some law that counties, like the state, should not exceed a certain per centum of the taxable value.

Mr. HEYBURN. We have done that.

Mr. REID. Then you check that much, and how are you going to relieve the present indebtedness? We are not impairing the validity of contracts already issued. But my friend informs me that we have prevented the counties of the state from exceeding a certain amount of taxation, and I think it is well guarded. But how can we relieve that which is already out, except virtually repudiating it, I can't see. Now, I offer an amendment to strike out "for county purposes" and insert "ordinary county purposes." That would mean what we call now county fund, and in the other line after "derived for this purpose;" that is, limiting it for this purpose, and let the commissioners go on and levy for bridge, hospital, and everything of that sort, road tax, etc., and keep it separate, so that when people work on bridges and on hospitals they can be paid, The bridge tax in our county is seven or eight thousand dollars, accumulating a little every year. As soon as we get it large enough there are two or three important

bridges to be built, for which there is not now quite money enough; it is understood they are going to be built. That money is set apart. Under this section it would go into the general expense fund and be applied to a purpose for which it was not levied.

Mr. CLAGGETT. This amendment in its substantial features is not a new proposition at all. As I stated when the matter first came up under a bill, which I got through the Nevada legislature it wiped out the debt of Storey county in a little over two years, and that debt amounted to over two million dollars. It was done without a particle of objection after the law passed and it was seen how it operated.

Mr. REID. How much did you shave the paper?

Mr. CLAGGETT. I did not shave the paper at all; but every county is bankrupt which does not pay its debts in cash, or, as a man pays them, upon a reasonable extension of time; and the whole theory of the argument here is wrong. Afterwards it was adopted here, first, I believe in the county of Boise, and then afterwards in the county of Owyhee. And I would like to have these two gentlemen whe represent those two counties state to the committee how that thing operated in fact as a practical proposition.

Mr. AINSLIE. Well, I will state that in my county it operated pretty well; but in order to prevent the law from becoming obnoxious upon the ground of its impairing the obligations of contracts, we left a margin in what we called "general fund" to take up warrants that were drawn on that fund. We did not compel people to come in on the redemption fund, but only gave them the privilege of bidding on this fund if they desired to do so. The view we took of the constitutionality of the act was that we were compelled to provide a fund upon which those warrants were drawn; we had a general fund, a current expense fund, besides the hospital and road funds, and have those funds today; but in creating the redemption fund by act of the territorial legislature, we did not abolish the general fund at all.

Our entire debt then outstanding against the county was drawn on the general fund, some of it, five, ten or sixteen years old.

Mr. REID. You got authority from the legislature to create a redemption fund in addition to the others?

Mr. AINSLIE. Yes; and the county commissioners in making their levy only levied five cents on a hundred dollars to go into the general fund. So we did not abolish that fund entirely, but we put such an amount into the redemption fund that if they preferred to take less on their warrants under sealed proposals, instead of waiting for the general fund, they could do so and the money was there to pay them.

Mr. CLAGGETT. Was any of the current expenses required to be paid in cash?

Mr. AINSLIE. We created a current expense fund in addition, and the actual necessary expenses of the county were drawn on the expense fund; and those parties could also bid on the redemption fund if they wanted to. But we had the general fund that existed from the foundation of the territory upon which those warrants were drawn.

Mr. CLAGGETT. Under the operation of that law did not Boise county get out of debt, and has not the scrip of Boise county been maintained at par ever since, under the operation of the law?

Mr. AINSLIE. Well, it operated to this extent, that a great many parties would prefer to take a discount on their warrants instead of waiting for the general fund to pay them off in their regular turn; and probably a large portion of the indebtedness, a hundred thousand dollars, was taken up at fifty cents or sixty cents on the dollar. Our warrants today stand at face. If a man presents a bill, he goes in and gets a county warrant, and walks across the street and gets the face of it. He may not get it out of the treasury for six months or a year, but any merchant will take it at face, because it draws seven per cent a year.

Mr. SHOUP. I hope this amendment will not be

adopted. If we adopt this amendment, we will have to tax our people sufficient to pay all our current expenses as we go along. We will have to create a tax for paying outside warrants which are already standing out. And you know Mr. Burrows of Michigan made a speech at the hotel in which he said he did not know what kind of people we were. Now, I think when he sees our constitution and sees this section in it, he will have no trouble to make up his mind what kind of people we are. He will make up his mind that we are the kind of people that hire men to work for us, and if we have money enough to pay them, we pay them; if not, we give them a note, and say to them, "the first man that presents his note at a discount is the man I am going to pay." That is the opinion he will form of us or anyone else who sees this constitution with that section in it.

Mr. HAYS. I desire to make a few remarks on this subject, in view of the fact that some twelve or thirteen years ago our county was in debt in the sum of about $80,000. Warrants on the general fund, hospital fund and road fund accounts were worth about fifty cents on the dollar at the time. Something had to be done to get our county out of debt. If you will wait a moment I will tell you what was done. Today our warrants are worth one hundred cents on the dollar. I read Section 841:[1]

"All taxes levied and collected in said county for county purposes, including such special taxes as are, or may be authorized by law, all licenses now or hereafter provided by law, all fines and forfeitures, all receipts from toll roads, bridges and ferries, and all poll taxes shall after the amount belonging to the territory has been deducted, be paid into, and constitute a fund to be called 'Current Expense and Redemption Fund,' which shall be disposed of as hereinafter provided, and not

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1—Sec. 9 of an act regulating salaries and fees and the collection and disbursement of revenue in Owyhee county, approved Jan. 9, 1877. Sec. 841, Special and Local Laws of Idaho, (1887.)

otherwise; provided, that nothing in this section shall be so construed as to interfere with or relate to the special tax levied for school purposes in said county; and provided further, that there shall be no special per capita tax for hospital purposes levied in said county, but a special per capita tax of $2.00 shall be paid by each male inhabitant of said county, over twenty-one and under fifty years of age, for school purposes, and the board of county commissioners shall furnish the necessary blank receipts, and said tax shall be collected by the assessor at the same time that the poll tax is collected, and shall be paid in full into the school fund of said county."

They were not redeeming our old warrants.

Mr. REID. What did they bring at those offers?

Mr. HAYS. Various prices; sometimes as high as sixty and ninety cents.

Mr. REID. And how low did the price fall?

Mr. HAYS. That depended upon whether the man wanted money very bad or not.

Mr. REID. I just wanted to know how it worked.

Mr. HAYS. But that is the way we have done in our county, and that is the law on which we are acting. It is perfectly satisfactory so far as I know; and I believe it to be a good law. It is the one by which the indebtedness of the various counties in the territory would be paid, and if a law of this kind would be enacted it will give them cash value for their warrants, give them par, and have it all the time, because there will be money in the fund to pay. And if there is any money remaining after the current expenses are paid, that would apply upon the old indebtedness. And there is another thing; this fund includes the hospital, but does not include the school fund. If there is a hospital bill against the county, in our county we make out a warrant against the redemption fund, and the commissioner pays it. It goes right into that fund.

Mr. WHITTON. That is, it takes all the income of the county to run the county.

Mr. HAYS. No sir, the county commissioners make the levy to pay all county expenses. You will never be short in your money except perhaps a month or two at a time. If you are short, you can get ninety-five

cents or ninety-eight cents for your warrants. I believe the amendment is a good one.

SPECIAL COMMITTEE TO DRAFT PROPOSED SECTION.

Mr. CLAGGETT. I move that this pending section with the bill be laid aside, and that a select committee of five be apointed to draft a section and report it to the convention in connection with this bill. In presenting this I did so simply to bring the matter formally before the convention and elicit to a certain extent, at least, the views of the different members. I think the matter can be improved; I thought so at the time I drew it and presented it; but it is a matter of such immense importance I am satisfied every objection that can be raised against it can be obviated, and we can get our counties all over this territory down upon a cash basis.

Motion was seconded and put by the chair.

Mr. HEYBURN. Mr. President, I had hoped we would dispose of this thing at this time. If it is referred to a committee it is probable that I may not be here when the committee reports. . And as the work of this convention is pretty well laid out for the next three or four days, I want to say a word in reference to this matter now on behalf of the county about whose affairs I know the most. The condition of affairs in our county is this: Two years ago last April, we found our county indebtedness to amount to about $150,000. Since that time we have issued a little over $65,000 in county warrants. It represents an excess of expense over income in our county in two years. In other words, in the neighborhood of $30,000 a year our expenses have been greater than our income. This is because it has been necessary for us—at least the county commissioners deemed it necessary—to buy and build public buildings. In that time we have bought a court house building, a jail building, and public property of various kinds and built a good many miles of public road, and in doing so we have incurred so much expense in excess of income. Suppose that condition of affairs continues, and

we don't know but what it will, where is the fund to come from to pay these gentlemen who have trusted the county and got its warrants for the last two years—those $65,000 of warrants? Where is the fund to come from to provide for the payment of those warrants? In the interest of common honesty and decency ought not we to make some provision that would at least pay something on those warrants or guarantee their payment at some time? It seems to me we should. I have sent up another amendment which has not been discussed yet;—add before the first words "one-half of" so that it would read "one-half of all taxes collected" etc. Now, that would leave a margin of one-half of the county's income to apply on the payment of its old debts, the debts for which it has received value and for which value it has not paid. It seems to me that is a little more fair and honest than it is to provide that all the income shall go into this fund. I am willing to support a measure that will provide for putting one-half of the county's income in a redemption fund, something such as was provided for Boise county, as I understand the gentleman—to put one-half the county's income aside for a redemption fund, and the other half to pay for those things where it is actually necessary that the county pay cash to avoid paying exorbitant prices for various things which it has to purchase. But I do hope whether it be now or upon the report of the select committee of five, or at any other time, that this constitutional convention will not do such an injustice to those persons who have trusted the county and advanced for it in our county some $65,000, as to leave them without any provision for the payment of their indebtedness.

Mr. SHOUP. If we incorporate this section in our constitution, what kind of an opinion will people have of us? They will regard us as insolvent, as impecunious, and in no way prepared to go into statehood at all. It can have no other effect, if we are going to do this thing at all in the constitution.

Mr. HASBROUCK. I do not really care to impose

upon the select committee, but Mr. Chairman, I wish to say this, that this section seems to be purely of a legislative character, and I doubt the propriety of putting it in the constitution. I do not care so very much about that, but if this committee is appointed, I would like to have them confer with the committee on Revenue and Finance. That committee has reported, but I have not seen the printed report yet, but they have a section in that article on the levying and collecting of taxes. I am really of the belief that it belongs in that article, this very section, and not the one we are now considering. And I would like to direct the gentleman's attention, who proposes to have this committee appointed, to that fact; and if they are appointed, that they confer with the same committee.

Mr. CLAGGETT. I don't suppose there will be any trouble about that. I can see clearly that every objection that is urged here can easily be obviated, and at the same time, the beneficial measure now pending can be secured. In our own county of Shoshone, those gentlemen in whose behalf my colleague grows so eloquent consist of about half a dozen scrip sharps who have formed a combination, and who have had it for the last three years, who stand at the foot of the stairway at every term of court, and who have fixed a price on county scrip, and when a witness or a juror comes down they ask him how much he will sell his warrant for, and they say they will give him fifty or sixty cents on the dollar. The next proposition we will have in the legislature, is when these innocent holders of outstanding warrants of the county will be down here, asking it to pass another bill, and where they have paid but forty cents on the dollar, to give them a bond of the county for a dollar and compound the interest again as they did before. I want to stop all that kind of racket.

Mr. MAYHEW. After all this discussion we have not arrived at any point. I hope this motion prevails; I hope that committee will be requested to report tomor-

row morning. It is not worth while to take a whole week.

Mr. CLAGGETT. I accept the amendment.

Mr. PARKER. Mr. President, I have here a substitute for Mr. Claggett's amendment, which I think will fill the bill as well as the committee can do it.

SECRETARY reads: Substitute for amendment to Section 6: The rate of interest on bonds or warrants issued by any county, city, township, board of education, or other subdivision, shall not exceed six per cent per annum, nor shall such issue of bonds or of warrants at any time exceed five per cent upon the assessed value of the taxable property within such subdivision.

Mr. PARKER. I have submitted this, because in my experience of fourteen years residence in this territory I have found it is impossible for any county organization to do business on a cash basis. No private business can do it, and I venture to say there is not a gentleman in business on this floor, who is out of debt today. A business man can approximate to some extent what his expenses are going to be; he can figure up his insurance, clerk hire, household expenses and everything else. But in dealing with a county organization we have to do with something far different. Under the present law we work entirely in the dark; we put the cart before the horse. The county commissioners make the tax levy, and thereupon the assessor is sent out to make the assessment; and the chances are that at the end of the year the county treasury is running behind. It is always so. It always will be so, and under Mr. Claggett's amendment it will be worse and worse. In every county there is a great deal of unexpected business coming up, and that business will have to be paid for out of the county treasury, and no man can foresee how much there is going to be of that business. No man can tell what the county expenses are going to be. So I say authority ought to be given to the counties or subdivisions to issue interest-bearing warrants, and as the moneys are paid into the county treasury on taxes that money can

be put in circulation again by paying off warrants; kill three birds with one stone. You reduce the principal of your indebtedness immediately; you stop your interest; and you put the money in circulation again. You put that money in the pockets of the people where it rightfully belongs. It is said government is a necessary evil, but rightfully administered it is necessary and good, but no government has authority or power to take money away from the people; it should be left in the pockets of the people to fructify there, and not put it in the county treasury for the treasurer to run away with. I am opposed to putting this temptation in the hands of any man.

("Question, question.")

The CHAIR. The question is on the motion for a special committee to report tomorrow morning.

Vote and carried.

Mr. VINEYARD. I hope these various substitutes will be referred to that committee.

Mr. CLAGGETT. They would have it in charge anyway.

The CHAIR. What is the pleasure of the convention?

Mr. CLAGGETT. I will withdraw that portion of the motion to lay this aside, if it can be brought up in connection with some other bill just as well. We might as well conclude the labors of the convention on this bill.

The CHAIR. The motion will be then to proceed with the consideration of the report of the Committee on Public Indebtedness.

CONVENTION IN SESSION.

President Claggett in the chair.

The CHAIR. Gentlemen of the convention, the bill as reported by the committee on Public Indebtedness has been considered section by section and also as a whole, at the preceding sitting of the convention. It will be referred to the committee on Engrossment for engrossing. What time shall be set for its final reading?

Mr. HASBROUCK. I move it be set for tomorrow morning at 9 o'clock. (Seconded. Vote and carried.)

The CHAIR. The chair will appoint as that special committee, Mr. Ainslie, Mr. Hays, Mr. Reid—

Mr. MAYHEW. I desire to move that the president of this convention be made a member of the committee.

The CHAIR. —and Mr. Mayhew of Shoshone. That makes the five, with the president.

ARTICLE XIII.— IMMIGRATION AND LABOR.

SECTION 7.

Mr. AINSLIE. Mr. President, my impression is that the report of the committee on Labor was laid over for the purpose of the committee offering an amendment by the gentleman from Nez Perce, or an additional section. I move that we take that up.

The CHAIR. The gentleman will send forward his amendment.

Mr. REID. I will read my amendment. I offer it as a substitute for the one I offered before and put it "Board of Arbitration," and I will state that I have examined the debate that was had on the measure in congress, and also the bill that was adopted in the house on that subject, and have drafted this as an additional clause, and the legislature can supply the machinery afterwards. I have modelled it after the powers made by the act of congress.

"Section 7. The legislature may establish boards of arbitration, whose duty it shall be to hear and determine all differences and controversies between laborers and their employers, which may be submitted to them in writing by all the parties. Such boards of arbitration shall possess all the powers and authority in respect to administering oaths, subpœnaing witnesses, and compelling their attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law upon justices of the peace."

Mr. MAYHEW. I would like to inquire, will that section permit an appeal from this board of arbitration? There ought to be some higher tribunal to determine matters on appeal.

Mr. REID. They can only go to that board by agreement, and that would depend on their agreement. If they reserve the right of appeal, they can.

Mr. MAYHEW. Does this section make any provision by which they can appeal?

Mr. REID. No sir, but it says they shall hear "such controversies as may be submitted to them in writing by all the parties." They go voluntarily, and when they go in, the writing stipulates what they shall do. Under our constitution as it is now written, the Judiciary article, if it be adopted, there can only be a certain class of courts formed. Now, it is the intention of this, as it was the intention of congress, that the legislature, for instance, might say that the commissioner (if they choose to put it in that way) of Labor and Immigration, a judge of the district court and others might form the board. Suppose the Union Pacific and its employes, or the Northern Pacific and its employes, had a strike, or other difficulty impending; if they saw it was imminent, they could then in writing go to the board of arbitration, and that board could hear it. In order to clothe the board with power to send for persons, papers and witnesses, that is given under the machinery to be provided by the legislature under the general clause of the Judiciary bill which says the legislature shall provide for courts and appeals. I think the legislature can provide for appeals from this board, but it will depend upon how the parties go in. They draw an agreement, and go to this board, with powers and authority, which parties may appeal to, or go into court if they choose, you give the board the right to summon witnesses, preserve order, and everything of that sort. This matter was argued a long time in congress, and finally the bill passed; and this is modelled pretty much on the bill that was introduced in congress as to its general powers.

They provide that the circuit courts and clerks and so on should have the same powers as commissioners, instead of justices of the peace. This provides for the power, and if the legislature goes on and provides who shall constitute the board, furnishes all the machinery, before there is an outbreak—for instance, before there is a stoppage of trains by an actual strike, when those differences commence to brood—

Mr. MAYHEW: (Interrupting) I understand that proposition. The only question I desire to understand, is there anything whereby they can appeal from a decision of this board? The reason of the establishment of this board of arbitration—I understand that thoroughly; but the question I ask, is there any way, if a person feels aggrieved with the decision of that board, that he can get it to the supreme court of the state?

Mr. REID. I think the legislature can provide that or the parties either, in agreeing to it. (The section was read again.) Now, I move the section be adopted. (Seconded. Vote and carried.)

The CHAIR. The preceding part of the article has been adopted, and this section having been adopted, the article is adopted as amended, and is referred to the committee on Engrossment. What time shall be fixed for its final reading?

Mr. VINEYARD. I move that its final reading be set for four o'clock tomorrow afternoon. (Seconded. Vote and carried.)

The CHAIR. This disposes of all the bills which are pending upon supplemental sections.

Mr. REID. I see on the calendar the report of the committee on Public and Private Corporations. That has been disposed of?

The CHAIR. Yes. There is nothing now upon the calendar except the report of the Judiciary committee, and Salaries of Public Officers.

Mr. REID. The latter went over, I think, until we determined the number of judges we shall have.

Mr. AINSLIE. I don't think there is any other

business we can do this evening, as the Judiciary bill was set for tomorrow; and I move we adjourn until tomorrow morning at 9 o'clock. (Seconded.)

Mr. COSTON. Mr. Steunenberg requested me to ask indefinite leave of absence for him as he was called home on account of sickness in his family. (Granted.)

The motion to adjourn was put by the chair.

Mr. HEYBURN. It that a necessity, Mr. President?

The CHAIR. It seems to be.

Mr. HEYBURN. Well, I suggest that a committee or some person be appointed to see the printers. We have some reports of committees, for instance, the report of the committee on Revenue, and some of those reports must have been in their hands a week or ten days.

Mr. ALLEN. I will say for the information of the gentleman, I think that they will be ready tomorrow morning.

Mr. HEYBURN. That is rather indefinite.

Mr. ALLEN. I will ascertain.

The CHAIR. That matter is all in charge of the committee on Printing.

Mr. HEYBURN. I understand this convention has disposed of all business before it that can be transacted.

The CHAIR. There is nothing before the convention except the report of the Judiciary committee and the committee on Salaries. The judiciary article was set specially for tomorrow morning at nine o'clock.

Mr. HEYBURN. Has the report of the committee on Labor been disposed of?

The CHAIR. Yes.

Mr. HEYBURN. Well, I have nothing to say except I am very sorry we are out of business.

The motion to adjourn was put by the chair. (Vote and carried.)

And the convention adjourned until 9 o'clock A. M., July 31, 1889.

July 31st., 9: 00 o'Clock A. M.

TWENTY-THIRD DAY.

Convention called to order by the President.

Roll call.

Present: Ainslie, Allen, Anderson, Armstrong, Batten, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pritchard, Pyeatt, Reid, Sinnott, Shoup, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Ballentine, Beane, Brigham, Crook, Gray, Hagan, Hammell, Harkness, Hendryx, Howe, Lemp, McMahon, Poe, Robbins, Salisbury, Savidge, Standrod, Steunenberg, Stull, Sweet, Taylor, Woods.

Mr. Reid in the chair.

Journal read and approved.

Presentation of petitions and memorials. None.

Reports of standing committees. None.

Reports of select committees.

PROPOSED SECTION ON COUNTY INDEBTEDNESS.

Mr. AINSLIE. The select committee, appointed last evening to prepare a section in accordance with the order of the convention, will report that they have performed that work, and the section will be found printed and incorporated in the article on Revenue and Taxation, the committee believing it more properly belongs in that article than any other.

Mr. MAYHEW. I would inquire where is the report. I was a member of that committee.

Mr. AINSLIE. It has gone to the printer and ought to be here this morning.

Mr. MAYHEW. That single section?

Mr. AINSLIE. That single section we incorporated in the report of the committee on Taxation and Revenue, as being the proper place for it.

Final readings.

COMMITTEE REPORTS.

The CHAIR. This is the hour set apart for the consideration of the report of the Judiciary committee.

Mr. HASBROUCK. The committee on Engrossment is ready to report.

Mr. MAYHEW. I would like to inquire if the committee on Printing is prepared to report back this morning, according to the request made yesterday, the article on Bill of Rights as amended. I demand that that report be sent in. I think it is an outrage to wait this long for that report.

The CHAIR. Can the chairman of the printing committee give any information?

Mr. ALLEN. I understand that was ready to be presented to the session of the convention this forenoon, and that they are only waiting to finish the stitching of the bill. I will ask the secretary if it has been received. The committee was told that that report should be ready.

The CHAIR. The chair will inform the convention that he is in possession of information that the calendars and report of the committee on Finance will be in the convention in a few moments; that the report of the committee on Bill of Rights is now being stitched and will be in convention at the afternoon session.

SECRETARY read the following report: Mr. President, your committee on Engrossment have carefully examined the following named articles of the constitution, namely, in relation to Education, Municipal Corporations, and Public Indebtedness and Subsidies, and find the same correctly engrossed. Hasbrouck, Chairman.

EMPLOYMENT OF ENGROSSING CLERK.

I have the honor to report that I have engaged the services of Miss Hattie Harris as engrossing clerk. Hasbrouck.

FINAL READINGS.

Mr. AINSLIE. Mr. President, do not these bills have to go to third reading and passage before they go to the Revision committee?

Mr. MAYHEW. I think that should be done right now.

The CHAIR. There seems to be a conflict. There are three bills now set for final reading at this hour, and also the report of the Judiciary committee. I suppose the reading will take place first.

Mr. MAYHEW. I move that we take them up now and read them. (Seconded. Vote and carried.)

The secretary proceeded to read the articles.

Mr. McCONNELL. Mr. President, I rise to ask a question for the purpose of trying to facilitate matters a little, if, after these are read, they can be reported to the committee on Revision, and will have to come back here for another reading?

The CHAIR. That will depend on the report of the committee on Revision.

Mr. McCONNELL. Well, they will have to come back anyway, I guess.

The CHAIR. As I understand it, if they make no change in the bill whatever, no transposition of words, it is adopted without another reading. But if they make a change, they will report what change they have made and call the attention of the convention to it, and then we will consider whether we shall adopt the change they have made.

Mr. McCONNELL. I think they have to be read.

Mr. SHOUP. I call your attention to Rule 54.

Mr. McCONNELL. I think it would be better for us all to put these matters ahead as fast as possible after they are reported by the Engrossing committee, so they can go to the Enrolling committee.

The CHAIR. Rule 54 states expressly when it shall be fully read, and the vote shall be on the article so amended and revised.

Mr. McCONNEL. And we want to get our Enrolling committee at work.

Mr. MAYHEW. There is another question in my mind, that that committee on Revision and Enrollment will not report that constitution back for six or eight days unless they go to work and revise what is in their hands already. We have been without a committee.

ARTICLE XII.—MUNICIPAL CORPORATIONS.—ADOPTED.

SECRETARY reads the report of the committee on Municipal Corporations as engrossed.

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

Roll call.

Ayes: Ainslie, Anderson, Allen, Armstrong, Batten, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Howe, Kinport, Lamoreaux, Lewis, Mayhew, McConnell, Melder, Myer, Morgan, Parker, Pefley, Pierce, Pyeatt, Reid, Sinnott, Shoup, Underwood, Vineyard, Whitton, Wilson, Mr. President—40.

Nays: None.

And the article was adopted.

ARTICLE IX.—EDUCATION AND SCHOOL LANDS—ADOPTED

SECRETARY reads the report of the committee on Education, School and University Lands.

Mr. Claggett in the chair.

The CHAIR. The question is now upon the adoption of the report of the committee on Education, School and University Lands.

Moved and seconded that the report of the committee be adopted.

Roll call.

Ayes: Ainslie, Anderson, Armstrong, Batten, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Mayhew, McConnell, Melder, Myer, Morgan, Pefley, Pierce, Pinkham, Pyeatt, Reid, Shoup, Underwood, Vineyard, Whitton, Wilson, Mr. President—39.

Nays: None.

And the article was adopted.

The CHAIR. And it is referred to the committee on Enrollment and Revision, for incorporation in the constitution.

ARTICLE VIII.—PUBLIC INDEBTEDNESS AND SUBSIDIES.

SECRETARY reads the report of the committee on Public Indebtedness and Subsidies.

SECTION 1.

Mr. AINSLIE. I ask unanimous consent to call the attention of the convention to what looks like an error in Section 1. It reads as follows: "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 centum upon the assessed value of the taxable property in the state, except in case of war to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, within twenty years of the time of contracting thereof." Where is there anything about the interest? I understood it ought to be annually or semi-annually, but there is nothing there about even paying the principal. I would like to call the attention of the chairman to it.

Mr. MAYHEW. It is correctly engrossed. I don't see how you can get it in now unless it is considered that it might be done by the legislature.

Mr. AINSLIE. I would ask that by unanimous consent that special order be laid aside until two o'clock and referred to the committee on Public Indebtedness, that they may examine it. It is a very important point.

The CHAIR. There being no objection, it is so ordered. The next matter is the report of the Judiciary committee.

Mr. MAYHEW. I thought the report of the committee on Salaries of Public Officers came first.

Mr. REID. It was agreed by general consent that it should not be considered until after the report of the Judiciary committee.

The CHAIR. The chair so stated that this was set down for this time specially.

Mr. MAYHEW. But this puts the convention—we have to go from one thing to another.

COMMITTEE CHANGE.

Mr. SHOUP. A member of the Apportionment committee, Mr. Brigham, has been granted indefinite leave of absence. I therefore move that Mr. Sweet be placed on that committee in his stead during the absence of Mr. Brigham.

The CHAIR. If there is no objection the substitution will be made, and Mr. Sweet will be placed on the committee on Apportionment in the place of Mr. Brigham.

ARTICLE V.—JUDICIAL DEPARTMENT.

Mr. HEYBURN. I move that the convention now resolve itself into committee of the Whole to consider the report of the Judiciary committee. (Carried.)

COMMITTEE OF THE WHOLE IN SESSION.

Mr. McConnell in the chair.

The CHAIR. Gentlemen, you have under consideration the report of the judiciary committee. The clerk will please read.

Mr. SHOUP. Mr. Chairman, I move that the report be reported back to the convention without amendment. (Seconded.)

The question was put by the chair.

("Question, question.")

Mr. MORGAN. I will ask the chairman of the committee if there are not two clauses there submitted to the committee of the Whole?

Mr. HEYBURN. It seems to me those two clauses ought to be struck out before reporting it back. And then I would have no objections to that.

Mr. MORGAN. There are two clauses—

Mr. SHOUP. I will state my object for making the motion. If this report is reported back to the convention without amendment, the question will then be in convention, shall the report of the committee be adopted, and those amendments will be in order in the convention, and it will not be necessary to go over the report twice; only to save time I make the motion.

Mr. HEYBURN. I would suggest this difficulty. Under the rule established by the convention, that no amendments are in order in the convention that were not made in committee of the Whole, we might find ourselves in difficulty, if any gentleman desires to amend any section of this bill. That is the only objection I see. Otherwise I would be in favor of discussing the matter once and for all in the convention; but if that rule is to be held in the convention after we go out of the committee, of course it would cut off all amendments.

Mr. CLAGGETT. That rule has not been adopted. Mr. Chairman, notice was given by the gentleman from Nez Perce a long time ago that he would bring up a proposition to amend the rule so that no amendments could be offered in convention except those offered in committee of the Whole, when the house resolved itself into committee of the Whole, but my recollection is it has not been brought up and no change has ever been made in the rule, and the consequence is as it now stands you may consider everything in full in the committee of the Whole, and also go over the same thing precisely, in the convention.

The CHAIR. No new matter?

Mr. CLAGGETT. Yes, that is the present condition of the rule, and the change has not been made. The gentleman from Boise is in favor of passing the proposed amendment.

Mr. MAYHEW. That is correct, Mr. Chairman,

because there were some amendments offered to one of the articles that had not been offered in committee of the Whole.

The CHAIR. The proper motion would be that the committee now rise and report the bill back.

Mr. CLAGGETT. Yes, without recommendation.

Mr. SHOUP. I think there is no doubt but what amendments can be offered in the convention if it is reported back.

The CHAIR. Well, it would be well to get the sense of the committee of the Whole as to what would be the course pursued in the convention.

Mr. CLAGGETT. If the motion of the gentleman from Custer prevails, we simply go out of committee of the Whole into convention, and there consider the bill for the first time in convention. And the proceedings in the committee of the Whole are nugatory; in other words, no proceedings at all.

Mr. AINSLIE. Before that motion is put I will ask whether, under the rules, it does not require a suspension of the rules. The rules require these proceedings to be read section by section in the committee, and subject to amendment by section. I think it would require a suspension of the rules. I have no objection to the change.

Mr. REID. I will ask the gentleman if it is not simply to cut off debate and save time.

Mr. SHOUP. That is it. ....

Mr. REID. Then I move that we suspend the rule, or do it by unanimous consent. I ask unanimous consent, that we accept the proposition of the gentleman from Custer, to report it back as in convention, and then proceed with the amendments as if it had been considered, and offer any amendments you choose.

The CHAIR. If there is no objection it will be so ordered. The question is now that the committee rise and report it back to the convention without amendments. (Vote and carried.)

CONVENTION IN SESSION.

The President in the chair.

Mr. McCONNELL. Mr. President, your committee of the Whole, having under consideration the report of the Judiciary committee, begs leave to report the same back to the convention without recommendation.

The CHAIR. If there is no objection, the report of the committee of the Whole will be received and lie on the table. What is your pleasure gentlemen, with regard to the pending measure?

Mr. MAYHEW. I move it be taken up and considered.

The CHAIR. It is moved and seconded that the report of the Judiciary committee be taken up in convention and considered. (Carried.)

The CHAIR. I will ask Mr. McConnell to please take the chair.

Mr. McConnell in the chair.

ARTICLE V.—JUDICIAL DEPARTMENT.

SECRETARY reads Section 1.

Mr. HEYBURN. Mr. President, I move that Section 1 be adopted.

The question is put by the chair.

Mr. MORGAN. Before the section is adopted, I call the attention of the chairman of the committee to the reading of the first two lines, "the distinctions between actions at law and suits in equity and the forms of all actions and suits, are hereby prohibited; and there shall be in this state but one form of action for the enforcement or protection of private rights, etc."

Mr. REID. There ought to be the word "such" in there, and which was left out.

Mr. MORGAN. But the word in law heretofore has been "abolish" instead of "prohibited."

Mr. HEYBURN. I think "abolished" is the better word.

Mr. MORGAN. Yes, I move to amend by striking

out the word "prohibited" and insert the word "abolished."

Mr. HEYBURN. I will accept the amendment.

The CHAIR. There being no objections to the amendment, it will be so ordered.

Mr. REID. Well, they do not exist now, and we use the word "prohibited" on that very account. They don't exist under territorial law, and abolishment of them would imply that they do exist. The clause as taken from the New York constitution,[1] and embodied in that reads as follows: "Distinctions between actions at law and suits in equity, and the forms of all *such* actions"—the word "such" ought to be in there, it was omitted by the printer or the copyists—"and suits, are hereby abolished." You understand, there is a distinction between the actions as well as the forms of them. The reason I put in the word "prohibited" is that they do not exist, and it prohibits them existing hereafter. They put in the word "abolished" in New York, because they existed.

Mr. MORGAN. There should be a comma after the word "distinctions"; "The distinctions, between actions at law and suits in equity, and the forms of all such actions and suits, are hereby prohibited." The way it reads, you would prohibit the forms of actions and suits.

Mr. REID. Those particular actions; that is, common law actions. There shall be one action, which shall be a civil action.

Mr. MAYHEW. That is not the point the gentleman is making.

Mr. MORGAN. No, there should be a comma after that word.

Mr. REID. I ask general consent that the word "such" be inserted after the word "all" in the second line.

1—Taken from the Code, not the Constitution. See Sec. 3339, Bliss's N. Y. Code Civ. Proc.

The CHAIR. If there is no objection it will be so ordered.

Mr. CLAGGETT. I wish to call the attention of Mr. Reid to the fact that the words "in form" ought to be inserted after the word "distinctions" in the first line, because you prohibit *all* distinctions between actions at law and suits in equity. That is not intended to be done; you cannot do that very well. "Distinctions *in form.*" Now, the second phrase, "and the forms of all such actions and suits are hereby prohibited."

Mr. REID. I copied it literally from the New York Code; but I have no objections to it if the chairman of the committee accepts it.

Mr. HEYBURN. It looks to me, that to insert that would be to repeat it in the second part of that sentence, to read: "Distinctions in forms of all such actions and suits."

Mr. MAYHEW. Yes, it says here, "there shall be in this state."

Mr. CLAGGETT. The point I make about the matter is this: it may be that probably any court construing it would hold the construction put on it here; but the point I make is, that on the plain letter of the language it is a prohibition of the substance of all distinction between actions at law and suits in equity as it now stands, and that is not intended; it is simply intended to reach a distinction in the forms of actions; whereas, as it is now, the distinctions "between actions at law, and suits in equity are hereby prohibited;" also any distinctions in the forms of actions and suits are prohibited.

Mr. AINSLIE. It seems to me these sections, which are *verbatim et literatim* from the constitution of New York, are proper, and in order to have the guidance of the decisions of the court of appeals and the highest courts of New York, we had better adopt their language.

Mr. CLAGGETT. Yes, I am not very particular about it.

Mr. AINSLIE. It might produce confusion in the decisions of the supreme court.

Mr. CLAGGETT. I will withdraw the amendment.

The CHAIR. The question is upon the adoption of the section as amended. (Put to vote and carried.)

SECTION 2.

Section 2 read, and it is moved and seconded that it be adopted. Put to vote and carried.

SECTION 3.

Section 3 read, and it is moved and seconded that it be adopted. Put to vote and carried.

SECTION 4.

Section 4 was read.

Mr. WILSON. I ask unanimous consent that the word "impeachment" be inserted instead of "impeaching"; so it will read, "shall have the power of impeachment."

Mr. MAYHEW. Well, this is correct the way it is.

Mr. WILSON. That word is not a noun there.

The CHAIR. By unanimous consent the word "impeachment" will be inserted in place of "impeaching" in line 1.

Mr. AINSLIE. Mr. President, I don't see the necessity of improving on the language of New York lawyers. What is the object of changing these things, I don't know. That is exactly the term used in the New York constitution.[1]

Mr. MAYHEW. Why, it is plain to be seen; the gentleman wants to get a noun in there.

Mr. AINSLIE. Well, I propose to follow New York as close as I can.

Mr. WILSON. I don't propose to follow anything.

The CHAIR. Objection having been raised the question must go before the convention.

1—But see Sec. 1, Art. 6, New York Const., 1846.

Mr. SHOUP. The Constitution of the United States reads "sole power of impeachment."[1]

Moved and seconded that line 1, Section 4, be amended by striking out the word "impeaching" and inserting the word "impeachment."

A viva voce vote was taken, and the chair being in doubt, required a rising vote, resulting 22 yeas and 11 nays; and the amendment was adopted.

The question then recurred upon adopting the section as amended. (Carried.)

SECTION 5.

Section 5 was read.

Mr. HEYBURN. Mr. Chairman, somewhere in the transcribing of this section the words "of estate" after "forfeiture" have been dropped out. I move that the words "of estate" be inserted after the word "forfeiture."

The CHAIR. If there is no objection the amendment will be made. The question is now upon the adoption of the section as amended. (Carried.)

SECTION 6.

Section 6 was read.

Mr. HEYBURN. Mr. Chairman, I move the adoption of the section.

Mr. CLAGGETT. Mr. Chairman, the Judiciary committee was evenly divided upon this question as to whether they would agree on that section, and also the plan of filling the supreme bench as provided for in Section 7, and have reported two sections. I raise the point of order, for nothing else, that Section 7 should be read so that the convention may have before it the report of the committee on this question. Only one-half of the report has been read.

The CHAIR. It seems that the committee so far, instead of submitting a minority and majority report,

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1—Art. 1, Sec. 1.

as the reports were really, reported two sections, which are similar in their provisions with the exception of some slight variations. It is requested that both sections be read.

Mr. HEYBURN. Mr. President, I submit that if any gentleman does not like the provisions of Section 6 he can move to substitute Section 7.

Mr. MAYHEW. I think the gentlemen have a right to have Section 7 read as a matter of information.

PROPOSED SECTION.

The secretary reads Section 7.

Mr. WILSON. I move the adoption of Section 6. (Seconded.)

Mr. WILSON. And I would say the reasons I make that motion are, that I was one of the seven who supported that view of the Judiciary committee, and there were seven who supported Section 7, who believe in appointing the judges by the governor and confirming by the senate. I am in favor of electing judges by the people. There is no argument to be made on the question one way or the other, further than that. It is a question of whether the majority of the convention is in favor of electing the judges by the people.

The CHAIR. I will ask the gentleman for the information of the convention, is that the only difference?

Mr. WILSON. That is the only difference in the two sections.

Mr. CLAGGETT. I offer as a substitute motion, Mr. Chairman, that the convention adopt Section 7 as a substitute for Section 6. (Seconded.)

Mr. HEYBURN. Mr. President, the difference between these two sections, but not apparent on its face, is this: if the motion now before the convention prevails, the judges of the supreme court will be appointed by the governor instead of being elected by the people. One-half of the Judiciary committee were in favor of their election by the people, one of which

half I was; and I am in favor of it now. I do not believe in taking from the people the power to elect their supreme judges; I do not believe in delegating it to the governor, and the council or the senate. Because I think it is so important that officers so closely in contact with the real and substantial interests of the people should be selected by the people, and not appointed by any power. I hope the motion will not prevail.

Mr. WILSON. Mr. President, it has been charged that we cannot get as good judges by direct election by the people as we can by appointment by the governor, and confirmation by the senate. I do not think that charge can be sustained. I know some sections in this country where they elect by direct vote of the people, and they have as good judges as any state in the Union. The state from whence I came (Pennsylvania) has as good a supreme court as there is. They pay them $8,000 a year, and that is my idea of it; but we cannot afford that luxury yet. In another state, where I had the honor to live six years (Michigan)—and I call every lawyer here to witness—they have as good supreme court judges in Michigan as anywhere in the United States: Thomas M. Cooley, Judge Campbell, and such men as that, are men of national reputation among the finest lawyers these United States have ever produced; and they have been elected by direct vote of the people, and I don't believe in taking from the people the privilege of selecting their judges any more than I do the governor. A governor is not always elected with reference to his fitness to select judges. I would not have the power of the executive branch of the government increased to a greater degree by giving him the power of appointing the judiciary.

Mr. HASBROUCK. I only wish to call the attention of the convention to one fact, and I would like to have the secretary read Section 18. It seems to me it is on the same subject matter.

Mr. HEYBURN. I would say to the gentleman that it is proposed by the committee to strike out Section 18.

Mr. MAYHEW. Mr. Chairman, I don't feel like to going into a lengthy discussion of this question. It is only a question as to which section we will adopt as to the method of election; whether the judges shall be elected by the people or appointed by the governor or the senate or the legislature. I am in favor of the election of the judges of the state of Idaho, and I believe that it is important and necessary in a new state (and in fact in all states) that the state and supreme judges of the state should be elected by the people. I believe that the conventions of both political parties will always put their best legal talent on the bench, and they will have an eye and a view to the nomination of the ablest lawyers in the state for that position. And I believe the people at large, of both political parties, are better judges than the governor or the legislature can be, and therefore I am in favor of it. And I will say in addition to that, Mr. President, that when you come to look at the different states who elect their judges, you will find that a large majority of the states in the Union do elect their judges. I have taken a little pains to ascertain that fact, and I find this result, that in fourteen states out of the thirty-eight the judges are appointed either by the governor, the legislature, and the senate or the council. Massachusetts, for instance, is a little different from all the rest of the states. Twenty-four states elect all their judges. Now, I take it for granted that if the twenty-four states out of the thirty-eight elect their judges, it is a good precedent, and shows that the people in the twenty-four states out of the thirty-eight have confidence in the selection of the judges by the people. Pennsylvania, New York, and a number of the largest states in the Union elect their judges by the people; and I certainly think it is the best system because it brings the question home directly to the people, and allows them to exercise their discretion and their judgment in the selection of the chief justice of the state. I am altogether in favor of that system.

Mr. BEATTY. Mr. President, the only question here I think is how we shall get the best judges. It has been said that the people shall elect these judges, as though the people desired to elect them.

Mr. MAYHEW. They do.

Mr. BEATTY. No, Mr. President, if the people were really electing these judges, it might be a different question; but we know too much about the manipulations of conventions to know that the people do not always have their voice in those matters. It is the conventions too often that elect the officers that are elected by the people at large. And so I think it would be in the selection of supreme judges. I believe it would be those who manipulate the conventions, rather than the people that would finally make the election. There is no question about the people voting all right, if you place the right man before the people for them to vote for; but it is not necessary to run over the history of political conventions; we know how they result. Now, it has been said that the states which elect by the people have the best supreme courts. I take issue with my friend upon that question. I do not think it has been the practical result. I believe that in earlier times when our judges were generally selected by some appointing power, we had better judges than we have now. We heard less of politics upon the bench than we hear of it now. Reference has been made to the state of New York. I am quite well aware that the state of New York has some very fine judges; but we do know that the state of New York supreme court has made some very strange political rulings at different times. But I am not going into the different states to balance odds and ends as to which has been proved to be the best system. Let us look at the United States system. I think no judges in the world stand as high as the United States judges from the supreme court judges down; and those are all selected by the appointing power. I think that is enough to guide us, if nothing else. But the main point I would have in urging this

seventh section instead of the sixth is, that I believe by this system we will keep politics out of the supreme court, and if there is any place in our whole system where politics should be left out of an office, it is in that of the supreme court of the state. Now, gentlemen, under this system in Section 7 it is not so likely that the governor could make appointments simply for political purposes; he stands in a position where he is subject to great criticism if he undertakes to do it; it seems to me he would be put upon honor. But there is another power behind the governor. If it is left to the governor the lawyers of the state will have an important voice in selecting the supreme judges, and we do know, as the history of the bar, that where the bar acts they do not select men simply for political purposes. I will venture that in nine times out of ten the bar selects men simply for their ability, and not for their political proclivities; and that power will be behind the governor to aid him in some respects. But there is another provision, which is important, which you may not have noticed on the first reading.

The CHAIR. Judge Beatty, you were not here yesterday, but the rule was amended to limit speeches to five minutes. I believe it was two speeches and five minutes.

Mr. BEATTY. Is my five minutes up?

The CHAIR. No, you have a quarter of a minute yet.

Mr. BEATTY. Well, I will say something in that time, but I want the interruption deducted. Under Section 6—I will not stop to read it—you will observe that of course the people elect. Now, the result of that will be this. Suppose this state is strongly republican, as we hope today, all your judges will be republican; suppose it is democratic, which we don't want it to be, all your judges will be democratic.

Mr. MAYHEW. Whom are you alluding to?

Mr. BEATTY. My friend is interrupting me and taking up my time. I will measure words with my

friend some other day when we have time to consume. I am talking now in a hurry to save my time, and the gentleman interrupts me.

The CHAIR. Time is up.

Mr. BEATTY. I only had five words more to add, and—

The CHAIR. Without unanimous consent we must confine ourselves to the rules.

Mr. BEATTY. Well, did you deduct the time that I was interrupted?

The CHAIR. No.

Mr. BEATTY. I simply want to say, gentlemen, that under that Section 7, as you discover, your supreme court cannot be all of one political party. That is all I have to add.

Mr. VINEYARD. So far as necessary that will be brought about if these judges are elected by the people, and I am against their selection. I say that that simply balances; our governor is elected two years, and he is in many instances governed by the power the governor will receive or the influence he will receive in the appointment of those judges, and it will be a political job in many cases, unless the tenure of the governor's office is a longer period than two years. I think it would be a much better system if these judges were appointed by the governor and the two houses of the legislature. I would favor that above the present system set out in Section 7. But I am in favor of electing the judges by the people. Let those conventions get up their best men and put them forward, and they will be elected, and we will have a purer judicial system in that way than if the judges were appointed by the governor and confirmed by the senate. Often these appointments depend on political jobbery and are made without reference to the ability or qualifications of the appointee; and therefore, I approve the manner of their selection as provided in Section 6.

Mr. CLAGGETT. Mr. President, this matter created a great deal of discussion in the Judiciary committee,

and finally, as appears, two reports were made of two methods of procedure. I am in favor of having these judges nominated by the governor and confirmed by the senate, because I am entirely clear in my own mind that we may thereby obtain a much better supreme court than we will by having their election made the football of political conventions. In the first place, I undertake to say that the history of the United States will show that the decadence in the character of our supreme courts of the several states began with the substitution of the elective for the appointive system. I recognize the fact that in several of the states where the elective system has been substituted it has not had this result; notably the states of Wisconsin, Michigan and Pennsylvania. But I wish the committee to bear in mind this proposition, that in those states they have practically provided such a length of term as to make the supreme court judges elected practically for life. In Pennsylvania, which was referred to by Mr. Wilson, I believe they are elected for twenty years; and so in order to get rid of the evils of the elective system after gaining it, they have been amending the constitution in that state to get half way back, at least, to the merits of the old system of nomination by the governor and confirmation by the senate, by increasing the length of term, making the election one of such tremendous importance that the whole people will be alert and in arms for the purpose of electing good men to the position. That same result can be secured without any of this trouble by the nomination of the governor and confirmation by the senate. Here we are electing men for six years. We are not giving them a term of office long enough to enlist what might be called the best interests of the community to control political conventions for nominating them; but they are elected for six years, and will be nominated at the tail end of those tickets, which are called to nominate state officers, and you will in my judgment get a very poor judiciary. Again, this provision requires they shall not all be of

the same political party. I regard that as a very serious disadvantage. You must remember that when we get in as a state we will not have the same system of appeals we have now. Now, we can go to the supreme court of the United States; but when we go in as a state we will only have a very small number of cases that can go to the supreme court of the United States. Your court of last resort will be here in all sorts of criminal cases and in all kinds of civil cases, except the small number of cases which will arise under the constitution and laws of the United States. The advantages of this system of appointment, nomination by the governor and confirmation by the senate, are so manifest to my mind, that it seems to me there ought not to be any substantial difference of opinion on it.

Mr. MAYHEW. You cannot appeal a criminal case in this territory to the United States court can you?

Mr. CLAGGETT. No, not this one, you can in some of them.

Mr. MAYHEW. Only one, and that is Utah.

Mr. CLAGGETT. But here, no matter what is the nature of the controversy, civil actions of all kinds between citizens of the territory, appeal lies directly from the judgment of the supreme court of the territory to the supreme court of the United States. And when you are admitted into the Union as a state you cannot do it. It is only in this limited number of cases provided for in the federal constitution, where one of the parties litigant is a citizen of some other state, where you can go to the supreme court of the United States, and then only where the amount in controversy is not less than $2,000; and also in cases involving construction of the laws of the United States, and several other matters not necessary to refer to here. Every lawyer knows our supreme court will have a great deal more power, and be the court of last resort in an infinitely larger number of cases, when we get to be a state than it is as we have it now as a territory; and for that reason, we ought to be very careful in a matter

of this importance. The only question is, how are we going to get the best supreme court; and I can say that the history of the country *does show* that the decadence in the character of our supreme courts began with the substitution of the electoral for the appointive system; even in the old settled and established states, where they have immense interests at stake, and where the great mass of the people take an interest in politics. How will it work here in the little new state springing up all at once, where the men are elected for only six years? I undertake to say you will find them made the football of every nominating convention, and being put at the tail end of the ticket, just as members of the legislature are, after what are called "the political offices" have been provided for by nomination. Compare the federal judiciary with the state judiciary; take the august tribunal of the supreme court of the United States, and take all your district judges and size them up with these state judges, and see what the difference is. It lies in the system of appointment over the system of election. And it furnishes a commentary and test by which we can determine this question upon its merits without any trouble whatever. And yet, in every one of these states in which these federal judges exercised their jurisdiction, there were members of the bar of a character as high and of learning as great as any you will find in the federal judiciary. And why do you not get them upon our benches as a rule? Simply because they are required to be elected by the people, and the whole question of their nomination and election is controlled by the interests of party conventions, and the haphazard result of an election.

Mr. MORGAN. I am decidedly in favor of the section that is in this bill. I think the judges of every state ought to be elected by the people. So far from our taking it out of politics to put it in the hands of a governor to nominate and the senate to confirm, we put it into politics; and there is a clause in this Section 7 which compels the governor to place politics in the

matter in such disregard that all three judges shall not be of the same political party. Then it requires him to appoint at least two judges of one political party and one of them of another. Mr. President, I deny the statement that our judiciary at the present time is not as good as it ever was in this or any other country. I believe the courts are as pure today, and presided over by as able men in this country as the courts have ever been in any country, or as they have ever been in this country. I deny the further statement that the judges of the supreme courts of the states are inferior to the judges of the federal courts of the United States. It has been but a little time since a distinguished man was appointed judge of the supreme court of the United States. I have nothing to say with reference to the qualifications of this gentleman, because I know nothing about his qualifications personally. We know that judges who are appointed to this distinguished position are usually selected on account of their great learning and judicial ability; but of this gentleman it was said that no man, not even his worst enemy, had ever accused him of being a lawyer at any time in his career; and certainly we have never heard of his abilities being eminent in any court in this country. However that may be, we trust he will make an excellent judge, and as good as the other judges who are upon the bench. One reason why those judges have distinguished themselves upon the bench is the fact that they are appointed for life, they hold their term of office for life, which I believe is a good provision generally, although if we get a poor judge we would like to get rid of him as soon as possible. I lived in the state of Illinois thirty-five years, and we elected our judges by the people, the judges of the supreme court, for six years, under precisely the same system that we propose to adopt here; and it worked well. I believe the judiciary of that state will compare favorably with the judiciary of any state in the Union. They are inveighing against the elective system. When was it discovered, let me ask, gentlemen

of the convention, that the elective system was not the best system that was ever invented for the selection of officers of the judiciary of the government, the state and the United States? When was it discovered, I say, that the elective system was bad? Under the original system as it was in England many years ago, everybody was appointed by the crown, and they were the servants of the crown; and in order to get rid of this tyranny and despotism the system of election was invented and was adopted. And we have been coming nearer and nearer universal suffrage, both in England and in this country, as the time goes by, and the nearer we get to universal suffrage, in my opinion, the better officers we shall get from the highest to the lowest in this country. And I am in favor of the election of the judges by the people.

Mr. SWEET. I desire to say one word with reference to this matter, because it is a question in which I am very deeply interested. I think instead of the judiciary becoming a football in the convention, as suggested by Judge Claggett, that in this state, if we are admitted as a state and the two political parties are contending for supremacy in the state, the supreme bench of the state, being the most important of the positions in the state, each political party will strive and struggle to present their very best men to the people for those positions. And my understanding is that where political parties are struggling for supremacy in the state, they universally select their best men for the judgeship, with a view of having men of character and ability to fill those positions to assist in pulling the rest of the ticket through; and I do not think, as a matter of political power, that any party would select for the supreme court of the state, men who could be used, or make it possible to use offices of that character as footballs in a political convention. But there is another reason why I believe in electing the judges by the people. And if, sir, it be true, that the people are not competent to select their judges; if it be true that the people are

not competent to judge of the character and fitness of those candidates; if it be true that they are not qualified to determine what is political jobbery and trickery, and place upon the bench men of the best character and ability, then the whole theory is, in itself, an utter failure. If the people are not competent to do this, then they are not competent to elect other men.

There is still another reason why I am in favor of electing the judges by the people, and that, sir, is because the people themselves desire to do so. I have not seen any expression on the part of the people that they desired to surrender this great power. It is one of their most important rights, and I believe if they could speak today, as with one voice, they would absolutely demand of this convention the right to select their own judges. They have suffered during the last three years from the very heavy hand of judicial neglect. If there has been any subject more than another upon which the people have commented, and which today inspires them in their anxiety to work for statehood, it is that they may have the right at least to select their own judges and control their own courts. They have suffered from neglect in this respct, and they desire relief, and desire to act for themselves, and not by proxy.

There is another thing, Mr. President, which will bear me out in saying, as Judge Morgan remarked, that the election of all officers by the people is not of a sentimental character. The president was first elected by the house of representatives. He is now elected by the states, but not quite by the direct suffrage of the people. That will be the next step, and it cannot come any too soon for the people, I assure you; they now demand the right to elect the president by direct ballot, and they demand the right to elect senators by direct ballot, and they demand the right to elect their chief justices and supreme judges by direct ballot; in fact, they claim the right to elect every officer that governs them by themselves; and that is a right they are going

sooner or later to have for themselves, from president to constable.

Mr. HEYBURN. Mr. President, there is another fact. We have taken great pains in our Bill of Rights to provide that the government of our state shall be divided into three separate and distinct branches: Executive, Legislative, and Judiciary; and to declare that they shall be separate, and not depend one upon another. Now, is it right, is it reasonable, to provide that they shall be separate, and not one to depend upon another, and to provide that one of these branches shall select the other? Is it not merging those two branches into one, the judicial and the executive, and allowing the executive to select the judicial? Why make the judicial branch of the government the creature of the other branch of the government? Then leave by your constitution each of these three distinct and separate branches of the government to stand alone, each one of them to guard against infringement by the other upon the rights of the people, dividing your government into three distinct branches, in order that each may be independent of the other. If you allow one branch to create another, then those two branches are one and the same thing. A judge that sits on the bench should not owe his important position to another branch of the government, or to any officer the performance of whose duties he may, under certain circumstances, be called upon to criticise. Their powers should be kept separate and distinct, and not one allowed to infringe upon another. And you can only secure that by not allowing one to create the other, because the creator will be the master of the created; and the creator should be the people in this case; the people should be the master of the created.

Mr. CLAGGETT. Mr. President——

Mr. SHOUP.

Mr. CLAGGETT. I will yield to the gentleman from Custer.

Mr. SHOUP. Mr. President, I rise with a great deal of diffidence to say anything on this question,

for it appears to be a question that has been left so far entirely to lawyers. I am not a laywer, and perhaps it will be considered out of place for me to say anything on this question. But I wish to say a word or two. My principal objection to Section 7 is that the judges shall be of different political parties. That means a minority representation. Now, I am opposed to minority representation. I believe it to be a vicious system. If a judge represents a minority, and it may be a very small minority, he does not represent the people of this territory, or a majority of the people; he represents a small faction. And if politics influences him in any way whatever, it is going to be for that very small minority. It practically ties him up. He is expected to do something for that minority as a judge, if he is elected upon a political issue. It brings politics into the court instead of keeping politics out of court. That is my principal objection to Section 7. I believe the judges should be elected.

Mr. CLAGGETT. Mr. Chairman, I simply want to add just a word to two to what has been said by me heretofore. The principle, so far as the suggestion made by the gentleman from Custer is concerned,—this question about having the judges of different political parties, cuts no figure here. We are discussing the question of the appointive as against the elective system, and if the substitute is adopted, those words "of the same political party" can be struck out after its adoption. But here is where the trouble comes in with regard to the suggestion made by my friend here, that it will destroy the co-ordinate branches of the government. I will ask you whether the government of the United States does not have three separate and distinct branches of government; the legislative, executive and judiciary; and there the president nominates and the senate confirms the judges of the supreme court and all other courts provided for by the laws of the United States. There is nothing in that. The only question is, how are we going to get the best supreme courts. That

is the only question before this committee. If the judges are nominated by the governor and confirmed by the senate, there will be no such thing as shoving the responsibility off upon the uncertain and indefinite electoral system of the country. The governor will come into the light of day; every interest in this state will hold him directly responsible for the proper exercise of his powers. The senate, which will also be a small and elected body, will be the point upon which will be focused the eyes and attention of the entire people, and I say that no governor and no senate will dare to violate the expressed will of the people in the matter of giving them the very best judiciary team, so to speak, that can be furnished throughout the limits of the state. I deny the proposition that the people care anything about the question of appointment or election. The only thing the people of this state will care about is to get the best judges; and I undertake to say that if you were to go from one office to another of every one of the great corporations existing right here in this territory today, and ask the opinion of the men who manage those concerns, that they would, without one single exception, all vote in favor of the electoral system. And why? Simply because they can control and manipulate in the background, when the public attention is not directed to them, the nominations of these various conventions, and nobody will ever know they are controlling all that until after the election and they have taken their seat upon the bench; and then you will begin to see, by running back for a period of a year or two years, where the cat was that was in the meal-bag at the time of the nomination. But whenever it comes down to the governor, he has got to act openly, in the light of day, and then whatever he does he has got to do in advance of the senate acting; that is by confirmation; and if he makes a bad appointment in any way, shape or form you will hear in time from the entire press of the territory, you will hear in time such a remonstrance against the nomination by the senate that the senate will not con-

firm in case an improper man is named for that position. I say it is in your supreme court that the poor men of this country have got to look for their protection and security. It is upon the proper administration of justice that depends the prosperity of everything; and we all know, as a matter of experience, that when it comes down to this question of the nomination of officers, and particularly of judicial officers, that the attention of the people is not directed particularly to that matter, that these other influences to which I have referred do come in and frequently influence and control and pull the wires of the convention, and the people find out to their cost what it means a year or two after.

Mr. SWEET. I think Judge Claggett's speech has demonstrated this proposition, that after all, sir, it is the people themselves upon whom we must rely. If these corporations, which the gentleman seems to fear so much, can walk into a convention and dictate the nomination of a judge, then they can walk into the office of the governor and dictate the nomination there. If you cannot rely upon the intelligence and virtue of the people to take care of these questions, then the thing is an absolute failure, because if they can dictate the nomination of a judge in the convention, they can dictate the nomination not only to the governor but to the whole senate and control it. The fact is, that the people will control this matter from justice to constable. It is a matter of power, and if they are not safe in selecting the judges, then they are not safe in selecting the governor who appoints the judges. I think it is a question that answers itself. It is a fact, I presume within the knowledge of perhaps two-thirds of this convention, because it was a little early for men of my age—but it is a well-known fact that the supreme court of the United States has been packed two or three times within the last thirty years for the purpose of carrying certain questions. And if the supreme court of the United States is subject to being packed, what have we to hope for from a state governor?

Mr. REID. Mr. Chairman, in the committee the vote upon neither one of these propositions proved to be decisive. I certainly would oppose the appointment of judges by the governor, especially since we have adopted the number of representatives and senators, and the way they are going to be apportioned. The way the matter now stands, the county I have the honor to represent will not have any voice in the confirmation of the supreme court judges at all. The convention refused to give the county a senator in this select body the gentleman talks about; the smaller counties will be left out of that select body, and the governor, run by his political party, will make his appointments, and the state gerrymandered so that a few large counties control his appointments, and those of us who happen to be from little counties won't have any voice in it at all. That is the way I look at it. I am not in favor of electing the judges by the legislature, and for this reason; we have allowed every county to have a representative, and for the further reason, I have lived under both systems. In the state of North Carolina, when they elected the judges by the people, we had a better set of judges—I mean, by the legislature—than we had when they were elected by the people; not because the people were not capable of electing the judges, but the people would never give it a thought. I will illustrate it. The hardworking, diligent lawyers, who do not take any part in politics, who sit in their offices and attend to their profession, attend closely to their business, will not go out and do the amount of rustling, if I may use that expression, necessary to get a nomination; and the consequence is that the politicians of the profession secure those nominations and are put upon the bench, and generally gentlemen who devote much of their time to politics in the law have come to neglect their law and are not as capable and able men as those who devote their entire time to the profession. Gentlemen of the profession know that. The law is a jealous mistress. A man cannot divide his time up among other things.

Politicians of the profession have never been known as the best lawyers of the profession. But I shall vote to elect the judges by the people rather than let the governor appoint them. The governor will always make his appointments, no matter how pure he is, either of his personal or party friends, or at the dictation of party friends; and he ought to do it. The president does it and he is criticised, and the nominations criticised when they are sent to the senate; and as the gentleman remarked, the supreme court of the United States has been packed to make rulings; but thank the Lord, they are getting back to the constitution now, and no matter who appoints them, whether democratic or republican. And the gentleman speaks of the federal judiciary—

Mr. BEATTY. (Interrupting) Do you say the governor will always appoint his political friends? I will ask you if the senate is not a check on his political appointments, to keep him within reasonable limits?

Mr. REID. I think not. If I was a member of the senate and of different politics from the governor, and the governor sent in a republican nomination, if he was all right, I would confirm him regardless of politics. So it would be a partisan nomination at the last. The gentleman says we can strike that part out if we adopt it. I think that was put in as sugar coating to make us take the pill. I don't believe in allowing the governor to appoint and the senate to confirm. How does the legislature come in under our system? Here every county has one member of the house. But of the two methods proposed I believe in making the people rather than the governor to appoint and this select body to confirm.

Mr. AINSLIE. Mr. President, I did not expect to say a word on this matter, and won't say more than about half a dozen. In the Judiciary committee I fought all the time for the election of judges by the people. I think the people are the proper ones to fill all the offices, even the postmaster. It was seriously contemplated in

congress some years ago by members of both sides, democrats and republicans, that the people ought to elect the postmasters throughout the United States. Now, as the people are the source of all power, they elect the governor. As the gentleman from Alturas says, talk about nominating conventions being packed by politicians, who will elect the judges! Well, they elect the governor in the same way, and the members of your state senate, and they will be just as much influenced by the political fortunes or ambitions of the individual to appoint him and confirm him, as a lot of politicians in the nominating convention. I do not see any difference except that when the people elect directly, they have a voice, each individual in the state, in the selection of the men who occupy those positions. When you appoint by the governor and confirm by the senate you do it by proxy through some irresponsible parties; nominations are sent in that have never been presented to the people for them to express an opinion as to whether they are fit persons to occupy those offices or not. And I believe in referring it right directly to the people and letting them do it directly rather than indirectly.

(" Question, question.")

SUBSTITUTE FOR SECTION 6 REJECTED.

Mr. HEYBURN. I call for the yeas and nays.

Mr. CLAGGETT. Is the substitute liable to be amended, or capable of being amended, at this stage?

Mr. MAYHEW. Not until it is adopted.

Mr. CLAGGETT. I am in favor of striking those words "two of whom shall be of the same political party" out. It was not put in as a sugar-coated business at all.

The question was put by the chair upon the adoption of the substitute for Section 6.

Roll call.

Ayes: Beatty, Hampton, Harris, Hasbrouck, Maxey, Pinkham, Mr. President—7.

Nays: Ainslie, Allen, Anderson, Armstrong, Batten, Bevan,

Campbell, Chaney, Clark, Coston, Crutcher, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pierce, Pyeatt, Reid, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson—36.

And the substitute was lost.

The CHAIR. The question now recurs upon the adoption of Section 6.

Mr. MAYHEW. I move the adoption of Section 6.

Mr. CLAGGETT. Mr. Chairman, I offer an amendment, to strike out the words in the third line of Section 6, "the electors of the state at large as hereinafter provided," and insert the words "the legislature in joint convention assembled." (Seconded.)

Mr. Chairman, I simply want to say, in reply to the suggestions that were made here in regard to the nominating conventions, that if they could control the election, and would abuse the power of electing the judges, so they would also the governor, and by indirection we would have the same thing. I deny that proposition. If the other propositions had been adopted, the people then would have had more than one opportunity of calling a check upon the selection of an improper official. They have an opportunity of calling a check in the first place by the election itself. Then they have the opportunity of calling a check after the appointment is made by the governor; and another one of calling a check on the confirmation by the senate, which would be three checks. If we adopt the amendment, which is proposed here, to elect judges by joint convention of the legislature, it will then have two checks as against one, which would only exist in case the judges are elected directly by the people. In other words, we would have the check of the nominations being passed upon by the electoral body at large, and then we would have the second check in the legislature. We would have the first check in the election of the members of the legislature, and in the other place, we would have a second check in the election by the legislature, and that is the

reason why when you get to work on these several ways by indirection there is always a series of stages at any one of which the people have an opportunity to criticise the action of the appointing power or the fitness of the nominee.

Mr. SWEET. I don't think there is any question upon which the people are today so absolutely agreed as this, that the election of United States senators by the legislature is the most stupendous humbug in our politics, and the people of all parties and of all sections are demanding that those men in the United States senate, nine out of ten of whom stay there by virtue of their bank accounts, with no other qualifications, be removed, and that the election of the senators be referred to the people themselves. And instead of our proceeding in the same direction, we are proposing to proceed not only to elect senators by the legislature, which we are obliged to do, but also add to it the election of judges. It strikes me as an astounding proposition to be presented to ordinary men who have been taking everything away from the legislature, for fear that they are not competent and capable of doing their work.

("Question, question.")

The amendment was put by the chair. Vote and lost.

The CHAIR. The question is now upon the adoption of the section. It is moved and seconded that Section 6 be adopted.

Roll call.

Ayes: Ainslie, Allen, Anderson, Armstrong, Batten, Beatty, Bevan, Campbell, Chaney, Clark, Coston, Crutcher, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Pyeatt, Reid, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—40.

Nays: Hampton, Moss, Sinnott—3.

And the section was adopted.

PROPOSED SECTION 7 STRICKEN OUT.

Mr. MORGAN. I think perhaps it is necessary now

to strike out Section 7, and I move that it be stricken out. (Carried.)

Sections 7, 8, 9, 10 and 11 Adopted.

Sections now numbered 7, 8, 9, 10 and 11 are separately read, voted upon and adopted, without debate or amendment.

Section 12.

Section 13 (12) read, and it is moved and seconded that it be adopted.

Mr. REID. I desire to offer this amendment to that section at the end of Section 13 (12): "The legislature may provide for the rotation of judges." It does not require them to rotate, but suppose now, that hereafter we find that an abuse grows up of having a judge to reside too long in some districts and he becomes familiar with cases and litigation, and then the legislature may provide that he may rotate. Rotate them around, having a new judge to come into the district. It does not require them to do that now, but will lodge with the legislature the power to require it, and to provide for a system of rotation of judges.

Mr. MAYHEW. Do I understand the gentleman to say that the judges will become too familiar with the litigation?

Mr. REID. Take a man living in his district, and going around, new cases coming up, where there is a good deal of talk and local prejudices, and everything of that sort, it might be desirable. It is now provided that the judges shall be elected by the people and reside each in his district. Suppose he is elected from four to six years and he travels the same districts around. Necessarily in social conversation and also in going out and among the people he becomes acquainted with a great many cases before they will be tried by him. Now, if you rotate and take a judge from one district to another, you get a man who is an entirely new man and not acquainted with the litigants, knowing nothing

of local prejudices, and you might get a more impartial hearing in that way.

Mr. HEYBURN. It seems to me that would defeat the very object of allowing the people to elect their own judges. They select a judge because they want him, and this gives the legislature the power to say that some other man shall be their judge. A judge is compelled to reside in the district. By implication he is compelled to set up a home and go to the necessary expense. Then the legislature might come in and say to him "you shall abandon your home and go off into this other district, and hold court there." Then again, the people of a district where there is no mining litigation would elect a man without reference to his ability in that line, and the people in a mining camp would elect a judge without reference to his ability in ordinary litigation, commercial law, etc., and the result would be that the legislature might say to the man that we have selected in our district because of his eminent fitness to fulfil the duties of his office where there is mining litigation, that he should be taken away from us because he had become too familiar with the performance of his duties, and be sent to some agricultural county where he was not familiar with the peculiar conditions that existed there; and say to the judge who was elected by an agricultural or cattle-raising community because of his peculiar fitness to perform the duties of his office in that district, that he should come up into our mining district and undertake to perform the duties, for which he has not the slightest qualification. It seems to me you would be defeating the will of the people when you say that they have not selected the wisest judge, and you will therefore foist upon them another judge whom they have not elected. I hope the amendment will not prevail.

Mr. REID. Just one word in reply. When you come to explain more fully how this will work it will not appear so objectionable. When you come to elect a judge in the first district; or in the second, for instance,

taking Nez Perce, and Latah and Idaho counties. They are now, as the bill provides, in the second district. When we elect a man for judge we are going to elect a man in full practice, who has cases all over that district, who is acquainted with the litigants and has been acquainted with them for years, knows the people thoroughly, has his enemies and his friends, and he will have more after the election is over when it is found out who favored him and who did not, and the newspapers come to make the usual amount of fuss. Now, there is not a single district in this new state, but what will have mining litigation, irrigation litigation and agricultural litigation. A man to be a successful judge in any one of the districts has got to be a master of all those different kinds of litigation. Commencing up north it is largely mining it is true; but there will be the water question and the agricultural question; he will meet those questions up there in Kootenai county, and also in some parts of Shoshone county. Go down into our county, there are mining interests, and in the eastern part of Latah county they are opening up large mines. Idaho county is one of the richest and largest in this state in mineral products, and will have mining interests there. So a judge to be qualified for his place has got to understand all those subjects. But it does not require that the legislature shall do it now, but after awhile, when we take a lawyer who has had his own cases there and everything of that sort, if we want to rotate him, we lodge this power with the legislature so that it can be done. I don't think there is any necessity for it at present, but it might arise. A judge residing so long in a district and becoming familiar with everything, would know his case before he went on the bench; and like every other man he would naturally get his prejudices, and frequently I know it is a fact, because sometimes, where a judge has become familiar with the cases, by agreement, we continue our case, and wait for some judge to come who does not know anything about them.

Mr. MORGAN. Mr. President, I am very much opposed to the amendment offered by the gentleman from Nez Perce, for some of the reasons already stated upon this floor; and among the most important reasons, in my opinion, is the fact that it is an outrage upon the judge himself. You provide in this constitution, or you propose to provide, that he shall have only $3,000 a year. He cannot build up a home in any place in this country; you make him a nomad; he is worse than the itinerant Methodist preacher, because the preacher can certainly remain the whole of one year in a place; but you put it entirely within the power of the legislature to send this judge into another district at any time they see fit, or rather you put it in the power of the governor, for the legislature would undoubtedly, if they passed any law on the subject, put it under the direction of the governor that he might be rotated. The gentleman speaks of the judges getting prejudiced. If he gets prejudiced by reason of living in one district, he ought not to be appointed on the bench, and the best rotation for him is to rotate him out of office. He will only hold it four years anyway. If that is the kind of judge he is he ought to be sent into private life. But by this amendment you prevent a judge from building himself a home anywhere. If he does he must live away from his family, or as the gentleman from Shoshone says, abandon his home. I think it an outrage upon the judges. And the reason given by the gentleman from Shoshone, that we elect a judge on account of his particular fitness for the litigation that arises in his district, is one of the strongest reasons why the people should be able to retain him in that district the whole time that he shall continue in office.

Mr. VINEYARD. I shall have to oppose the amendment offered by my friend Reid from Nez Perce, for the very reason stated by the gentleman from Shoshone. These several districts should select their own judges; they are district offices and are elected by districts. And to engraft in this article that the legislature shall have

power to enact a law to rotate these judges in office means to rotate them out of that district, or to put them into some other district, other than the district for which they were elected by the people of the several districts. The operation of such an act as that, Mr. President, would be to defeat the very object of the people when they are electing these judges from these various districts. There is provided in this section a clause that will cure any difficulty the gentleman seeks to remedy in this, that on the application of either of the judges he may call one of the other judges to the district to hold a term of court in his district, if he is unable to preside from any cause. This article provides that the governor may call one of the other judges to carry on the business if the presiding judge cannot act. That in case a judge may become so intimate and familiar with the matter of litigation in his district that thereby he may be incapacitated and unfit from some local or other reason from trying the several causes or the several subject matters that may come up in his district, the power is given to substitute another judge. And it is another reason why no acts should be passed to rotate these judges out of their districts. It is the very reason why the judges should remain where they are elected, because of their peculiar fitness to try the character of litigation that may arise in their respective districts.

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

The vote was taken and the amendment lost.

Mr. Claggett in the chair.

Mr. McCONNELL. Mr. President, I desire to offer an amendment to the section under consideration.

SECTION 11.

SECRETARY reads: Amend line 1, Section 12 (11), by striking out the word "five" and inserting the word "three."

Mr. McCONNELL. I move its adoption.

Mr. AINSLIE. I rise to a point of order. That has been adopted and passed.

The CHAIR. The chair will sustain the point of order.

Mr. McCONNELL. I move to reconsider the section, if I meet with a second. (Seconded.)

Mr. McCONNELL. Mr. Chairman, I understood that the amendment was to this section. I had lost sight of the fact that it had been adopted. If the record shows that it had been adopted I had lost sight of it. My object is to have this constitution go before the people in such shape that there will not be too many explanations to be made with regard to the attorneys on this floor. I do it out of consideration for the attorneys purely. Because the number of judges provided in this article is so large and the expense so great, which the people will have to bear, that I am satisfied we will have many explanations to make before we can get the people to vote for this constitution, on this very one question; and I would like to bring it up and discuss it. Of course, if the attorneys can make us see that it is to the interest of the people to have eight judges in this territory where we now have but three, I am willing to acquiesce in it, but I have not heard any argument in support of it. It has been quietly sent through, because the gentlemen on this committee were composed of the attorneys of the convention, and men on the floor like myself have a delicacy about opposing these legal gentlemen, who are trained on the rostrum. I hope the motion to reconsider will prevail.

Mr. BEATTY. I have no objection to reconsidering this section, but I raise the point of order, that we have a motion before the convention now, that should be disposed of, and the motion of the gentleman is not germane to it, which is the adoption of Section 13 (12). Let us get rid of that first.

Mr. McCONNELL. I will withdraw my motion to reconsider.

The CHAIR. The motion to reconsider is temporarily withdrawn. The question is upon the adoption of Section 13 (12). (Carried.)

Mr. McCONNELL. I now renew my motion to reconsider the vote by which Section 12 (11) was adopted. (Seconded.)

Put to vote and carried.

Mr. McCONNELL. I now offer an amendment.

SECRETARY reads: Amend line 1, Section 12 (11), by striking out the word "five" and insert the word "three."

Mr. McCONNELL. I hope this amendment will be adopted in the interest of economy. For the present, at least, I believe this article leaves it within the power of the legislature to increase the number of judges hereafter as the wants and needs of our country grow larger; they can add to the number of judges and increase the number of judicial districts. At the present time the judges manage in a kind of way to keep the work done, and under the provisions of the law now, they are far more heavily burdened than they will be if we adopt this constitution and become a state, in several particulars: first, they will not be obliged to sit as supreme judges; and secondly, there will be no rehearing of trials of cases on account of hung juries, or at least but very few. A great many cases now tried in our courts, as known to all attorneys now present, have to be tried over again, which gives additional work to the judges; but under the law which we have enacted, requiring only a certain majority of the jury to bring in a verdict, the cases to be reheard will be few in number. Consequently I think that the relief coming to the district judges in the present number of districts will be amply sufficient to enable them to perform their duties in an acceptable manner.

Mr. HEYBURN. What is the condition of the business of the district court in the county from which the gentleman comes, as to being behind or not?

Mr. McCONNELL. Well, we are now laboring

under the difficulty of having a judge who is appointed; and he has been sick and unable to perform his duties. But we hope to elect an able bodied man when we become a state.

Mr. HEYBURN. I will ask the gentleman if the judge did not hold his last term of court, and the one before, the full time appointed by law?

Mr. McCONNELL. That may be.

Mr. HEYBURN. I will ask the gentleman what is the condition of the court calendar in Shoshone county?

Mr. McCONNELL. I don't yield. I think the arguments I produce will be sustained by the gentlemen on the floor, who have to pay the taxes and don't have to go into these courts as attorneys, and will probably never be judges. You will make by this a saving, as will be seen, of two judges, at a salary of $3,000 as proposed; that will save on the judges alone $6,000. We will save two district attorneys at the proposed salary of $3,000 a year, or $6,000; we will also save two clerks of the district court—

Mr. WILSON. We don't have any district court clerks.

Mr. McCONNELL. Well, we will save $12,000 a year. And I think the judges will have plenty of time to do the work, and I believe they can do it. I certainly don't think it is a good plan now to increase our number of judges by making a supreme court and increasing the number of district judges by two. It is too much. If I had been on the floor I would have opposed the supreme judge section entirely, and allowed five judges and had three district judges to act as supreme judges. But as that section has been adopted without objection, I seriously object now to having five district judges.

Mr. HEYBURN. Mr. President, my object in asking questions of the gentleman was to see whether he knew anything about the facts relating to this matter, or whether he was simply going on buncombe. It is easy enough to get up on the floor and claim to be acting in the interest of economy. We are here to form an

intelligent state government, and give the people a government sufficient for their needs, and to do it at as reasonable expense as we can, and if we cannot afford to do it, then we are not fit for statehood; that is all. If we cannot afford to adopt a government on a fair basis, then we had better stay in a condition in which the United States government or some other foreign country will pay our expenses. I asked the gentleman whether or not the business of his own county was conducted by the courts as prescribed by law as to the length of time, etc. He did not know. Well, I do. There is not a sufficient provision now in the county from which the gentleman comes to dispose of the business of its courts. There is not sufficient provision in the county from which I come to dispose of the business of the court; and it has been growing and growing until every calendar is larger than the one before, of undisposed business, and it will remain that way. Who is interested in this? The attorneys? The people who bring these suits are the ones interested; it is their interests, which are being litigated, not the attorneys' interests. The attorneys are not the parties interested in having those cases disposed of; it does not make any difference to them whether they drag their slow lengths along through the years or not. It is for the people who bring them. The attorneys do not go out on the street and compel men to come into court. The people come in voluntarily, it is their rights which are involved. A man comes in and says, "A certain party is claiming something, and I want you to go into court and protect my rights." And the attorney goes in if he is employed to do it. Then who is interested if these courts cannot dispose of the business before them? The litigants. And the litigants come from the body of the people. I don't suppose there are half a dozen gentlemen on this floor that are not now or that have not been recently engaged in litigation, directly or indirectly. It is of no interest to the attorneys whether there are five judges or a dozen judges, except in the interest of their

clients. They are interested in having enough courts to dispose of the business. It is one of the strongest arguments in favor of statehood and against territorial government that we have no adequate judiciary system; that the courts are provided by the government under the territorial law and are insufficient to dispose of the business that naturally comes before them—that comes from the people, not from the attorneys. We have three judges now. There isn't a district in this territory that is not months and months behind in its business. You will, it is true, relieve these judges of some of their business by relieving them from sitting on the supreme court about six weeks in the winter time. The litigation in this territory is increasing very rapidly, as we are in population and wealth and importance, and it will continue to increase. And it is wise on our part to provide a sufficient government for all of the interests, both judicial, executive and legislative, and every other branch of it. You should cut these judges down to three, the gentleman says, because it will save $12,000 in the salaries—$6,000 in their salaries and $6,000 for salaries of district attorneys. It will not do anything of the kind. It is absolutely impossible to get three judges to perform the judicial duties of this territory for any such salary. They are receiving more than that now. And you propose with the growing interests and growing litigation of this territory, or of the state, to impose additional duties upon those men, and cut their salaries down, when one of the reasons now why we do not have a more satisfactory court is because the salaries are insufficient and always have been. And you will not get district attorneys, if you defeat this measure and divide this state into three districts; you will find nobody who will accept the office, unless he is a fool, for $3,000 a year, when now you are paying three or four times that much.

Mr. McCONNELL. It devolves on me to make a little explanation in regard to the condition of business in the courts of our county. I can only speak for our

county. It is a notorious fact that the reason why the business in our county is behind is on account of the dilatory proceedings of the attorneys in not attending upon court. Our calendar might have been cleared and I think it was cleared up at the last session of our court in our county. There are some cases where the juries fail to agree that have got to be tried over again; there wasn't time to do that, and under the provision of the law as enacted here there will be no more of those cases. It is a notorious fact that attorneys are there from day to day, and the judges call up these cases, and they are not ready, they ask for another day for this or that purpose; but if there was some provision of the law to require attorneys to come into court with their cases when they are called, this question of delay would be done away with, and the witnesses could go home, and the juries attend to their business, and a large portion of the expense be curtailed. It has been suggested to me that four judges would be better than three, and I am willing to accept that amendment to my amendment. But I do think five is out of reason at the present time.

Mr. CLAGGETT. I offer the amendment to the amendment to strike out "three" and insert "four."

Mr. WILSON. I desire to say a word or two on the amendment of the gentleman from Latah. If his amendment is adopted you will have seven counties in this district, two terms in each county, fourteen terms in this judicial district. If the other section providing for district attorneys shall be adopted, one judge and one district attorney must do the business of seven counties, two terms of court a year in each. I say, as an attorney, that I believe everybody will admit it is a physical impossibility for that to be done. It is not done now, and never has been done in Idaho territory. In this county the courts are behind; in Alturas county they are behind, and so far as I know they are behind in every county in this district. If the provision for district attorneys for each district is adopted, which of course must be considered in connection with this amendment

in order to make it intelligible, then there is a saving of more than enough to pay the additional salaries of five district judges; over $15,000, more than enough. There is a question for us to consider. I say if we provide for five district judges and five district attorneys for the state, and abolish the office of district attorney for each county, which I am willing to do, then we will save $15,000 in the plan as now in force in this territory; and that is something for you to consider. If you do not do that, and if you provide for four judges or three district judges—

Mr. REID. I propose when I get the floor to show that the present judiciary system of this territory now costs the territory $59,970, and if they adopt everything proposed by the Judiciary committee it will only cost $39,000; nearly $20,000 difference.

Mr. WILSON. That is $5,000 more than I stated.

Mr. McCONNELL. How does the gentleman know what the expenses are? If you have a district attorney in each district court it will be necessary to have deputies, or make some provision for a man to act in his place when he is absent.

Mr. REID. That is paid by the office.

Mr. McCONNELL. There will be prisoners brought in that will have to have an examination.

Mr. REID. Expenses for that are paid by the office.

Mr. McCONNELL. That is an expense.

Mr. REID. It does not come out of the taxpayers.

Mr. WILSON. If there is one district attorney for each judicial district (and five are provided for), then one district attorney can discharge the duties of his district, because there will not be more than four counties in any one district; and it is possible, in my opinion, for him to discharge the duties of that office. But if you increase the number of counties in the districts it will not be possible for him to discharge the duties of the office. Now, if this plan is adopted, as shown by Mr. Reid (and those are not speculative figures, but actual figures taken from the records in the different

counties of the territory), we will save not $15,000, but $20,000 in this system. But now, in the interest of economy I insist we adopt this system. If not, I insist that we go back to the old system of one county attorney for each county, and not innovate upon the legislative act in that regard. I am willing that we shall make that innovation, that much, in order that we save $20,000 and give the people of the state a good judiciary system. Those are the facts and figures before you. There is a plan to save $20,000 in our legal system, and I call upon every lawyer upon this floor to bear witness if we cannot make a system to save the state $20,000. The question is which will you do?

Mr. REID. I would like to make a statement with reference to the cost. I don't care to annoy the convention with any political or buncombe talk about this matter; I don't charge that any other gentleman is making it. But I have taken pains to look the matter up, and I would like to make a statement as to the finances of it. The great objection, as intimated by the governor in his proclamation, will be the cost of state government, as compared with territorial government. He properly estimates that we pay now for the expense of the territorial government about $75,000 a year. That is what we taxpayers pay; the United States government pays the balance, which I think all amounts to $103,000. That is in accordance with the report of the comptroller, and it is in accordance with the statement made by the governor in his proclamation, and itemized by him, so there is no theory about it. It is just about $75,000, possibly $73,000 and something. Reports laid on your tables this morning by the committee on Finance, virtually say that our state government will cost a grand total of $140,163. That is, that your state government is going to cost $65,661 more than the territorial government. Now, when you go before the people how will you meet it? Well, we have a system, which, if you will adopt it, includes district attorneys, whereby we will save about $110,000; so if you deduct the increased cost

for state government of $65,000, from the $110,000 (it will be more than that, it will be nearly $120,000, but I will put it at $110,000 in order to be conservative, then you will have nearly $45,000 cheaper government in county and state under state government than you have under the present territorial government. Now, let us see what this judicial system is costing now. We have three judges who get $3,600 each, a total of $10,800. It is true, the national government contributes to its support. We have a prosecuting attorney that prosecutes for the government that costs us about $6,000. That is the limit of his fees, and we will put it at the limit. Then you have district attorneys in each county which costs the round sum of $36,600; and clerks of the courts, which you pay out of your taxes now; so that the present judicial system of this territory costs the people of the United States and of the territory the round sum of $79,970. Now, suppose you adopt this system of three supreme court judges at $9,000, and of five judges at $15,000; five district attorneys at $15,000; that makes a total of $39,000; taking $39,000 from $59,970, you have about $20,000 in favor of the present system. Now, the judiciary will cost the taxpayers more than it does now, because the United States government pays it; but when you foot up the aggregate you will find your county and state expenses will be $40,000 or $50,000 less than the territorial expense is now, if you adopt the two systems proposed. Estimating sheriffs' salaries at $36,000; clerks of the district courts, who are ex-officio auditors, $13,600 (and I have one-half of the counties here, and have averaged them, I could not get them exactly, but have enough to be fairly exact, and have kept on the conservative side); probate judges about $10,000 or $12,000; district attorneys about $36,000; superintendents of public instruction about $9,000, and county assessors about $9,000; making a total of $110,000 to $115,000, which you are going to get rid of in the way of salaries. How are you going to pay them? In fees. That is, the persons having busi-

ness with those offices will pay them, and it won't come out of our taxes. Your county taxes will be lessened, but your state tax increased. My friend makes a strike at lawyers, but I am talking about this as a business proposition, and I wish he would too. He says lawyers don't come into court prepared. Well, I know he does not; he had a case in court, and his lawyers came in and asked for time to amend the pleadings. He was one of those litigants, and I suppose when his attorneys saw his pleadings needed amendment, they must be given time, and so did the man opposed to him require time; both sides wanted time. I have always found that when the clients wanted the cases tried the lawyers are willing to try them. Whenever it is to your interest to try the case your lawyer will try it; when it is not, he wants to continue it. Lawyers are generally ready when their clients are. I know in the north part of the state we need two district courts; Shoshone and Kootenai counties require the attention, as these gentlemen know, of one judge the whole year round. The other three counties will require the attention of another judge, and especially will this be the case, when in the course of time we get into the Union. We are going to have railroads up there, and that will create mining litigation in the western part of Latah county, and the chairman is familiar with the mining resources developed there. In Idaho county, as soon as it begins to get railroad facilities, a great many mines are going to be worked there that are not worked now; and that will give rise to litigation, and it will keep a judge busy traveling those three counties all the year round to hold court and attend to the business there. I don't know how it is in the south; you gentlemen living down here know whether you need it or not.

I do not yield to any man in a desire for economy; I have fought for it all along, not for a record, but because I belived it was right, and in going before the people we can assure them of our purpose to be economical, and at the same time give them all the facilities

for justice that they have a right to expect if they adopt the constitution. Now, is it right? You have got to have a district up there. If you have but three judges and put those five large counties together, you will require a man to do that which is physically impossible for him to do. Is it economy for the taxpayers and the litigants, who have to go to court, to have the calendar so crowded they cannot have their cases heard? Is it economy to the county to pay jurors for that length of time and put off the trials of criminals? I believe a large part of the court's time is consumed in the trial of criminal cases. Cheap justice is generally injustice. I had rather have the state government pay for it than for us to continue this system. What is the prime evil now? It is that you cannot get your cases tried, that justice is not properly administered, and all that sort of thing. I don't mean to charge anybody with corruption or lack of integrity, but there is a defect in our system. Didn't we all express our indignation when the provision was cut from the bill to give us one more justice here? If we needed four then, won't we need five when we enter statehood with these rapidly developing resources? If so, let us have them. If we don't need them, strike that out, and strike out all of this bill pertaining to lawyers, and put in farmers, and put in men who, if they do not, ought to pay taxes, for the lawyer pays as much taxes as anybody else. It is a plain business proposition, like all the other business propositions brought before us. If the courts are crowded, if the administration of justice is delayed; if costs are piled up; if county scrip is issued and counties run in debt and litigants denied the right to have their rights determined, let us inaugurate the machinery that will give ample means to have their controversis determined.

Mr. PARKER. I support the amendment. I think three judges will be enough for this territory. In my own county we have a heavy calendar, but we have had no congestion in court for three years. In Shoshone county my recollection is that the late judge there was

an imbecile, and a condition of that kind in the court is owing to his negligence of the business on the bench. In Oneida county also we saw a state of things that was unusual. I allude to the indictment of a lot of Mormon citizens for perjury. If you do away with your efforts to make criminals out of law-abiding citizens, you can easily reduce the calendars in those counties to such limits that three judges will be enough. I shall vote for the amendment.

Mr. CLAGGETT. I offered the amendment to that amendment that the number of district judges be limited to four instead of five—not *limited,* but reduced from five to four. This matter was up in the Judiciary committee and fully considered, and at the last stage of these proceedings we had agreed upon four judges. I don't know what caused the committee to change its ideas afterwards and raise the number from four to five.

Mr. REID. It was acted on in the committee.

Mr. CLAGGETT. It may be, but I was not present. My reason for advocating this is because I believe four judges can do the work of the territory or of the state under this changed system. I think two judges down here south of the Salmon River range can do the work, and I think it will take two in the north to do the work; for although we have only five counties there, as against thirteen counties down here, those five counties furnish a great deal more litigation that these counties down here. As stated by Mr. Reid, if we can make a saving of $20,000 over the present system, I don't see any reason why we should not increase that saving to $26,000 if we can do it. Bear one thing in mind, that when we get to be a state we are going to have a United States court, in which a very large proportion of the mining litigation will be determined, which will relieve the district courts to that extent. Our district judges will also be relieved from supreme court duty, and that also will enable the district judges to attend to the business in their districts to much better advantage. For that reason I believe four men can do the work. One thing,

however, that ought to be considered about this view of it—it is not a question only of the district judges being able to do the work; it is a question of expense and convenience to the litigants also. We must bear in mind this proposition, that if we save a few dollars to the taxpayers, but increase the expenses very largely to the private litigant, it operates as a tax after all upon the community. To illustrate, suppose we have in north Idaho only one judge. That judge has the power of issuing all writs quo warranto and mandamus, and if he resides two hundred miles away from where the litigation is commenced, the result of it is that whoever had to go to the judge at chambers to get any particular order would be frozen out on account of the expense in reaching the judge in vacation. So that you must have judges enough to have them within reasonable striking distance of the litigants; and for that reason it requires two men in north Idaho. The whole question is, will it require more than two south of the Salmon River range? If it will, then I shall vote against the amendment I have offered myself, and in favor of the five. That is a question about which I have not the necessary information.

Mr. WILSON. I admire the gentleman's theory of economy. Economy is all right for Idaho territory, but does not relieve us down here from the system under which we are suffering now. There are five counties in the north and thirteen in the south. By this report it is required that there be two terms of court in each county in each year. Now, to say that two judges in south Idaho shall attend to thirteen counties and that northern Idaho shall have two judges, is so manifestly unjust that I don't think the convention would adopt it. I would not draw the line on the Salmon River mountains on any issue that comes before the people of Idaho; but we must draw it on this. It is so manifestly unfair and unjust that I did not think anybody in the state of Idaho would consent to four judges, if two go to the north. If we could get half the time of the two judges

in the north there might be some reason for it. The people of north Idaho will be well provided for; the people of south Idaho will be left under the same condition as now, which has caused the people to cry out for statehood louder than anything else that has engaged their attention. It would not relieve the people of south Idaho one bit, and again I say these judges and district attorneys will be paid out of the state treasury. The people in southern Idaho will pay taxes to replenish that depleted treasury according to the assessment on their property. I have no doubt that much more than half of the assessed valuation of property in the territory is south of the Salmon River mountains; and therefore it would be plainly a manifest injustice that the people here should be compelled to pay this expense for a perfect system in north Idaho when they are compelled, notwithstanding the increased taxation, to have an imperfect judiciary system in southern Idaho. It is a fact beyond dispute, and needs no argument—it states itself, that if two judges in northern Idaho are necessary, three are necessary in southern Idaho. We had far better go back to the old system of three judges, and the people will cry out from that ridiculous system quick enough. If you are going to reduce it at all, let us apportion it. But I am not in favor of any reduction at all. I think the gentleman will concede we ought to have no reduction, if the people here cannot get along with two, and I think every man on this floor will bear me out in saying that we canot get along with two.

Mr. CHANEY. I move we take a recess until two o'clock. (Seconded. Carried.)

AFTERNOON SESSION.

The CHAIR. The question before the convention is the consideration of the amendment offered by the gentleman from Latah to Section 12 (11) to strike out the word "five" and insert the word "three."

I beg pardon, gentlemen, there is a special order at this hour.

COMMITTEE REPORT—ENGROSSMENT.

Mr. HASBROUCK. The committee on Engrossment wishes to report.

SECRETARY reads: Mr. President, your committee on Engrossed Articles of the constitution have the honor to report that they have carefully examined the articles in relation to Livestock and Executive Department, and find them correctly engrossed. Hasbrouck, Chairman.

The CHAIR. The question is now upon the final reading of the articles reported by the committee on Engrossment.

Mr. VINEYARD. Is this the hour for its consideration?

The CHAIR. The secretary can inform us.

The SECRETARY. Yes, two o'clock. The article on Executive Department, and the article on Livestock were set for two o'clock.

Mr. HEYBURN. And also the report of the committee on Public Indebtedness, which was laid over this morning.

ARTICLE VIII.— PUBLIC INDEBTEDNESS—ADOPTED.

Mr. BATTEN. The committee on Public Indebtedness reported.

SECTION 1.

SECRETARY reads: Your committee on Public Indebtedness, to which was specially referred for correction Section 1 of the article on Public Indebtedness, beg leave to report the same back and recommend that it be amended as follows: "Amend Section 1 by inserting in the same after the word 'liability' in line 7, the following: "as it falls due; and also for the payment and discharge of the principal of such debt or liability." Batten, Chairman.

The CHAIR. The question was pending this morning on the final reading of this article. It was referred

back temporarily to the committee on Public Indebtedness to make such change as it might suggest.

Moved and seconded that the same be adopted.

Mr. BATTEN. I desire to say that the original draft appeared as the correction now makes it read, and that cures the objection made by the gentleman.

The CHAIR. The amendment will be inserted as adopted, without there is objection. As we are proceeding to read this on special order, I presume the proper thing to do would be to have it read now, and placed upon its final reading. If there is no objection the secretary will read it finally for adoption. The chair finds that this is not the engrossed bill; and the question now is whether we shall refer it back without engrossment, and refer it to the committee on Revision.

Mr. HEYBURN. I move we consider it now as if it were engrossed, and refer it to the committee on Revision. (Seconded. Carried).

Mr. AINSLIE. I move that the rules be suspended and that the article be considered as read, and voted on without further reading at the present time.

The CHAIR. It was read and voted on all through this morning. It is now moved and seconded that the rules be suspended and the article be considered as read. (Carried).

Roll call on adoption of article.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beatty, Bevan, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pinkham, Pyeatt, Reid, Shoup, Sweet, Vineyard, Whitton, Wilson, Mr. President—39.

Nays: None.

The CHAIR. The article is adopted and referred to the committee on Enrollment and Revision for incorporation in the constitution.

ARTICLE IV.— EXECUTIVE DEPARTMENT—ADOPTED.

SECRETARY reads No. 5, the report of the committee on Executive Department.

Mr. AINSLIE. I make the same motion in regard to that; it was read yesterday, Mr. Chairman, and in order to save time I move that the rules be suspended and the further reading of the article be dispensed with, and it be placed on its final passage.

Mr. HEYBURN. I would like to ask whether or not there has been inserted in that bill after the words "of public instruction" the words "commissioner of Labor and Immigration." The convention yesterday determined upon that officer.

The CHAIR. That was in the report of the committee on Labor, and this is the report on Executive Department.

The question was then put by the chair on suspending the rules. (Carried.)

Roll call on motion to adopt the article.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—45.

Nays: None.

And the article was adopted.

ARTICLE XVI.—LIVESTOCK.—ADOPTED.

The SECRETARY. The report of the committee on Livestock is the next one for this hour.

SECTION 1.

Section 1 was read.

Moved and seconded that the report of the committee on Livestock be adopted, and that the article be adopted as read.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pink-

ham, Pyeatt, Reid, Shoup, Sweet, Underwood, Whitton, Vineyard, Wilson, Mr. President—45.

Nays: None.

And the article was adopted.

COMMITTEE WORK.

Mr. HASBROUCK. Mr. President, your committee on Engrossment has not had time to examine the reports fixed for consideration at 3, 3:30 and 4 o'clock P. M., and unless the members composing that committee can withdraw from the convention to consider the same I ask for further time. And I will suggest that further time be granted, for the reason that two members who are associated with me are members of the Judiciary committee, whose report is now being considered, and if the convention will allow, I would ask until tomorrow morning at 9 o'clock to report the three articles I have mentioned: first, State Government, Public Institutions, Buildings and Grounds; Public and Private Corporations; and the report of the committee on Labor.

The CHAIR. Is there any objection to granting leave?

Mr. McCONNELL. Couldn't we grant leave until this evening at eight o'clock

The CHAIR. Is there any objection? If there is no objection leave will be granted.

Mr. CLARK. Mr. President, the committee on Printing have considered the matter of printing, and find that all is in the hands of the printers and will be finished early today. There remains, if we complete our work by Saturday night, the question of accounts; and the printers would like to have their accounts fully approved on Saturday, and the committee ought to have some time to revise it. If it is in order, I would like to move that the remaining committees which have not reported be instructed to report at nine o'clock tomorrow morning. That will then require every minute's time to enable the printers to present them to the con-

vention, and to the committee on Revision. (Seconded.)

Mr. AINSLIE. The committee on Schedule have matters that cannot be reported at that time.

The CHAIR. Does the gentleman except the committee on Schedule?

Mr. CLARK. I think they had better be instructed to bring in their report tomorrow morning if they can.

Mr. SWEET. This motion requires the committee to report, and if they are not ready to report, I suppose they must report that they are not ready.

The question was put by the chair. (Carried.)

Mr. SHOUP. That being the case, I wish to announce that there will be a meeting of the Apportionment committee in the council chamber immediately after adjournment this afternoon.

Mr. BEATTY. Mr. President, as the chair will observe, there is a great deal of work being referred to the committee on Revision and Enrollment, and there is no clerk for that committee. I am not sure that I am right about that but I understand that the work as reported by the committee on Engrossment will have to be rewritten after the committee on Enrollment shall have done their work. I suppose if any change is made in the way of grammatical errors, it will have to be reported to the body, and then the work will have to be rewritten. Now, there is no clerk for that committee, and it has been suggested to me that we had better have authority to employ a clerk, so that when we are ready the clerk may at once get to work. I will ask, therefore, that the committee on Enrollment and Revision be authorized to employ a clerk, provided we can get one by paying him out of our own pockets, and that he will accept the same terms as the other. There is a great deal of work before the committe, as much as we will be able to get through with.

Motion seconded. Put to vote and carried.

ARTICLE V., SECTION 11.—JUDICIARY.

The CHAIR. The pending order of business is the further consideration of the report of the committee

on Judiciary.

Mr. Sweet in the chair.

Mr. MORGAN. Mr. President, just before noon recess I listened to statements of gentlemen with reference to the necessity of judges in different parts of the territory. One gentleman suggests that if you don't indict the Mormons we can save considerable judicial labor in that direction. We might carry out that suggestion and decline to indict the people that are stealing horses throughout the country and save a good deal of work in the courts. And so on with all the other crimes being committed, which I regard as about all of the same grade. The gentleman from Shoshone said, and I presume very properly too, that it is necessary (and I believe they all agree to the proposition that it is necessary), that they have two judges in the northern part of the territory, where they have only five counties. Now, I shall insist, at least so far as I am able to do so, and shall ask the concurrence and assistance of members from the southern part of the territory, that if only four judges are allowed, they shall take at least three of the counties, which are termed southern counties, in to the northern district. It is a fact which most of us here are well aware of, that not one-half of the business in Alturas county—I think I am correct in stating that, and if I am not, there are gentlemen here who can correct me—has been done at any term of court in that county in the last three or four years; not one-half of it. It is true, Alturas county is divided, but we have the same territory, and the judge who holds court there must try those same cases; that is, he must go to Elmore and Logan counties and try those cases. In my own district I know that the judge has not been able this last year to do one-half the business that was before the court during this time. As I said before the Judiciary committee, in the county of Cassia, where we held the term last spring, we tried two or three cases, and started in on a water case and tried it half way through, and it came time for the court to

adjourn, and we were obliged to adjourn with the case half tried; it took us a week or eight days to try to the middle of that case, and then the court adjourned to one day before the sitting of the court in the fall, in order that he might take up that case, and not lose all that labor. It is a fact further, gentlemen, that there is not a county to my certain knowledge, because I have been with the judge in each of the counties excepting the county of Bear Lake, during this spring —there is not a single county but what he has cases in that have been tried, and he now has them under advisement, and some of them have been under advisement at least ten months of this time. Now, it would not be correct for me to state that that is the fault of the judge altogether, because I don't believe it is; he has had more work than he can do; and this goes to such an extent that when yesterday and day before yesterday I with some other attorneys argued some cases before Judge Berry, one case in particular, which had already been submitted to him and argued ten months ago, the judge had forgotten we had ever made the argument and requested us to argue it again.

Mr. BEATTY. Is that the fault of the judge or the attorneys?

Mr. MORGAN. It may have been the fault of the attorneys, but this state of things is intolerable; and let me state, it is not the fault of the attorneys: the atorneys are not dilatory in these matters. It is to the interest of the attorneys to push the business through and get rid of it. I have been a practising attorney for thirty-three years, and I think I know what the interest of an attorney is. We want to try these cases through and have them determined. I would rather a judge would decide wrong, and decide against me, than to take a case under advisement and keep it six or eight or ten months. And I believe every attorney will agree with me. I would rather go to the supreme court for the correction of it. We want these matters decided and determined, and the

judges must have time to properly consider and determine them. It is ruinous, absolutely ruinous to men who have cases for trial in these courts, if they are obliged to wait six, eight and ten months, and as some of these cases I know of have been on the calendar for eighteen months, and been ready for trial all the time. Sometimes the subject of the litigation becomes valueless during that time; men lose large amounts of money. They cannot stand that sort of thing, and these cases should be determined. It is well known to every man, who has had any practice in the mining camps of this country, that there is a kind of human pirates that live in every camp; they follow from one camp to another for the purpose of jumping claims and getting up pretended claims to the title of a mine that becomes valuable. If those men can keep those questions in litigation for months or a year, you must buy them out to get rid of them and that is all they want. It is an outrage to a poor man or to any man who owns a mine to be placed in that position; but if the case can come up and be tried in three months or six months, those pirates cannot succeed in robbing their fellowmen in that way. Therefore, in my opinion it is impossible for two judges to do the work in these thirteen southern counties. We cannot expect that litigation will decrease in the future so much that they will be able to do it; it will increase in certain counties, and in certain other counties it will decrease. That is the case the world over. At one time a mining camp is on top, and there is a great deal of litigation from it; another time it is down, and then there is very little litigation. And so it is with the litigation in all other counties. The litigation in these thirteen counties is certainly large. We have at least three-fifths of the litigation of this territory in these thirteen counties. The result will be, we must have three judges, and the northern counties two, or they must take a certain share of the southern counties into their district, and leave us ten to their eight.

Mr. HASBROUCK. Mr. President, I am opposed to this amendment, and I shall favor the section as it comes from the committee; and for this reason: I represent, or help to represent Washington county, and I wish to make this statement. The court last fall in Washington county, for some reason that I am not able to explain, held no term. The result was that we had a number of criminals or persons who were held for examination in our county jail, and as they were kept there six months, Washington county was put to an expense of at least $1,500. I got that from the officials who know. That would have paid the salary of one of the judges for half a year. Besides the other fact, that some of those parties who were held to answer, as it afterward turned out, should not have been held, and were discharged without a trial. It is manifestly unfair that northern Idaho should have two of the four judges; so manifestly unfair, that I don't suppose anyone in this convention will have the courage to maintain the proposition. If we have but two judges in such a large extent of territory, it will be found many times that persons will be confined in the county jails longer than they should be, and the expense devolving upon the county to support them during that time, would more than pay the extra salary we will have to pay to the judges. It may appear on its face that we are increasing the expenses, and that the state government will be more expensive than that of the territory, but it is only on its face, as has been shown by Mr. Reid by figures that cannot be disputed. I make these remarks not as a practising attorney, but as a private citizen.

Mr. McCONNELL. Mr. Chairman, there isn't any proposition for northern Idaho to have any two or any number of these judges. The law says the state shall be divided into three judicial districts.

The CHAIR. I understood you accepted the amendment of the gentleman from Shoshone.

Mr. McCONNELL. Yes, I will.

Br. MORGAN. Yes, and the gentleman in his address, after proposing four judges, stated that they must have two of them in the north.

The CHAIR. The question is upon the amendment offered by the gentleman from Latah.

Mr. CLAGGETT. I wish to withdraw the amendment I made this morning. From conversation with gentlemen in the southern part of the territory I know that they need three judges, and I know that we need two up north.

The CHAIR. The question is then upon the amendment of Mr. McConnell that the word "five" be stricken out and the word "three" inserted.

A viva voce vote was taken, and the chair announced that the amendment was lost. Thereupon a division was called for, and upon the rising vote the result was: Yeas 9, nays 29.

The CHAIR. It is now moved and seconded—

Mr. BATTEN. Isn't there an amendment of Judge Claggett's?

Mr. CLAGGETT. I withdrew that.

Mr. BATTEN. Well, I seconded that, and I will offer it as an independent motion.

Mr. McCONNELL. I second it.

Mr. BATTEN. I have all along maintained in accordance with my honest convictions that four judges will amply discharge the duties of the district judges in the new state. You all remember there was a celebrated individual who became historical, who served in the national convention, and whose name was Philander Greene; and his immortal expression was, "What are we here for, if not for the offices?" Now, if the principle is to establish as many offices as possible, let us carry it out on the Philander Greene principle, and make it ten or twelve judges. I honestly believe we ought to pause a little and consider what we are doing. I confess I am arraying myself against the older members of the bar, and do it with extreme reluctance, but I do honestly believe that when we rid the judges

of their appellate jurisdiction, when we consider what Judge Claggett said about these men with the large claims, the litigation that now finds its way into our territorial courts, which will then find its way into the United States district court; and when we consider how sparsely settled many of the counties are, I honestly believe four judges can well and faithfully and efficiently discharge all the duties they may be called upon to discharge. I realize the great difficulty is this, that owing to the peculiar condition of things, the fact that there is an almost impassible or a difficult range of mountains that divides us in twain, we cannot adjust this matter nicely. It seems to me that the north should have a separate district of itself, and must be considered separate and distinct from the south; and in considering these two sections entirely separate from each other, we are confronted with the dilemma, that in the north and northeasterly strip, which is separated from the south by this almost impassible barrier of mountains, there are but five counties, and in the south thirteen. Now, the argument has taken this drift, which seems to run all the way through, that if we were differently situated geographically, if this barrier of mountains did not hinder us in the solution of this question, then four judges would be sufficient. I think we can do with four anyway. I don't think we should raise this barrier of mountains as a sort of obstacle in the way. I dislike to take the stand against older and riper minds of the bar, but I maintained this in the Judiciary committee, and to be consistent and in accordance with my honest convictions I think that four judges can amply fulfil all the duties there are. There are three or four counties that have this excess of business. As to Alturas county, much can be said in explanation of the condition of things that prevail there. Last year we had no term of court at all, and I know very well that some of us lawyers, if we will be honest and candid with ourselves, must admit that some blame attaches to us. I have seen how easy it was for

lawyers upon some frivolous pretext or excuse to get a little indulgence in the way of continuing cases, and I think we can rightfully charge ourselves with a good deal of the blame. I honestly believe four judges will be sufficient, and I think if we go before the people with explanations, we go before them handicapped, and the first thing they will say it that we have been getting along with three judges, all-told, including appellate and district judges; and now by this bill you have three appellate judges and five district judges—you have offices without number. Then the burden devolves upon us all to make them understand the thing. And the moment we have to start in on a long laborious explanation, that moment we are seriously handicapped in presenting this constitution to the people. So that I do think that we should adopt the amendment reducing the number of judges to four.

Mr. McCONNELL. I call for the yeas and nays.

Mr. WILSON. I should be perfectly willing to have four judges if they could be apportioned properly. But before I vote for four I want to know how they are to be apportioned. Gentlemen in northern Idaho say they must have two judges. In behalf of the people of southern Idaho, I say that we cannot possibly get along with two. If they can take one in that district with five counties up there, I would be willing to take two down here; but I maintain you cannot apportion them so that some counties in northern Idaho will be in the same district with southern Idaho, because you would have an imperfect district. For example, if Nez Perce and Idaho counties belong to a district which has three counties in southern Idaho, say Washington, Ada and Owyhee, then if a litigant in Ada county wants to get an injunction or preliminary order he must go wherever the judge happens to be sitting, which might be in Idaho county. Then the litigant and his attorney would have to go 1,200 or 1,500 miles by rail, 200 miles on the back of a mule or 200 miles on snowshoes probably to get his injunction. And that is something

which he could not possibly do. I submit, and I think the attorneys will bear me out, that these preliminary orders will be called for more and more as the years go by; they are called for more and more every day. Today we have a large irrigating ditch in the capital, Boise City now. From $100,000 to $150,000 will be expended in the building of that ditch. Our statutes provide that in acquiring the right of way under our act of eminent domain, appraisers may be appointed by the district judge. Last winter I had a bill introduced in the legislature covering that point so that the district judge in chambers can appoint the appraisers and the damages be paid into court and the enterprise go on. Now, if the judge was in northern Idaho while this enterprise was going on, it would necessitate this showing being made, and the litigant and his attorney going into northern Idaho to get the order for appointing appraisers to assess the damages, that they might be paid into court and the enterprise go on. In other words, it would probably cost him $1,000 to get this order. This barrier is insurmountable; and therefore I shall contend that the question is either three or five judges. There is no intermediate point. Four doesn't remedy it; I would rather have it three than four. Four is only $3,000 cheaper than five, but four is $100,000 worse than five. If two district judges are given to the counties of northern Idaho, southern Idaho should have four, which is unjust. The valuation as shown by our assessment of the taxable property in southern Idaho is $16,431,799. The taxable property of the five northern counties was $5,192,948. In other words, in southern Idaho, south of the Salmon River mountains we pay more than three times the amount of taxes they pay in northern Idaho; and it would be a manifest injustice to require the taxpayers in southern Idaho to support a judiciary system that provides two judges in northern Idaho, where they pay but one-third of the taxes. You must remember that judges' and district attorneys' salaries are paid out of the state treasury, and not by the

counties, as district attorneys have been. For those in southern Idaho I demand that we know how this apportionment is going to be made. Northern Idaho insists, both lawyers and laymen, that they must have two out of the very necessity of things. If they must have two, there is far greater reason why we must have three. Four is a compromise and I don't like compromises; they always result in something iniquitous.

Mr. REID. I would like to offer a word in explanation of a statement I made before the noon recess. The governor has called my attention to the fact that in making the statement that was published, we overlooked an item of $4,400 that the committee included. It is interest on the floating debt. So I have now a corrected statement, that the convention may vote with a full understanding as to the expense. I will read this statement. The annual expense for the state government as estimated by the committee will be $140,661. The annual expense under the territorial government now is $80,000. I mean expense to the people. I don't mean what the federal government contributes. It leaves an increase in expense of the state government over the territorial government of $60,661. Now, that includes, and this estimate is based on the idea of adopting, five judges and three judges of the supreme court, just as the committee has reported. Now, how can we get that increase down? We propose to do it by the county system. The saving in the county expense, if we adopt the system reported by the committee, on sheriffs' salaries will be $36,000; salaries of auditors and recorders $13,410; salaries of probate judges $10,260; salaries of district attorneys (county attorneys they were) $36,600; salaries of superintendents of public instruction $7,020; salaries of clerks of the district courts $6,510; making a saving over the present government of $109,800.

Mr. MORGAN. That is, what is actually paid now.

Mr. REID. Yes, I have taken the table and averaged it so that it only missed it a hundred dollars on

ten thousand. Now, deducting the increase in state government from the decrease in county government and you have the net balance of $49,139, in favor of state government, provided you adopt the system both of state government and county government, as reported by the committees. In round numbers call it $50,000. Now, we go to the people on that proposition. It is true, we have increased the judiciary. Now, I am going to support five judges. Gentlemen say that if we will adopt five judges they won't need the county attorneys, because we will have five district attorneys, and they can go along with the judges. Some of the delegates here tell me they have tried both systems, and some of them are inclined to prefer the present mode which costs $36,600. If we can make five district attorneys do that work, which will cost $15,000 on the total, it would average up the cost and save $50,000 to the state government; that is, what comes out of the pockets of the people. I am in favor of that system. And I will say to gentlemen candidly, if they adopt four judges, I am willing for the gentlemen in the northern counties, Shoshone, Kootenai and Latah, to put them together and have Nez Perce and Idaho to be added to two or three of the counties down here. I throw this out, speaking for Nez Perce county, because I don't want anything of this sort; if you want to adopt four judges, do so, and that will be determined in the next section when we come to that; but I say vote for five, because I want to get rid of these county attorneys, and I want if for this reason also; and I might as well make the point right here so we can vote on it now as well as hereafter and not have to repeat it. County attorneys cost $36,600. The average salary in the territory of the district attorneys is about $1,500 to the county. Multiplying that by eighteen, and adding to it $9,600 that Mr. Wickersham estimates will be necessary, and you will have the cost to this territory of $36,600 for county attorneys. Now, the five district attorneys will cost $15,000. Deduct that, and you have a saving

of $21,600 in the matter of district attorneys. The committee estimated that it will only take $16,000 to run the legislature, so in two years you will save almost enough by adopting this present system proposed by the judiciary committee, to run your legislature six terms, provided the sessions are only sixty days long. But suppose you go back to the county attorney system. Then you wipe out nearly all of this balance of the decrease in expense in favor of the state government that we propose to have by adopting this county system, so it leaves the thing about even. Now, in many counties this office is unsought and a great many persons in the counties are incompetent. By adopting this system of five district attorneys and paying them a salary you will get five good lawyers, and, as was stated the other day in the argument by Mr. Sweet, when these district attorneys have to prosecute in the district court, cases of murder and everything of that sort, they will have to meet the best men at the bar. Now, you had better take the system of district attorneys and district judges and do away with the county attorneys, and go to the people on that proposition. It is true we have increased the judiciary. That has been the evil here, but when you foot up the whole cost, if you adopt this system you will save $50,000 over what you are paying under the territorial government. We propose to put all the laymen, probate judges, sheriffs and others on fees; and if you adopt the system of district attorneys what have you done? If you adopt the system complete as reported by the committee you practically save $50,000. Now, what do you do by striking out one judge and one district attorney? You save $6,000. And then you want to restore county attorneys. I think, gentlemen, to make the thing satisfactory, if we adopt the whole system as reported, and then go to the people and say, "yes, we have given you five district judges, but at the same time we have given you courts that will transact your business, and while we have increased the expense in some particulars, yet upon the

whole, if you adopt this constitution, and go into the Union under it and carry out this state government as we have established it, you practically save $50,000. On the other hand, suppose you do not adopt this system; you have increased your taxes; instead of paying three and a half mills for state purposes, you will pay seven mills." Therefore I shall support the bill.

Mr. HASBROUCK. I shall still maintain my support of the section as it was reported from the committee, and I am opposed to the amendment offered by my friend from Alturas, and I will say right here that I oppose it on more than one ground that he will still have to explain. By taking off one of the judges does he still not have to explain? One judge taken off will not save us from making explanations. And I will say on behalf of my county of Washington, that I will try and explain the matter to my constituents satisfactorily.

The CHAIR. The question is upon the amendment of the gentleman from Alturas.

Mr. McCONNELL. I withdraw the demand for the yeas and nays.

The question was put by the chair upon the adoption of the amendment. Vote and lost.

The CHAIR. The question is now upon the adoption of the section.

Section 12.

Moved that Section 13 (12) be adopted. (Carried.)

Section 13.

Section 14 (13) was read. Moved and seconded that Section 14 (13) be adopted.

Mr. CLAGGETT. I offer the following amendment at the end of the section: "Each district judge shall have the power to appoint a master in chancery for each county in his district, and may remove him at will. Such master shall have the power to issue temporary injunctions and perform such other duties as may be

prescribed by law, but no temporary injunction or restraining order shall be issued by such master in chancery or any district court or judge thereof in any case where the possession of, or the right of title to, real property is brought in question until the party affected has had an opportunity on reasonable notice to appear and resist such issuing." (Seconded.)

Mr. CLAGGETT. There are two propositions embraced here, and that is to confer upon the district judges the power to appoint masters in chancery, who will have the power to issue temporary injunctions, and perform such other duties as may be prescribed by law; but the principal reason I offer it is to get rid of that which has constituted the greatest standing abuse in the administration of justice in all these territories of the west, and under which more devilment has been wrought, if I may use the expression, than under all others combined; and that is the power of district judges to issue ex parte, without any notice whatever, injunctions tying up the possession and use of real property, particularly mining property, throwing upon the defendant the necessity of going to a large expense to move to dissolve the injunction, and in the meantime put a stop to the entire operations that may be carried on. And I want to say right here that I have not, in the course of nearly thirty years on this Pacific coast, known of one single solitary case where an injunction has been issued ex parte without notice, where the title or possession of real estate was brought in question, that it could not have been just as well issued without creating any trouble whatever some five or ten or twelve days afterwards upon notice. In other words, in cases of this type it will simply amount to this, that no temporary restraining order can be granted until after the expiration of a week or ten days of notice.

Mr. WILSON. Does your amendment include interlocutory orders of appraisers to assess damages?

Mr. CLAGGETT. Oh no, it simply covers temporary injunctions.

Mr. WILSON. I would like to have it include something of that kind.

Mr. CLAGGETT. That can be done by amendment. And when you do get a scamp in the judge's office—and once in a while you do—it is through the abuse of these discretionary powers in the matter of issuing temporary injunctions where he works out his corruption, and in some cases we have quite a lot of judges who are cranks on the subject of power, and want it understood by everybody that they have the power of shutting down every mine, and every mill without bringing anybody into court, and they exercise that power in the most unreasonable manner.

Mr. HEYBURN. I hope the amendment will not prevail. When you do it you offer a premium to the shotgun policy of taking possession of other men's property when they have no redress. For instance, take a placer mining camp. If the court cannot issue a temporary restraining order without notice, somebody will take possession of your mine, and during the ten or twelve days in which it would be necessary to give notice he would have accomplished his object, and would not then care whether he is stopped or not. And that applies to every other mining property. When a man takes violent possession of your property, you should have an instantaneous and efficient remedy of getting him out of there before he can despoil it. No man is ever injured by a temporary injunction if he is in the right. It simply preserves the substance of the property, while the question can be determined as to who owns it, that is all. The court does not, by issuing a temporary injunction, to take one man out and put another one in, and tell him to go to work and despoil it and rob it of its substance. But he simply says "neither of you shall handle the substance of this property and waste it until the question is determined as to who owns it." And when you take that power away from the court, you have offered a premium to this class of men who go and take violent possession of a man's

property and hold it and take away the substance of it during the ten or twelve days that elapse before you can give notice and have an order issued to restrain him. The legislatures have been appealed to by the gentleman who moves this amendment for support. No legislature in any state in the Union has ever taken this power away from a judge for a single minute, and I defy the gentleman or anyone else to show me where any legislature has deprived a court or a chancelor of the right to issue these writs.

Mr. BEATTY. I would like to have that amendment read again.

The secretary rereads the proposed section as set forth above.

Mr. HEYBURN. I desire to say further, Mr. Chairman; I neglected to pay my respects to the first portion of it. I do not believe in a judge being empowered to delegate his power, the exercise of that judicial discretion with which he expects to act; I do not believe in him being empowered to delegate that to any man. When we lodge in a judge the right to grant injunctions and to exercise judicial discretion and judicial power with reference to our rights and our property, I do not believe that judge should be allowed to select in any county somebody to whom he shall transfer that power to issue those orders. I want that power to issue from the court itself, and I want the court to be responsible for the exercise of that discretion. That is another objection I have to it.

Mr. BEATTY. Mr. President, I did not design saying anything; I wanted to hear the amendment read with a view to knowing how to vote upon it. I think there is one serious objection, however, to that amendment. The question would be who would be appointed as master in chancery. A lawyer ought to act in that position. Now, no lawyer in any county would want to take that position, because he may himself have to appear before that master in chancery. The result would be, if you exclude the lawyers, some layman

would have to fill the position, and a layman could not properly fill that position. I supposed when the amendment was first offered it was with a view of having some officer ready and convenient in the absence of the judge to issue these temporary restraining orders. I live in a mining country, and have for twenty odd years, and I fear the effect of that proposition. If parties at all times must have notice before even a preliminary injunction is issued, I fear that great damage would often be done in mining cases. We know how often it occurs that men get possession of mining property and get out perhaps a hundred, or a number of tons of valuable ore, amounting to hundreds of dollars in value; and if they are to have notice of a preliminary injunction they may remove the very thing you want to prevent; they may do the very illegal act you want to prevent by this restraining order. I agree with my friend from Shoshone (MR. CLAGGETT) that sometimes restraining orders are granted injudiciously. I agree that judges sometimes overstep the bounds. I agree, as a matter of course, that it is the business of the judge, even though these temporary restraining orders are allowable under the law—it is the business of the judge to inquire carefully before granting them, and he shall not issue them to every man who comes and asks for them. It is his business to have enough of the facts before him to know he is not doing any injustice. But we propose to elect hereafter our judges from the people, and we shall not have these judges from the outside, who are in the habit of granting them recklessly; we shall have men who are accountable to the people directly, and who will be probably more careful when issuing these restraining orders; but I must say, with all due deference to my friend from Shoshone, that I prefer the law as it is; I prefer that we have the power to issue temporary restraining orders. This does not apply to you gentlemen in the farming community so much as to us in the mining communities; but I have known of hundreds of instances in my practice in

mining communities where if we did not have the power to have these temporary restraining orders, hundreds of thousands of dollars damage would be done by the removal from the dumps of mines within four or five days, of ore taken out. As has been suggested by some gentleman opposed to this amendment —I believe friend Heyburn from the north—these temporary restraining orders are not intended to put a man in a different position from what he is, but simply to hold the matter in statu quo—simply in the condition it is until a hearing can be had. If a judge has proper judicial discretion no great damage is likely to result from a temporary restraining order. If we get judges who are reckless and careless, we must get at them. You cannot make all laws right, to meet all defects in judges, lack of judgment or lack of proper qualities; you have got to trust to them; but I undertake to say if the judge knows his duty, very little damage will result from these temporary restraining orders. If you cannot secure them, great damage will result, especially in mining communities. I regret to differ from my friend from Shoshone, but I think the amendment would work us damage, and especially on that point I mentioned first; I hardly see whom you could get to act as master in chancery. It would have to be some person other than a lawyer, and only a lawyer should act upon such important matters as those.

Mr. CLAGGETT. I shall ask to have the vote divided on this question, Mr. Chairman. The master in chancery part of it may stand or fall by itself, and so may the other part of it. But I don't intend to allow my friend from Alturas, nor my colleague from Shoshone to befog the attention or minds of this committee, if I can help it, and their argument so far has had that tendency. Let us see how this thing practically works. The case which is put by my colleague is, that in case the power to issue these ex parte injunctions is taken away, parties will go to work and jump mines and take violent possession, and all that sort of thing. If you

will bear in mind from the reading of it, it only involves such cases as where the right of possession or title is brought in question. We already have a statute for mandatory injunction, where the question of title cannot be brought into question at all, relating to the manner in which this possession is obtained, and all of that power of a court of equity is still left untouched by the amendment which I offer. If a man comes in and takes possession of a piece of real estate in this territory today by force and violence, or fraud, or in the night time, or in the temporary absence of the party in possession, or by any combination thereof, the district judge is armed with the power, without inquiring into the possession of title or right of possession, to immediately put him out of possession and put the party back who was thus turned out. This amendment does not touch a case of that sort at all. It simply touches the old standing abuse where the judges are issuing restraining orders to put a stop to mines and mills, and are doing it under the guise of necessity, from which every mining camp in this country, from one end of the Pacific coast to the other has suffered, and which has given rise to a set of blackmailers who are constantly prostituting and using these powers of the court for the purpose of extorting money from those against whom they perhaps trump up a pretended title; and there isn't an old miner who cannot bring case after case in which it has been done. My friend from Alturas says it will be necessary, in order to keep miners who have gone to work and taken out hundreds of tons of ore, from removing it. Let us see. That is one of the standing abuses I am trying to get rid of. Here is a man in possession of a mining claim working it in good faith, spending his time and money in that development work. He has got ready to take out ore. On the outside is a party who has some "shingle" or pretended title, or some good title if you see fit, who quietly waits until the ore has been taken out and the man in possession has in good faith bankrupted himself in the

development; then just before the time comes around for him to obtain some return from it, the other party goes to a district judge, gets an ex parte judgment to stop him from working, and forces him into court at that particular time when he hasn't a dollar with which to defend his rights. I have seen that thing done in Shoshone county to my personal knowledge, until man after man who had an undoubted legal title was frozen out and compelled to abandon his property. It was perfectly competent at any time when this outsider desired to test the question of the right of the party in possession to go and bring his action before he had got hundreds of tons of ore hauled upon the dump. But they wait until the thing is done, until the man in possession in good faith has gone on and done this work of development, and then at the last minute they will sneak by midnight to the district judge's chambers and get one of those ex parte restraining orders. And I repeat what I have said before, that in the whole time I have lived on the Pacific coast I have never seen one instance in which a temporary restraining order was granted ex parte where it could not have been granted with equal safety to both parties five or ten days afterwards upon notice. There is no necessity for it, and it is so universal, almost universally a systematic abuse of power, that I say the power should be taken away entirely, and the man who is in possession and is working a piece of property should be entitled to the presumption, which the common law raises in his favor, that he is the owner of it, and that neither possession itself should be taken from him, nor should he be restrained or stopped in the ordinary transaction of his business until he has had a hearing in some court, at least as against those pretended charges and titles and fraudulent claims to title, which may be set up against him. That is the theory of the whole matter.

Mr. HEYBURN. Mr. President, I did not expect to say anything more on this matter. I don't want to see a mistake made; I don't want to see the eloquence

of the gentleman carry this convention away from reason, common sense and common honesty, and if I can say a word to prevent it I propose to do it. On the statutes of this territory at this time there is a provision under which these injunctions that the gentleman complains of are granted.[1] And in that same statute, following on the heels of the one I refer to is another one, which says, "If the court or judge deem it proper that the defendant or any of several defendants should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted, and the defendant may in the meantime be restrained.[2]" Now, that leaves it entirely with the court. The statute provides further, that no injunction shall be granted except upon a verified complaint, and that the complaint upon its face must show such facts, sworn to by the parties, which, if proven true, would entitle them to the relief demanded. Now, those are the provisions that are carried forward in the law of this territory; and all of this talk about blackmailers is no argument. Which are you going to prefer; the man whom the other side calls a blackmailer, or the man who demands possession of your property, which is the very question you are going to determine by the law? Are you going to prefer the man—where an immense wrong is being done—who is manifestly taking possession of a piece of property for the sole and exclusive purpose of taking away that particular substance of it which he may take away in the days that it is necessary to give notice? Are you going to prevent the judge, where a case of that kind is so plain there can be no reasonable doubt in the mind of the judge, from granting this relief by saying to the party, "You shall not take away the substance of this property until you prove you are entitled to it"? Who is wronged or who is harmed by

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1—Sec. 4288, Rev. Stat. (1887) et seq.

2—Sec. 4292, Rev. Stat. (1887).

this provision allowing the judge to grant these injunctions? Neither party can remove the property; neither party can destroy it; it remains there subject to the adjudication of the rights of the parties. Take the other horn of the dilemma. Suppose the court cannot grant the relief, and a man goes into possession of a piece of property, either by stealth or force, and takes away its substance, whether great or small—and sometimes it is very great—and he is insolvent and has no property by which you can recover a pound of it; then where is your remedy? Isn't that an immense wrong on the face of it, that ought to be guarded against. In the one case neither party can take away the property; it remains there uninjured. In the other case, the defendant has been permitted to remove it, take it away, and place it beyond the power of the plaintiff to recover it. Which is the greatest evil to provide against? I am not going to drag the mining cases of Shoshone county before this convention. I want to lay this matter before you, as a plain common principle of equity and honesty and common sense, whether or not you are going to prevent these judges, who are now invested with this power, from having the power hereafter to protect men in the enjoyment of their private property. If a man does not own the mine or mill, he ought to be stopped from working it. The gentleman says it results in stopping the working of mines and mills. If somebody else takes your mine and wants to work it, the fact that he is working it in good faith cuts no figure; that is no reason why he should be allowed to take some other mine or mill, and work it; he might as well take forcible possession of your bank and say, "Why, I am doing a very honest and graceful banking business here, I am doing it in perfect good faith." The answer is, you are taking somebody else's bank; and anybody can do it with all the suavity and grace in the world if he can take some other person's property to do it with. It is that we want to be able to prevent. There is a class of men who think if they can get into possess-

ion of another person's property, and make the other fellow do the fighting, they are all right; and they are worse than blackmailers; they are thieves.

Mr. AINSLIE. I was very sorry my friend, the gentleman from Shoshone, has introduced this bill in the Judiciary committee. We were nearly three weeks preparing this bill, which that amendment would strangle as to the writ of injunction; it would deprive the owner of property of the undisputed right, which is possessed in every civilized country, of protecting it against the marauders who are attempting to steal it and take it away from him. I can give instances of some farmers in this house, where the man would be deprived of the right of injunction and irreparable harm would result to his farm. Take a dry season like this; the man first settling on a stream takes the water out and had irrigated his orchard, garden and crops. Some other fellow comes a long time after him, eight or ten or twenty years, and finds there isn't water enough for both, and cuts a ditch from the first appropriator and takes the water away from him. Now, what shall the first appropriator do, unless he gets the water back, and how is he going to take it back? Is he going to take a shotgun, or as a law-abiding citizen will he apply to the court for a writ of injunction to prevent that man taking the water away from him? This amendment will result in bloodshed instead of law. Again, if a man is running a tunnel into a hill alongside of a mine that has been worked for years, and the title of the owners in the mine is undisputed, a jumper may come along and locate land adjoining—may not be a jumper at the time—and he runs a tunnel into the hill and strikes nothing for himself. But after he gets in a hundred feet he runs a crosscut into the vein of his neighbor, the prior discoverer of the mine, and commences to take out the richest kind of ore. How are you to stop him? You must go (you say) to a master in chancery, a deputy judge, and prefer your case to him. In the

meantime the other man has packed out a $100,000 worth of rich mineral. The law provides in every state that upon granting an injunction, before it is granted, the plaintiff shall give bond to the defendant for any damages he may sustain by reason thereof, even before a temporary restraining order is granted; and I am satisfied if this proposition had been laid before the Judiciary committee it would have been unanimously sat down upon except by the gentleman introducing it.

Mr. BEATTY. I did not intend to take part in this discussion, but having spoken once my mind is naturally brought in again. I believe it is a rule among horse-racing men that when a horse distances all others he is ruled off the track; and I almost feel that my friend from Shoshone should be ruled out here, for like these wild storms that sweep over our mountains, now he, by his eloquence and zeal sweeps everything before him. He springs on us a proposition unexpected to me, and now he says we are befogging your minds by the suggestions we have made. Now, I want to show you the proposition as made. He takes up the proposition which is an unnatural one. He takes this instance, of some man who is honestly in possession of his mine and is working it and has got out a hundred tons of ore, when some blackmailer standing off and looking on gets a restraining order. That is an unnatural case. It is not the man who is honestly in possession of a mine and is working it that is damaged; it is not when a man is working his mine properly that he is restrained; but the more usual cases are when a man is improperly working a mine. The cases where we want this injunction are like this: some party comes along who has no title or right to mine a claim, and in the absence of the true owners he works upon it; and without their knowledge, as I have known numerous instances, gets out a large amount of ore; and before you have a chance of restraining him—or would have a chance under the system the gentleman proposes—the man would get away with the ore. It is for cases of

that kind that we want this restraining order; and as I said before it cannot do any damage. I appeal to every man who knows anything about a mining camp, how often it occurs that some mine away off in some out-of-the-way place is worked by some man who has no title whatever to it, who gets the ore out. Perhaps you had barely time to hear of it and get your restraining order to prevent him from removing the ore from the mine and disposing of it. It is for cases of that kind that we want this law, and in support of it, and against the amendment, I have only to cite all the laws in the west. I believe there is not a state in the west that has not just such a provision as we are contending for, allowing judges in all cases of this kind to issue their temporary restraining orders.

There is one thing I wish to allude to that has not been yet referred to. My friend Judge Claggett says there is danger of rogues and blackmailers getting injunctions against the honest miner. Now, bear in mind this, that our statute now provides that the party getting it is liable for the costs; he first gives a bond upon a liability for the costs. Not only that, the law goes farther and says that he is liable for reasonable attorney's fees if he has the injunction unlawfully issued. So that the man against whom the restraining order is issued has all of those safeguards. He can claim from the plaintiff not only the costs and expenses, but even the attorney's fees; and more than that, bear in mind that the restraining order is only for a few days, eight or ten or fifteen, as the judge sees fit. A judicious court may make the time short, only five days perhaps; and I insist that only a little damage can be done by this system, whereas, by that amendment, if adopted, great damage would be done, and I hope this innovation will not be adopted.

The CHAIR. The question is, will you adopt the amendment offered by the gentleman from Shoshone?

Mr. CLAGGETT. I call for a division of the question; first, on the first branch of it.

SECRETARY reads as follows: "Each district judge shall have power to appoint a master in chancery for each county in his district, and may remove him at will. Such master shall have power to issue temporary injunctions, and perform such other duties as may be prescribed by law."

Mr. REID. I just want to ask one question. If you create this office you have another salary to pay.

Mr. CLAGGETT. No, you have not. There is no salary to pay, and it is an office in force in nearly every state in the Union.

Mr. PINKHAM. In relation to that matter just mentioned, I would say if he refers to the laws and constitutions of almost any of the eastern states, he will find it is the common practice in every state to have a master in chancery or a commissioner whose powers and duties are—and the office is created for the express purpose—that he shall grant writs of injunction, mandamus, quo warranto, prohibition, or any other equitable order that he sees proper, with the same authority that the court has if he was personally present to do so. I believe that provision was made and placed in this resolution, or this amendment, by Judge Claggett at my suggestion today. It is a fact, I know it has been practiced for the last thirty years in most of the eastern states. I never found out yet, and no man can ever point to me a time when it ever came in conflict with the practice of the courts. In addition to other provisions or authority conferred upon him by the statutes, by the legislature, is this, that he has authority to take, in certain cases, applications for divorce, and instead of the time of the court being taken to investigate and take testimony of that character day after day in court, it is referred to the master in chancery; especially where there is no contest in the case, and reported back to the court for its decision. I think he is a very useful member of the court and his compensation is provided for by the legislature, and is in fees, and does not come under the provisions of any constitution.

Mr. REID. The gentleman is right where the two systems exist of equity courts as well as courts of law. The first article of this Judiciary article, however, abolishes all this equity distinction, and we have one form of action. We used to have masters in chancery in our system when we had the old common law system, and the biggest fees ever paid to anybody were paid to those masters in chancery. In the state the gentleman comes from, it is just called to my attention, they have the two systems of equity and law. But we have abolished those systems, and now have the code practice. We appoint commissioners instead of masters; but under none of these code systems do they ever clothe masters in chancery with the power to issue writs, because that is a delegation of judicial function, and it is necessary to equip them with all the power of a judge. But as we can try with a judge pro tempore, and have five judges now, and they will all be accessible, and we do not have to go out of three or four counties to find a judge, I don't think we ought to adopt it. Furthermore it is a brand new question sprung here, and my notion is that if we adopt it we will have more litigation and mischief growing out of it than if we leave it out. I believe there will be other mischief arise under it worse than that it is intended to cure.

("Question, question.")

The question is put by the chair. Vote and lost.

SECRETARY reads: "But no temporary injunction or restraining order shall issue"—

Mr. CLAGGETT. I will have to withdraw that in the shape it is, it does not make sense now. I will ask leave to withdraw the amendment.

The CHAIR. If there are no objections it is withdrawn.

SECTION 13.

Moved and seconded that Section 14 (13) be adopted. Put to vote and carried.

SECTION 14.

Section 15 (14) read, and it is moved and seconded that it be adopted. Put to vote and carried.

SECTION 15.

Section 16 (15) was read.

Mr. REID. I offer an amendment. This is a provision that is now in the Salary bill, and I move to add that just after the section: Add after Section 16 (15), "He shall receive such compensation for his services as may be provided by law."

Mr. HEYBURN. I will accept the amendment.

Moved and seconded that the amendment be adopted. Carried.

Moved and seconded that Section 16 (15) as amended be adopted. Put to vote and carried.

SECTION 16.

Section 17 (16) read, and it is moved and seconded that it be adopted. Carried.

SECTION STRICKEN OUT.

Section 18 was read.

Mr. BEATTY. Mr. President, I ask the chairman of the committee if that is not entirely provided for in Section 6.

Mr. HEYBURN. I would suggest that that should be stricken out. It is all provided for in Section 6, which has already been adopted.

Mr. BEATTY. I move that Section 18 be stricken out. (Motion seconded. Put to vote and carried.)

SECTION 17.

Section 19 (17) read, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have an amendment pertaining to the salary of the justices.

SECRETARY reads: Amend Section 19 (17) by

inserting before the first words, the following: "The salary of the judges of the supreme court, until otherwise provided by the legislature, shall be $4,000 per annum; and the salary of the judges of the district court, until otherwise provided by the legislature, shall be $4,000 per annum; and."

Mr. MAYHEW. I move that it be adopted.

Mr. REID. I move to amend that by striking out "four" and inserting "three."

Mr. CLAGGETT. I would suggest that the way it is limited there now it is not that each shall receive, but receive that in the aggregate.

Mr. HEYBURN. Put the word "each" in the amendment in each of those cases.

Mr. MAYHEW. I think that is about right; might as well divide the $4,000 between the three.

The question of the amendment to the amendment was put by the chair. Carried.

The CHAIR. The question is now on the amendment as amended, the effect of which is that the judges and justices shall each receive a salary of $3,000 per annum. (Put to vote and carried.)

Moved and seconded that Section 19 (17) as amended be adopted. Put to vote and carried.

SECTION 18.

Section 20 (18) was read.

Mr. HEYBURN. I believe that word "resident" is not to be in there.

Mr. WILSON. I have an amendment.

SECRETARY reads: I move that Section 20 (18) be amended by inserting the following words after the word "thereof" in line two, to-wit: "but the legislature may reduce or increase the number of districts and district attorneys."

Mr. WILSON. I would say that I submit that amendment for the purpose of making the article consistent as a whole. In Section 12 (11) those very words occur in relation to district judges and district courts,

that the legislature may increase or decrease their number; and they should have the same power to increase or decrease the number of district attorneys.

Mr. MAYHEW. I would call the gentleman's attention to this fact, that in Section 20 (18) a district attorney shall be elected for each judicial district. That would say that if the legislature should in the future increase the districts that increases the number of district attorneys.

Mr. REID. I would like to hear it read.

The proposed amendment is read by the secretary.

SECTION 11.

Mr. WILSON. I simply add that because the same provision is added in Section 12 (11) in relation to district judges.

Mr. REID. Will the gentleman consent to let it come in after line 5? We can go back and insert it, and then it will read: "may increase or decrease the number of judges, district courts and district attorneys."

Mr. WILSON. I will consent to that.

Mr. REID. Will the chairman of the committee consent to that?

Mr. HEYBURN. Yes.

Mr. REID. Then I suppose by unanimous consent we can go back and insert that. In Section 12 (11), line 5, after the words "district judges" insert "and district attorneys."

SECTION 18.

Now, I move an amendment to Section 20 (18).

SECRETARY reads: Add after Section 20 (18), "who shall receive as compensation for his services $2,500 per annum."

Mr. REID. They have increased the number of districts, and I move to insert "$2,500" instead of "$3,000," in the interest of economy; I think we might save that $3,000, but if the convention thinks not, we can go back to it. Kootenai and Shoshone will be one

district. He can live in one county and ride over to court; it won't cost him much, he can make the $2,500 net by practicing law and attending to civil business. Coming down to Nez Perce, Idaho and Latah, he can live in one county and it won't cost very much to attend court in the other counties.

SECTION 15.

Mr. BEATTY. I would like to suggest to the gentleman, some place we have just passed over that is left somewhat to the legislature.

Mr. HEYBURN. That was the clerk of the supreme court.

Mr. BEATTY. Well, this better be so too.

Mr. REID. I made this change at the suggestion of an attorney of experience. He said he did not think a district attorney was worth as much as a judge. The district attorney has a chance to do civil business, and the judge does not.

Mr. MORGAN. I suggested to Mr. Reid that the salary of the district attorney be made $2,500 for this reason. When a judge goes upon the bench you deprive him of the privilege of doing any other kind of business; he cannot practice law at all; he is confined simply to the salary you give him, and he will take out of that his expenses also. The district attorney, if he is a good lawyer—and he ought to be a good lawyer—can easily make $2,000 in addition to the salary you give him here. He can take all the civil business he can do in the district. At least he can do a large amount of civil business, and I think it would be a very easy thing for a district attorney, who is a good lawyer, to make $1,500 or $2,000 in addition to his salary. For that reason, inasmuch as he has the privilege of practicing law, which the judge does not have, I think $2,500 is enough for his salary.

Mr. MAYHEW. Mr. Chairman, I am rather inclined to support the amendment of my friend from Nez Perce for another reason in addition to that just given by

Mr. Morgan. The district attorney is not required, in attending the courts in the different counties, to remain there during the entire term of court. It is the general practice in holding district courts that the first week or two weeks of the term is devoted to criminal business, convening of the grand jury, and preparing indictments, which requires the attention of the district attorney; and after that is through with, if he finds any indictments, the criminal cases have precedence and are tried first. If he insists upon it, unless there is some motion made for a continuance on the part of the defense, his cases are tried first. Therefore, he is not required to remain in the county the entire term of the district court. Besides, as has been said, district attorneys can attend to other business besides that of criminal business, and if they are good attorneys they can make two or three thousand dollars in addition to their salary. I therefore think more ambitious lawyers, who desire to be good lawyers, will desire to be district attorneys than to be judges.

The question was stated by the chair, and the secretary reread the amendment.

Mr. BEATTY. I move as an amendment thereto: "until otherwise provided by law."

Mr. REID. I was going to suggest to the gentleman, if he will withhold his amendment, that when the section is read I will propose to add the balance of the report of the committee on Salaries, and that will keep it out of the constitution: "The legislature may by law, diminish or increase the compensation of any or all officers provided in this constitution; but no diminution or increase shall affect the compensation of the officer then in office during his term: Provided, however, that the legislature may provide, for the payment of actual and necessary expenses," etc.

Mr. BEATTY. Very well, that will be satisfactory; I will withdraw my amendment.

Mr. HEYBURN. The word "resident" in line 9, Section 20 (18), was changed by the committee to

"elector," but has found its way into print as "resident." I think that should be changed to "elector."

Mr. CLAGGETT. I would suggest that the word "resident" be left and the word "elector" added.

Mr. MORGAN. He could not be an elector without he was a resident.

Mr. CLAGGETT. Yes, he may have his legal home in one place, and his domicile in another. He may vote in Shoshone county and live in Coeur d'Alene or Kootenai county or at some other point. I offer an amendment, to insert after the word "resident" the word "elector." (Seconded. Carried.)

The SECRETARY. There is an amendment here by Mr. Reid that has not been acted upon.

The CHAIR. The question is upon the amendment offered by Mr. Reid of Nez Perce, fixing the salary of district attorney at $2,500 a year.

A viva voce vote was taken, and the chair being in doubt, a rising vote was taken, which resulted Yeas 37; Nays 3; and the amendment was adopted.

The CHAIR. There was an amendment offered by the gentleman from Idaho (MR. PARKER), which the secretary will read.

SECRETARY reads: Substitute for Section 20 (18): "The district attorney shall be elected for each county by the qualified electors thereof, and he shall hold office for the term of four years, and shall be a practicing attorney at law, and a resident of the county."

"Question, question." Vote and lost.

The chair then put the question upon the adoption of Section 20 (18) as amended.

Mr. ARMSTRONG. I desire to ask the gentleman from Nez Perce if there is any provision made for deputy district attorneys?

Mr. REID. No sir, we leave that to the legislature. We discussed that in the Judiciary committee and concluded to leave it to the legislature.

Vote upon the adoption of Section 20 (18) as amended. (Carried.)

SECTION 19.

Section 21 (19) read, and it is moved and seconded that it be adopted. Carried.

SECTION 20.

Section 22 (20) read, and it is moved and seconded that it be adopted. Carried.

SECTION 21.

Section 23 (21) read, and it is moved and seconded that it be adopted. Carried.

SECTION 22.

Section 24 (22) was read.

Mr. REID. I would like to suggest to the chairman of the committee—it is just called to my attention by the gentleman from Alturas, that after the words "three hundred dollars" should be inserted the words "exclusive of interest[1]" that is the way it is in the statute.

Mr. HEYBURN. I presume that was within the contemplation of the committee. I dislike to accept anything that will increase the jurisdiction of justices of the peace, because I think it ought to be $100. But I presume that was intended to be excluded.

Mr. MAYHEW. That was agreed upon by the committee in the discussion of the jurisdiction of probate and justice of the peace courts.

Mr. REID. But the question is whether it ought not to be expressed in the letter. I know what we meant.

Mr. HEYBURN. Well, I will accept the amendment.

1—These words do not occur in the territorial statute prescribing the justice of the peace jurisdiction. (Sec. 3851, Rev. Stat., 1887). But see Sec. 3841, prescribing the probate court jurisdiction.

The CHAIR. If there is no objection, the words "exclusive of interest" will be inserted after the word "dollars" in line 4.

Mr. CLAGGETT. I move to strike out the word "three" in line four and insert the word "one."

Mr. HEYBURN. I second that motion.

Mr. REID. I would like to hear from the gentleman on that.

Mr. CLAGGETT. My reason for it is very simple. The reason why in this territory the jurisdiction of justice of the peace was increased from $100 to $300 was in consequence of the largeness of the judicial districts, and the fact that district courts were held only at long intervals. We have provided here a system of judges and a number of judicial districts, which will bring the functions of the district court into play at least twice a year; and as a general proposition they will remain almost constantly in session where there is any large amount of business to be done. Whenever you bring an action as high as $300 in the justice court it always goes to the district court on appeal anyhow. I say always. I don't know of any case that has happened under my observation in the five years I have lived in Idaho, where it has not. When you bring it above $100 and up to $300 that is the case; but these small petty matters under $100, there is not enough involved to cause an appeal. When you get above that amount they are always appealed, thus doubling the cost, and I think we should limit their jurisdiction to a point where there is no necessity for appealing because the amount won't justify it, to say nothing of the fact that I don't believe that the average justice of the peace ought to be allowed to pass on a question of over $100 anyhow, on principle.

Mr. MAYHEW. You will find by reading the section just passed upon (21) that the probate courts of the counties have jurisdiction to $500, and whenever it is over $100 it can be brought in the probate court.

Mr. MORGAN. There is one matter that the con-

vention ought to consider before they reduce it, and that it this. The counties in this territory are very large and sparsely settled; towns are a long distance apart. There is a justice of the peace in each precinct, and I have in mind now a matter suggested to me by Mr. Hogan, that in Lemhi county there is a town called Gibbonsville, which has a good deal of legislation, which is forty-five miles from the county seat; and if you reduce the jurisdiction of the justice of the peace to $100, it forces everybody that has a claim in that vicinity to go to the county seat over forty miles away, and take all his witnesses. So I think that the jurisdiction being fixed at $300 has worked very well in this territory.

Mr. REID. I hope the amendment will not prevail. These justice courts, with all their defects and errors, are very convenient courts for the people. They provide that with a jury you can have a case tried by a jury of six men, and our counties are large. There is another, reason, too; very frequently we have to attach, and to go into the district court with a case of attachment always makes the cost about double. The justice courts are cheaper, and in nearly all instances of plain debt, where the sums are $200, or under $300, a very simple process is issued from the magistrate's court; and it is a cheap court. Under the attachment laws we have now, and I suppose we will have the same in the state, nearly all proceedings are commenced by issuing summons and attachment about the same time. And there is generally not much defense to it, and it is a cheap and easy method of settling differences. If you have to go into the probate court it is most inconvenient sometimes to people in the outlying districts, and it costs much more. I think they ought to have jurisdiction of $300, and the probate $500.

The question was put by the chair and a viva voce vote taken. The chair being in doubt a rising vote was taken, which resulted, Yeas 10; Nays 23, and the amendment was lost.

Moved and seconded that the section be now adopted. Put to vote and carried.

SECTION 23.

Section 25 (23) read, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I would like to suggest that in the second line the words "nor unless" be stricken out, and the word "and" be substituted. It is bad construction.

The question was put by the chair on the adoption of Section 25 (23) as amended. Carried.

SECTION 24.

Section 26 (24) read, and it is moved and seconded that it be adopted.

Mr. SHOUP. Mr. President, I move that Custer be taken out of the fourth and placed in the fifth district.

Mr. MORGAN. I second the motion.

Put to vote and carried.

Mr. AINSLIE. It seems to me the word "counties" ought to be put in there. The word "county" does not appear in the section at all.

Mr. REID. I move that the words "of the following counties, to-wit:" be inserted after the word "constituted" and that we strike out "as follows."

Mr. CLAGGETT. I would suggest that the word "and" in line five, before the word "Lemhi" be stricken out also in consequence of that amendment.

The amendments were accepted and adopted.

The CHAIR. It is moved and seconded that Section 26 (24) be adopted as amended.

Put to vote and carried.

Mr. MYER. Mr. President, I see in Section 25 (23) the age of the district judge is thirty years. I would like to know what the age of the supreme judge would be before he is competent to sit on the bench.

Mr. MORGAN. There is no provision made for it in the section.

SECTION 25.

Section 27 (25) was read.

Mr. WILSON. I move to strike out "together with bills for curing the same," because if they should draft a bill they would always sustain it and everything in it. I move to strike out line 7. (Seconded. Carried.)

The question upon the adoption of the section as amended was put by the chair. Carried.

SECTION 26.

Section 28 (26) read, and it is moved and seconded that it be adopted. Carried.

PROPOSED SECTION.

Section 29 was read.

Mr. CLAGGETT. I move to strike out the words in the second line "agreed to by a majority of," so as to leave it so it will read "agreed to by two-thirds."

Moved and seconded that the section be adopted.

Mr. BEATTY. I would like to ask the chairman of the committee why this section is put in here. I have no objection to the section, but it seems to me it belongs in another place.

Mr. HEYBURN. It was put in under the rules. The committee was instructed under the rules to report the method and manner of it. It is usual to put it here in other constitutions.

Mr. HAMPTON. I understand the word "and" is inserted in the sixth line after the word "state" and left out after the word "election."

The SECRETARY. The word "and" is after the word "state" in the original.

Mr. HEYBURN. Strike it out and insert it after "election" before "cause."

The SECRETARY. So it will read: "To the electors of the state at the next general election and cause the same."

Mr. ALLEN. I move to amend by striking out

after the word "in" in line 7, "not less than four newspapers of general circulation" and inserting "one newspaper in each judicial district." (Seconded.)

Mr. AINSLIE. I would amend that by putting it "in one newspaper in each county."

Mr. ALLEN. I will accept the amendment.

The CHAIR. Send the amendment up in writing to the secretary.

Mr. HEYBURN. Mr. President, I would suggest after the word "weeks" in the seventh line that the words "prior to said election" be inserted. It seems to be somewhat indefinite.

The CHAIR. If there is no objection the words will be inserted. There is no objection and it will be so ordered.

SECRETARY reads Mr. Allen's amendment: In line 7 after the word "in" insert the words "one newspaper of general circulation in each judicial district."

Mr. HEYBURN. I move to amend that by making it one in each county. It seems to me a matter so important as that should be published in each county.

Mr. MAYHEW. I second the amendment.

The CHAIR. The gentleman from Logan moves to amend Section 29 by inserting after the word "weeks" in line seven, "one newspaper of general circulation in each judicial district." To that amendment Mr. Heyburn adds an amendment to the effect that the proposed amendment shall be published in each county in one paper of general circulation. The question is on the amendment to the amendment. (Carried.)

The CHAIR. The question is now on the amendment to the section. (Carried.)

Moved and seconded that the section as amended be adopted. Carried.

PROPOSED SECTION 30.

Section 30 read, and it is moved and seconded that it be adopted. Carried.

Mr. REID. I move the following section, and that

will dispose of the salary bill. It just applies to those features in the salary bill, matters that are virtually agreed on, and by inserting it here, will prevent the insertion of another article in the constitution.

SECTION 27.

"Section 31. The legislature may by law diminish or increase the compensation of any or all of the following officers, to-wit: Governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney general, superintendent of public instruction and district attorneys, but no diminution or increase shall affect the compensation of the officer then in office during his term; *Provided, however,* That the legislature may provide for the payment of actual and necessary expenses of the governor, and the secretary of state, attorney general, and superintendent of public instruction incurred while in performance of official duty."

Mr. REID. I have copied this from the report of the committee on Salaries and named the officers named in the salary bill.

Mr. CLAGGETT. You hav'nt district judges.

Mr. REID. Well, I will ask to have the secretary insert district judges before district attorneys.

Mr. SHOUP. The salary of the superintendent of immigration is not put in there.

Mr. REID. We intended to put that in the labor article. It might, however, go in here.

Mr. WILSON. I would suggest that you allow the legislature, if it sees fit, to provide for the payment of expenses of district judges, supreme court judges and district attorneys.

Mr. REID. Well, I am putting in what the convention virtually agreed on the other day. I think their salary covers that. The others are stationary.

The CHAIR. The question is on the adoption of the section offered by the gentleman from Nez Perce.

Mr. WILSON. I move the amendment, that judges of the supreme court, district judges and district attor-

neys be included in this list of officers that the legislature may provide for their expenses. How does it read as now amended?

SECRETARY reads: The legislature may by law diminish or increase the compensation of any or all of the following officers, to-wit: Governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney general, superintendent of public instruction, justices of the supreme court, and district attorneys, but no diminution or increase shall affect the compensation of the officer then in office during his term; *Provided, however,* That the legislature may provide for the payment of actual and necessary expenses of the governor, secretary of state, attorney general and superintendent of public instruction incurred while in performance of official duty."

Mr. REID. I will ask to add after "superintendent of public instruction" where it first occurs, "commissioner of labor and immigration."

Mr. WILSON. I move to add the words "supreme court judges, district judges, and district attorneys" to the list of executive officers.

Mr. PARKER. Mr. President, I have a substitute.

SECRETARY reads: Section 31; substitute for the amendment: "The compensation of all officers not otherwise provided for in this constitution shall be prescribed by law. Salaries shall be paid quarterly."

The question was put by the chair. (Lost.)

Mr. MORGAN. I think that ought to be added as an amendment to the section.

Mr. AINSLIE. The legislature can make those salaries payable quarterly without putting it in the constitution.

The CHAIR. Now, if you will state your amendment, Mr. Wilson, the chair will entertain it.

Mr. WILSON. I want to add after the executive officers—

The SECRETARY. You want to provide for the traveling expenses of the judges and—

Mr. REID. Well, the reason the Salary committee—

The CHAIR. I think we had better get the amendment first.

Mr. REID. We can argue it while he is writing it, Mr. President. The reason we fixed the salary, for instance, of the governor at $2,500, he is stationary; we provide him with expenses provided he does have to travel.

Mr. MAYHEW. What is the question before the body?

Mr. REID. The gentleman moved an amendment that whenever the legislature sees fit it may provide for traveling expenses additional to salaries. I am opposed to it. We give the judges $3,000 and the district attorneys $2,500, and that is intended to include traveling expenses and all costs. Suppose you give the judges their traveling expenses. A judge's salary might run up to $4,000 or $5,000, and the district attorney's salary might run up to that. Why do we give traveling expenses to the governor, superintendent of public instruction, and attorney general? Because at some time they may be called off in a distant part of the state to look after the state's interests; and their salary is fixed upon the idea that they remain stationary. It is not contemplated that they have to go elsewhere, except the superintendent of public instruction; but if they should, we provide their actual and necessary expenses therefor, and we fix their salary upon the stationary basis. Now, as to the judges and district attorneys. When we fixed their salaries we took into consideration that they would have to travel around three or four counties, and we gave them $3,000 in view of that fact.

Mr. MAYHEW. Don't you think it would be proper to give them mileage?

Mr. REID. No sir, I would object to anything but a salary because I think $2,500 will cover it.

Mr. MAYHEW. I think the judges should have it.

The CHAIR. Gentlemen come to order and the secretary will read the amendment offered.

The SECRETARY. "Supreme court judges, district judges and district attorneys"—where do you want it inserted?

Mr. WILSON. In the section; that is the idea.

The SECRETARY. I will insert it after superintendent of public instruction."

Mr. MAYHEW. I desire to make an amendment, and you can argue it, to strike out district attorneys.

Mr. WILSON. All right. I will consent to that. There is no reason in the world why executive officers should be preferred to judicial officers in this matter. We are leaving the whole matter to the legislature, and if this section was not in there at all I think the legislature would have that power. We have provided for their salaries, and no doubt the legislature could provide for their traveling expenses as well without that section being in there; but while it is in there I would put it in for the whole business. That is, for the legislature to provide if they saw fit.

Mr. REID. I just call attention of the delegates to the fact that when you come to pay mileage to the governor and the other officers, their mileage will be as much as their salary, if not a little more.

Mr. CLAGGETT. If that is so, then under the provisions of the constitution they would not get any salary at all. After you deduct what it will cost them to travel around, according to the theory of the gentleman from Nez Perce, they would have nothing left. So far as the judges of the district courts are concerned, I for one voted to fix their salaries at $3,000, because I wanted them to get that much money for their services, and as to their actual expenses, I think it ought to be paid.

Mr. REID. There is just one reply to that. Mileage allowed me to come to this convention is for 1124 miles, if I can get it.

Mr. MAYHEW. Well, you are not going to get it.

Mr. REID. Ten cents both ways, which would be about $200, and I can get here and get back for $45.

The legislature will fix it at ten or twenty cents both ways.

Mr. MORGAN. I presume if you allow the legislature to provide for the expenses of these officers it is not necessary for them to get that mileage. They may provide a gross sum, any amount you see fit. They have already provided for expenses of the judges of the district[1] in this territory by giving them $100 in each county, where they hold court, excepting the county where they reside, and they can provide a gross sum, just as well as to provide mileage.

Mr. REID. Yes, we have saved $3,000 on the district attorney's office. Now, let's spend it.

Mr. PINKHAM. I wish to amend the section in this manner: "Provided, any judge of the supreme court or district attorney, who is riding upon a pass, over railroads in this country in the discharge of official duties, the amount of mileage, which they are obliged to be paid at that time be deducted from their salaries"; which would be consistent with their vote the other day.

Mr. WILSON. The only objection I have to that in my mind, it does not provide for any mileage for district attorneys at all; and if he—

The CHAIR. The amendment is not supported, and we need not spend time on it. The question is on the amendment offered by Mr. Wilson, to the effect that the legislature have authority to provide for the expenses of justices of the supreme court and district judges.

The vote was taken, and the chair being in doubt a rising vote was taken which resulted: Yeas 7; nays 25.

Upon the adoption of the original section offered by Mr. Reid, a viva voce vote was taken and division demanded. Upon the rising vote the result was: Yeas 26; nays 4; and the section was adopted.

Mr. HEYBURN. Mr. Chairman, I now move that the article as a whole be adopted. (Seconded.)

The motion was put by the chair. (Carried.)

1—Rev. Stat. 1887, Sec. 6147.

Mr. HEYBURN. I move that the article be passed to final reading tomorrow at 2 o'clock. (Seconded. Carried.)

Mr. REID. If it is order, I move that the convention be discharged from further consideration of the report of the committee of Salaries of Public Offices, as it has been virtually incorporated in one of the other reports. (Seconded. Vote and carried.)

Mr. SHOUP. I move the Bill of Rights be taken up. Seconded. Put to vote and carried.

ARTICLE I.

The CHAIR. The question under consideration is the Article on Bill of Rights. The secretary will read.

SECTIONS 1, 2, 3, 4, 5, 6 AND 7.

Sections 1, 2, 3, 4, 5, 6 and 7 are separately read, voted upon and adopted, without amendments or debate.

SECTION 8.

Section 8 was read.

Mr. MORGAN. I would suggest that the word "for" between "offense" and "any" in the first line should be stricken out and the word "of" substituted.

The CHAIR. If there is no objection, that will be so ordered.

Mr. AINSLIE. It seems to me there is something wrong with this section. And we discussed it a long time. The way it reads now, if a person is bound over and not indicted—the grand jury ignores the bill—he can still go on and try him on information, even if the grand jury ignores the bill, the way that reads.

Mr. HEYBURN. I call attention to the fact—it will probably be noticed by the Revision committee—that after the word "impeachment" there should be a comma.

Mr. SHOUP. After the word "answer" in line one I think the word "for" should be inserted, so that it will read "No person shall be held to answer for any felony." If there is no objection, I suppose it can be inserted without a motion.

The CHAIR. If there is no objection, the word "for" will be inserted in the first line ofter the word "answer."

Mr. CLAGGETT. I move to insert the words "of the peace" after the word "justices" in line 4.

Mr. MORGAN. I second the amendment. (Carried.)

Mr. AINSLIE. There is an amendment I think will correct the defect in regard to "after a commitment by a magistrate" no person shall be held "unless the charge has been ignored by a grand jury."

Mr. HEYBURN. Do you think a court would consider that in any way, anyhow?

Mr. BEATTY. I have an objection to that section, if I understand it.

Mr. MAYHEW. I desire to second the amendment offered by Mr. Ainslie.

Mr. BEATTY. The way I read this, it requires first, prior action of the committing magistrate before anything of this kind can be done. If that is what it is to mean, it would meet my objection. In other words, the magistrate must act upon the case before the grand jury or anybody else can act. That objection was spoken of once before, and I thought it was corrected, but it is subject to the same objection now.

Mr. SHOUP. This section is entirely different from the section first reported by the committee. I think the original section is a great deal better than it is now.

Mr. CLAGGETT. To cover any possible ambiguity that might be here, I will move to strike out the words "held to answer," and simply insert the word "tried," so it will read, "No person shall be tried or held to answer for any felony or criminal offense of any grade," etc.

Mr. MAYHEW. I don't think that obviates the objection of Mr. Ainslie.

Mr. SHOUP. I will read the section as originally reported by the committee, which I think is a great deal better than this one, and the convention ought to

adopt it. (After reading[1]) I move the adoption of that section, in place of the substitute. (Seconded.)

The question was put by the chair.

Mr. AINSLIE. We went through that discussion pretty thoroughly the other day; it is placing too much power in the hands of the district attorney; he can file an information against anybody in God's world whatever, and bring him up and blacken his character.

Mr. SHOUP. I don't insist on it, if you can fix this one up. I will withdraw the motion at present.

Mr. BEATTY. I suggest this: "No person shall be compelled to answer for any felony or criminal offense of any grade, unless on the presentment or indictment of a grand jury, or after a commitment by a magistrate, or information by a public prosecutor." The design is this: that the public prosecutor should not present an information until after a committing magistrate has acted; but the way it is in here you cannot come before a grand jury and make a presentment until after a committing magistrate acts. If you put that clause, "after commitment by a magistrate" before the word "information" I think it will convey the idea we desire; "unless on the presentment or indictment of a grand jury, or after a commitment by a committing magistrate, or upon information by a public prosecutor." My recollection is we designed that the public prosecutor should not present until after a committing magistrate had acted. I will offer that amendment.

Mr. AINSLIE. I will offer this amendment.

Mr. BEATTY. Let us hear Mr. Ainslie's amendment first.

SECRETARY reads: Insert in line 3 after the word "magistrate" the following: "unless it has been ignored by a grand jury." (Seconded.)

Mr. SHOUP. Let us hear it read again.

SECRETARY reads the section as it would be if so amended.

1—Not given in reporter's notes.

Mr. CLAGGETT. If you adopt that, it amounts simply to this, that the grand jury cannot indict at all, for a man cannot be held to any crime unless the offense has been ignored by a grand jury. The way it is, it is all right, and in my judgment perfectly clear. My friend has got the word "unless" in a bad place; "he shall not be held to answer for any criminal offense, unless on an indictment by a grand jury," unless the grand jury ignore.

Mr. AINSLIE. There is a word left out before "information." "No person shall be held to answer for any felony or criminal offense of any grade, unless on indictment by the grand jury, or unless" etc. There ought to be a semicolon after jury in the second line.

Mr. SHOUP. I think that makes the section very plain.

The CHAIR. The question is on the amendment offered by Mr. Ainslie.

Mr. CLAGGETT. I vote no, because I am very clear that I am right on that proposition. It is a matter of English, and I move this section be laid aside until we can—

Mr. MAYHEW. Oh, let us fix it up now.

Mr. CLAGGETT. Fix it this way and you make it nugatory.

Mr. BEATTY. I do not know how the amendment comes in and I cannot vote.

SECRETARY reads: Insert in line 3 after the word "magistrate" the words "unless it has been ignored by a grand jury."

Put to vote and lost.

Mr. BEATTY. I have an amendment, Mr. Chairman.

Mr. AINSLIE. I would like to have some gentleman that knows the English language better than I do, offer an amendment so that the district attorney cannot try a man on information, after the charge has been ignored by a grand jury.

SECRETARY reads Mr. Beatty's amendment: In line 3 strike out the words "after a commitment by a

magistrate," and insert them before the word "information" in line 2.

Mr. MAYHEW. Mr. Chairman, I move a call of the house. We haven't a quorum here, and are going on without it.

The CHAIR. Is the demand for a call of the house seconded?

Mr. CLAGGETT. I second the call.

Roll call.

Present: Ainslie, Allen, Anderson, Armstrong, Batten, Beatty, Bevan, Campbell, Chaney, Clark, Hampton, Hasbrouck, Hays, Heyburn, Jewell, King, Kinport, Lewis, Maxey, Mayhew, Myer, Morgan, Moss, Parker, Pefley, Pinkham, Pyeatt, Reid, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Mr. President—35.

Mr. MAYHEW. I now move that the further call of the house be dispensed with. (Seconded; and it was so ordered.)

Mr. AINSLIE. I offer an amendment to Section 8.

SECRETARY reads: Continue Section 8 as follows: "And provided, That after a charge has been ignored by a grand jury, no person shall be held to answer or for trial therefor, upon information of the public prosecutor." (Seconded.)

Put to vote and carried.

Mr. BEATTY. I have an amendment in there, Mr. Chairman, that was offered to that section, to make it read in this way. That section now certainly means that no presentment can be made by a grand jury until after the party has been committed by the committing magistrate, "unless on presentment or indictment of a grand jury or information of the public prosecutor after a commitment by a magistrate." Now, I propose to make it read in this way: "No person shall be held to answer for any felony or criminal offense of any grade, unless on a presentment or indictment of a grand jury, or after a commitment by a magistrate, or information of the public prosecutor."

Mr. SHOUP. I think that section is as plain as the English language can make it.

Mr. HEYBURN. I suggest to the gentleman from Alturas that he will accomplish exactly what he is trying to do, I think, if he will just insert the word "on" after the word "or" before "information" in the second line, and without making so much change; "or on information."

Mr. BEATTY. And with the comma struck out after the word "prosecutor" perhaps that will do it; "or on information of the public prosecutor after a commitment by a magistrate;" I guess that will do it; I believe it will.

The CHAIR. If there is no objection, the word "on" will be inserted after the word "or" and before "information," in line 2. There is no objection, and it is so ordered. The question is now on the adoption of Section 8. Are you ready for the question?

"Question, question." Put to vote and carried.

SECTION 9.

Section 9 was read.

Mr. SHOUP. Mr. President, I have an amendment to that section.

SECRETARY reads: I move to amend by adding after the word "liberty" in line 2, the following: "And in all trials for libel, both civil and criminal, the truth, when published for good motives and justifiable acts, shall be a sufficient defense."

Mr. SHOUP. The section will then read as originally reported by the committee. Those words I move to insert were struck out on motion in committee of the Whole, for the reason it established a rule of evidence. This may be true. It may establish a rule of evidence, but it is the same as in the thirty-three constitutions of the United States already, and I think it ought to be in there.

(" Question, question.")

The question was put by the chair, and a viva voce vote was taken. The chair being in doubt, a rising vote was taken, resulting: Yeas 16; nays 16.

The CHAIR. The Chair votes No. The amendment is lost.

Moved and seconded that Section 9 be adopted.

Put to vote and carried.

SECTION 10.

Section 10 read, and it is moved and seconded that it be adopted. Carried.

SECTION 11.

Section 11 was read.

Mr. CLAGGETT. I move to strike out the words "prescribe and." They can regulate the exercise, but they have no right to prescribe it.

Mr. SHOUP. I will accept the amendment.

The CHAIR. If there be no objections, the words "prescribe and" will be stricken out in the second line.

Moved and seconded that the section so amended be adopted. Carried.

SECTION 12.

Section 12 read, and is is moved and seconded that it be adopted. Carried.

SECTION 13.

Section 13 was read.

Mr. SHOUP. I move to strike out all after the word "himself" "nor be deprived of life, liberty or property without due process of law." Those words are in the 14th amendment to the Constitution of the United States, which provides that no state shall deprive any person of those rights. I don't think it is in place here. (No second.)

The CHAIR. The amendment is not supported. Are you ready for the question?

Put to vote and carried. Section 13 adopted.

SECTION 14.

SECRETARY reads Section 14.

Mr. BATTEN. I move that this section be stricken out.

Mr. HEYBURN. I second the motion.

Mr. BATTEN. Mr. Chairman, I gave some few reasons when this section was under discussion in committee of the Whole. I do not know that I can add very much now to what I said then. I think it is attacking one of the most sacred of all rights which are guaranteed to us. I do not propose to enter into any great spread-eagleism or anything of that sort, but we cherish with a great deal of earnestness and a great deal of jealousy our right to private property, and I honestly believe that this section invades that right. It is directly upon one of the most sacred of our rights, in that it permits Mr. A, or John Doe, by setting up some little flimsy pretext, to public use, to take the property of Richard Roe. For that reason I am opposed to the section. The mere declaration in the constitution that a certain thing shall constitute a public use, or certain takings constitute a public use, does not make it such. What does constitute public use? What sort of taking constitutes it for public use? I think it must be such a taking as will redound in effect to the benefit of the public or of the government—beneficial and necessary to the entire public or to some portion of the public. That I think is the rational construction of what constitutes public use. The property must be taken for use by the general government or by the general public or some portion of the general public, and not for the pleasure or benefit of any particular individuals or any particular societies. I say this section is obnoxious inasmuch as it undertakes to and will permit and sanction the taking by a private individual for his own private benefit and use, for his own individual gain and aggrandizement, of the property of his neighbor, and does it under the constitutional sanction that it is for

public use. By parity of reasoning, I may pick my neighbor's pocket and say my necessity was very urgent and I had to construe my necessity into something of a public necessity to gain immunity for my felonious act by this constitutional provision here. For that reason I say it is wrong and should not be incorporated here in our constitution. We see what harm it has done already. One of the ablest members of this body—I allude to Judge Hagan of Kootenai county—left in voicing the spirit of disgust when the committee of the Whole adopted this section, and said he could not approve of the constitution with any provision like this embodied in it. Likely this is a small matter, though seemingly that dose of only one section of one article was a sufficient dose for him to justify him in taking a stand against the whole constitution.

Mr. BEATTY. I would ask you if Judge Hagan didn't go home to go fishing? That is what he told me.

Mr. BATTEN. Well, probably he did.

Mr. MAYHEW. He did not go home for that purpose at all.

Mr. BEATTY. I stated what he told me.

Mr. MAYHEW. He went home exactly for the purpose as stated—he did not care about being a member of a constitutional convention that had this provision in it.

Mr. BATTEN. Now, a plausible pretense of public benefit might be found to sustain almost every conceivable attack upon private rights. And I believe we can easily see, if we stop to reflect a moment, how under this section a plausible pretense can be easily set up and urged with plausibility whereby every attack—any attack—may be made upon private property. Now, I had intended, Mr. President, had the time been such as to admit of it, to prepare something of an argument, drawing my inspiration from so eminent an authority as Judge Cooley in his work on Constitutional Limitations. I will confess this matter offended my sense of constitutional rights so violently that immediately after

its adoption by the committee of the Whole, when it was under consideration in that committee, I went down into the library and tried to brush up some of my general reading on the subject, and my reading of Mr. Cooley in that excellent work of his and also my reference to authorities, convinced me that the stand I had taken was a sound and proper stand. Mr. Cooley says in his work on Constitutional Limitations, if I may be pardoned for reading it:

"It would not be entirely safe, however, to apply with much liberality the language above quoted, that 'where the public interest can in any way be promoted by the taking of private property,' the taking can be considered for a public use. It is certain that there are very many cases in which the property of some individual owners would be likely to be better employed or occupied in the advancement of the public interest in other hands than in their own; but it does not follow from this circumstance alone that they may rightfully be dispossessed. It may be for the public benefit that all the wild lands of the state be improved and cultivated, all the low lands drained, all the unsightly places beautified, all dilapidated buildings replaced by new; because all these things tend to give an aspect of beauty, thrift and comfort to the country, and thereby to invite settlement, increase the value of lands, and gratify the public taste; but the common law has never sanctioned an appropriation of property based upon these considerations alone; and some further element must therefore be involved before the appropriation can be regarded as sanctioned by our constitutions. The reason of the case and the settled practice of free governments must be our guides in determining what is or is not to be regarded as a public use; and that only can be considered such where the government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience, or welfare, which, on account of their peculiar character, and the difficulty —perhaps impossibility—of making provision for them otherwise, it is alike proper, useful, and needful for the government to provide."[1]

Mr. MORGAN. I don't object to that in that work.

Mr. BATTEN. Public convenience can certainly not be urged as an argument in behalf of this section; but

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1—Cooley's Con. Lim., 5th ed., p. 660; 7th ed., p. 768.

the argument I have heard urged in its behalf has been something like this: That here we have a condition of things which requires us almost to invade private rights. It is an argument—it is a flimsy argument because it it not grounded upon anything solid or substantial. It is an argument, as the lawyers would say—and I hope you will not deem me pedantic—*ex necessitate rei*—from the necessity of the thing; and this sort of arguments are negative arguments, not grounded upon anything firm or solid that will appeal strongly to the reason of man. Now I desire simply to say this, that while I am aware, well aware, we are laboring under a condition of things that calls for some action, yet I will never, so far as I can do it, sanction anything like this under such a plausible pretext, as that we are living under a condition of things that requires us to take private property for private use. Now, sir I think we must all admit that what we seek to attain by this section can be equally attained, just as effectively attained, by the old method of an understanding with your neighbor—an agreement with him.

Mr. MORGAN. Suppose he won't agree.

Mr. BATTEN. Well, I say that, however, the instances of his non-agreement or failure to agree will be very rare, and I lay this down almost as axiomatic that rare instances will not justify a general law of this kind.

The CHAIR. The gentleman's time has expired.

Mr. MAYHEW. Mr. Chairman, I desire to make a motion to take a recess until 8 o'clock this evening. As you know, it is rare that afternoons we have had a quorum, and I think by having a session this evening we can have a quorum here, at least to do this business we have before us of so much importance. I therefore move we take a recess until 8 o'clock.

Mr. BEATTY. I desire to suggest this: The committee on Revision and Enrollment have a great deal of work before them and I have asked the committee and they have agreed to meet this evening at 8 o'clock, and if they have any meeting I suggest this: If we

hold over until 9 or 10 at night, there is no time for them to meet and you will only be delayed the more in the end. My object is not to delay the work now but hasten it.

Mr. MAYHEW. I have this to say in relation to the meeting of the committee on Revision: The committee has not met heretofore for about ten days, and now I say this is such an important matter that I do not desire to see a section of this kind adopted without a fuller house than there is now. I am sorry it interferes with them. I think this motion is not debatable.

Mr. CLAGGETT. No, but the gentleman is debating. I would like to state one thing on this. I think we ought to get through with this bill. We can conclude it before our ordinary time for adjourning. It is true this is an important section, but it was argued for two days in a full convention; it was sustained by a vote of 49 to 11.

The CHAIR. The motion is to take a recess until 8 o'clock this evening. (Vote). The noes seem to have it. (Division called for). 11 in favor, 19 opposed. The motion is lost. The question is on the motion of the gentleman from Alturas to strike out Section 14.

"Question, question."

Mr. MORGAN. Mr. President.

CALL OF THE HOUSE.

Mr. MAYHEW. I move a call of the house. (Seconded).

Mr. SHOUP. I object to a call of the house.

Mr. CLAGGETT. Then it requires to be supported by one-fifth of the members.

The CHAIR. Call the roll.

Mr. CLAGGETT. Objection is made, and when objection is made the rule provides that it must be sustained by one-fifth of the members.

The CHAIR. I can't tell whether one-fifth of the convention sustains the call by hearing a voice here and there.

Mr. MORGAN. This is a vote whether we sustain a call?

The CHAIR. Yes, sir.

Roll call:

Yeas: Batten, Campbell, Chaney, Hasbrouck, Hays, Heyburn, Hogan, Jewell, Kinport, Mayhew, Melder, Myer, Parker, Pefley, Sinnott, Vineyard—16.

Nays: Allen, Anderson, Armstrong, Beane, Clark, Coston, Hampton, King, Lewis, Maxey, Morgan, Moss, Pinkham, Pyeatt, Shoup, Sweet, Underwood, Whitton, Mr. President—19.

The CHAIR. As I understand the rule, the call of the house is sustained.

Mr. MAYHEW. Now you see, Mr. President, we have not a quorum here.

The CHAIR. The clerk will furnish the sergeant at arms the names of the absentees.

Mr. MAYHEW. I suggest now we take a recess.

Mr. CLAGGETT. No, sir, you have demanded a call, and we will stay here.

Mr. UNDERWOOD. I move we take a recess until 8 o'clock.

Mr. MAYHEW. The gentleman is out of order—you can't move to take a recess under a call.

Mr. CLAGGETT. If we take a recess until evening, the trouble about it is this: We want to get through this week. The committee on Enrollment and Revision must necessarily sit in the evening, and if you take nine of our members away to sit in that committee during the session of the convention, it leaves you without a quorum, for there are only forty members in attendance.

Mr. SHOUP. I have no objection to laying this matter over until tomorrow morning. I move that we adjourn until nine o'clock tomorrow morning. (Seconded).

The CHAIR. I understand that in a call of the house, there is nothing to be done. You can move to suspend the call.

Mr. SHOUP. I move to suspend the call. (Seconded.

The CHAIR. It is moved and seconded that the

call of the house be suspended. (Vote). The chair is in doubt. (Rising vote; 18 in favor, 10 opposed). The motion to suspend proceedings is carried. The question is now, shall Section 14 be stricken out.

Mr. MAYHEW. I move we take a recess until 8 o'clock.

Mr. SHOUP. I move we adjourn until 9 o'clock tomorrow morning.

Mr. MAYHEW. I accept the amendment.

The CHAIR. The motion of the gentleman from Shoshone was not supported. The question is, shall the convention adjourn until nine o'clock tomorrow morning. (Vote and carried).

TWENTY-FOURTH DAY.

August 1, 1889, 9: 00 o'Clock A. M.

Convention called to order by the President.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Ballentine, Brigham, Crook, Gray, Hagan, Hammell, Harkness, Hendryx, Howe, Lemp, McMahon, Poe, Pritchard, Robbins, Salisbury, Standrod, Steunenberg, Stull, Taylor, Woods.

Mr. CAVANAH. I ask to have the record corrected in this respect, that I answered to my name yesterday morning.

The CHAIR. If there are no other corrections the journal will stand approved.

Presentation of petitions and memorials. None.

Reports of standing committees.

COMMITTEE REPORTS.

Mr. CRUTCHER. The committee on Mines and Mining desires to report.

Mr. SHOUP. The committee on Apportionment desires to report.

SECRETARY reads: Mr. President, your committee on Mines and Mining beg leave to report that in all matters properly coming within the jurisdiction of your committee, consultations have been had and conferences held with the committee on Revenue and Finance, and Manufactures and Irrigation; and such provisions necessary to be inserted in the constitution as relates to mines and mining have been adopted and inserted in the proposed articles to the constitution reported by the said committees. Wherefore, your said committee reports no additional article to the constitution relating to the subject of mines and mining. Respectfully submitted. J. F. Crutcher, Chairman.

The CHAIR. If there are no objections the report will be received.

SECRETARY reads: Mr. President, the Apportionment committee respectfully submits the following report. James M. Shoup, Chairman.

The CHAIR. The report will lie on the table and be printed.

Mr. BEATTY. Mr. President, I move that the committee on Apportionment be required to attach to their report the schedule showing the number of votes in each county upon which this apportionment is based, and that that be printed with the report, similar to the schedule attached to the report of the committee on Finance. We would like to know just the number of votes upon which this apportionment is based. (Seconded).

Put to vote and carried.

Mr. WHITTON. Mr. President, the secretary read the county of Latah as two members; it has three.

The SECRETARY. The County of Latah, two members, is the way it is written here.

Mr. SHOUP. There was so much confusion back here that I was unable to hear what the gentleman from Alturas said.

Mr. WHITTON. I said the county of Latah had three members instead of two representatives, unless it was changed.

Mr. SHOUP. Now is not the proper time to discuss this bill. It will be discussed after it is laid over and printed.

Mr. HASBROUCK. The committee on Engrossment is ready to report.

SECRETARY reads: Mr. President, your committee on Engrossed Articles of the Constitution have the honor to report that they have carefully examined the following articles, viz: Seat of Government, Public Institutions, Buildings and Grounds, Public and Private Corporations, and Labor, and find the same correctly engrossed. Hasbrouck, Chairman.

The CHAIR. The secretary will read the reports which went over until this morning, in their order.

SECRETARY reads the report of the Committee on State Government, Public Institutions, Buildings and Grounds.

ARTICLE X. ADOPTED.

The CHAIR. The question is upon the final reading of the article on State Government, Public Institutions, Buildings and Grounds. The secretary will call the roll.

Roll call:

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—46.

Nays: Mayhew—1.

And the article was adopted and referred to the

committee on Revision and Enrollment to be incorporated in the constitution.

ARTICLE XI. ADOPTED.

SECRETARY reads the report of the committee on Public and Private Corporations.

The question being on the adoption of the article on Public and Private Corporations, the secretary called the roll.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—47.

Nays: None.

And the article was adopted and referred to the committee on Revision and Enrollment to be incorporated in the constitution.

ARTICLE XIII.—IMMIGRATION AND LABOR.

SECRETARY reads number 15 (13), the article on Labor.

SECTION 8.

Mr. ARMSTRONG. Mr. President, I have an additional section to offer to the Labor article.

Mr. MAYHEW. I make the point of order, that it is too late to offer an amendment.

Mr. REID. It was agreed the other day when this bill was put on its final passage, the salary should be put in, and this was passed over by unanimous consent at that time.

The CHAIR. If there is no objection the secretary will read it.

SECRETARY reads: The Commissioner of Immigration, Labor and Statistics shall perform such duties

and receive such compensation as may be prescribed by law.

Moved and seconded that the same be adopted.

Mr. REID. The duties are stated specifically, and Section 7 requires a board of arbitration. It may be necessary, and the legislature may want, to put him on the board of arbitration. Having prescribed his duties here, I think that would limit them.

The CHAIR. It is moved and seconded that the amendment offered by the gentleman from Logan be inserted at the end of the article as an additional section.

Put to vote and carried.

Mr. MAYHEW. The question is now whether that bill does not require to be engrossed.

Mr. REID. I ask unanimous consent that it be referred to the committee on Revision without further engrossment.

The SECRETARY. The engrossing clerk can write that right on the end of the article here.

Mr. REID. I move that it be put on its final passage and be considered engrossed. (Seconded).

Mr. CLARK. Mr. President, please have that additional section read.

SECRETARY reads the section as set forth above.

Roll call on adoption of the article:

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—49.

Nays: None.

And the article was adopted.

ARTICLE I., SECTION 14.

The CHAIR. The regular order of business and the special business is finished for the day. The matter now

before the convention consists of the unfinished business of yesterday, namely, the consideration of the article on Bill of Rights, Section 14.

Mr. SHOUP. Mr. President, I do not wish to take up the time of the convention in discussing this article or to go into the merits of the article. It was discussed two days in committee of the Whole, and I have no doubt every member of the convention has made up his mind as to how he will vote on this section. The question, however, has been repeatedly raised here that this section is an innovation—that it is contrary to all law and to all precedent. I will read a few extracts from some of the constitutions of the states on that question—the right of taking private property for private use in specific or express circumstances. I read from the constitution of Alabama, Art. 1, Sec. 25:

"Provided, however, that laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and for works of internal improvement, the right to establish depots, stations and turnouts, but just compensation shall, in all cases, be first made to the owner."

I read now from Art. 18, Sec. 14, Constitution of Michigan:

"Private roads may be opened in the manner prescribed by law; but in every case the necessity of the road and the amount of all damages to be sustained by the opening thereof shall be first determined by a jury of freeholders; and such amount, together with the expenses of proceedings, shall be paid by the person or persons to be benefited."

Constitution of New Jersey:[1]

"Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners."

The constitution of New York, Art. 1, Sec. 7, provides:

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[1]—Art. 4, Sec. 7, Subd. 8.

"Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefitted."

Art. 1, Sec. 23, Constitution of South Carolina:[1]

"*Provided, however,* That laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and for works of internal improvement, the right to establish depots, stations, turnouts, etc.; but a just compensation shall, in all cases, be first made to the owner."

The constitution of Colorado[2] contains the following:

"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. Private property shall not be taken or damaged, for public or private use, without just compensation."

I think, Mr. President and gentlemen of the convention, that there is no doubt but what there are precedents for such a law as this. This provision in the constitution of Colorado has been in force for thirteen years. It passed congress and has gone through the test of the courts of Colorado. I think there is no necessity of arguing further on the merits of this section. It is noticed here that nearly every delegate upon this floor, if not every one, who is opposed to this section, has no interest whatever in agriculture. It is a well known fact that it will be impossible to irrigate many sections of land in this territory unless we have some provision in our constitution that the ownership of land at the mouth of a canyon contemplates the rights neces-

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1—Const. of 1868.

2—Art. 2, Secs. 14 and 15.

sary to take the water out in order to get a grade so as to take it on the high bench lands. It has been repeatedly said here, and the impression, as I take it, to be given to members of this convention is, that it will destroy the property of the owner—running a ditch over a man's land. It does nothing of that kind. All that is proposed to do is to compel the owner of land, provided he shall not agree to anything reasonable—to compel him to allow another person the right of way over his land—just ground enough to run his ditch; but it is also provided that he shall be paid every dollar that the land is worth. I think there is no necessity for discussing this section any longer.

Mr. BATTEN. I desire to withdraw my motion to strike out the section, or rather, to move it be struck out—the section as it now reads—and substitute the original section. The original section, as I understand it, is a literal copy of the Colorado section touching this matter, and inasmuch as it has stood the test there for some years and all relates to this vital matter, and there has been some adjudication upon the Colorado constitution in this regard, I am willing to stand by the Colorado constitution. So I offer this in place of my previous motion.

The CHAIR. Is there a second to the substitute?

Mr. BATTEN. I move to strike out Section 14 and substitute the following section to be numbered 14:

"Section 14.[1] 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. Private property shall not be taken or damaged for public or private 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 court for the owner, the property shall not be needlessly disturbed or the proprietary rights of the owner divested."

1—The first sentence of this proposed section is an exact copy of Sec. 14, Art. 2, Colorado constitution. The remainder is taken from Sec. 15, same article.

That is the original section.

Mr. MAYHEW. We will adopt the original section as printed in the bill.

Mr. SHOUP. Mr. Hammell, member of the committee, drew that section and he said that he copied it verbatim from the Colorado constitution. I have been searching for the last twenty-four hours for the Colorado constitution and have been unable to find it in the city; although I did compare the section at the time to the Colorado constitution, and my recollection is that it is verbatim, but I am not positive on that point. It seems to be impossible to find a copy of it.

The CHAIR. Are there any seconds to the amendment offered by the gentleman from Alturas? (Seconded, seconded.)

The CHAIR. The gentleman from Alturas moves to amend Section 14 by striking same out and substituting the section which has been sent to the secretary's desk.

Mr. MORGAN. Mr. President, as has been well said by Mr. Shoup in his remarks this morning, this section was discussed, re-discussed and discussed again for almost two days, in this convention, and both of these sections were discussed at length. The section that has just now been proposed is a substitute for this one and should go in another place, if at all—under the article on Irrigation.

Mr. BATTEN. If you refer to Section 4 on Irrigation, you will find this subject is virtually covered.

The CHAIR. Section 4 was stricken out for the reason that this section covers the case.

Mr. MORGAN. Gentlemen, you recollect that at adjourning at that time, so far as the irrigation of lands was concerned, that Section 4 in the report of that committee was entirely sufficient, in my opinion, for this purpose. But many gentlemen regard that this should apply to mining interests, and I am told by prominent mining men upon the floor that it is a section absolutely necessary to the interests of miners to

enable them to develop and work their property. It seems to me this has been abundantly discussed, and it is only necessary for me or anyone else to say that it is impossible to irrigate the lands of this territory in these sagebrush districts unless you have some provision about this. If it cannot be done, then the people might as well leave this territory. It is an absolute necessity, and I am told by mining men that it is just as necessary for their benefit as it is for those of the agricultural interests. This property is not to be taken without compensation; nobody is to be unnecessarily injured or damaged. The law must provide a means and method for ascertaining the necessity for going across the lands of another, so that it cannot be done needlessly or unnecessarily. It has to be submitted to a jury or to the court—the necessity for crossing the lands is to be submitted to a court and a full hearing with all the parties interested in court. Not only this, but the law will provide and this section requires that whatever damages shall be assessed must be paid to the owner of the land or property or else paid into court for his use. It seems to me that there ought to be but one opinion with reference to this. The gentleman read some remarks of Judge Cooley with reference to the common law—that the common law was against this thing. Well, we know that. There are a hundred things, I might almost say a thousand things, that are in our statutes today that were forbidden by the common law. The interests of the country as civilization progresses and improvements are made compel us from time to time to enact new laws which are in derogation of the common law and do away entirely with the principles of the common law. So it is with this. Judge Cooley, in writing that, correctly stated the common law with reference to this matter; that private property could only be taken for public use, but we see here an absolute necessity for taking it for private use. It was illustrated, I believe, upon the floor yesterday, the statement was made—it is only necessary to illustrate by making the statement

with reference to this little valley. Suppose Tom Davis or a few other parties who came into this town at an early date, had taken up land across this valley extending to the bench on each side—which they might have done—the country below was open and free—and said simply to the people below, "Here, you can't improve this land—you can't take a ditch across my land." He could have kept ten thousand or perhaps a hundred thousand acres below him upon this stream absolutely in its desert condition. That is no rare thing. You see, gentlemen, this is a necessity. A private person must have the right to take his ditch across the farm of another private person or else the country cannot be improved.

Mr. Morgan in the chair.

("Question, question.")

Mr. VINEYARD. The question is, does not this substitute cover the whole ground, as introduced by Mr. Batten? In other words, doesn't the original section as reported in the Bill of Rights cover everything Judge Morgan asks for? "Private property shall not be taken for private use unless by the 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." That covers the whole case. And that is the Colorado constitution under which they have been living for thirteen years. Under that provision you have this right. You have a right to condemn those lands on the ground of public necessity for the purposes therein specified; to the extent of working mines; to the extent of laying out private ways; to the extent of establishing reservoirs and other basins for public good. The public necessity of the case under this law would justify all these things. Therefore I can't see why we should go beyond that and say for the veriest whimsical and flimsy pretext that private property may be condemned for private use when everything laid down in this section is covered. I was not here when this original

debate was had on this particular section, but I don't see but what the whole matter is covered, and we are willing, so far as I am concerned, that the section in the Colorado constitution be engrafted in this constitution on this subject. There is no doubt as to the extent of this and the power the legislature would have under it to enact all the necessary laws upon this subject. It extends to every known case of necessity that might arise in a country of this character.

Mr. PYEATT. Please state your objection to this section.

Mr. BEATTY. Mr. President, I thought we had done with this matter. I regret it comes up again in the shape it is now. There is now a proposition to go back to what we condemned and abandon what we had approved. The last gentleman who was upon the floor says he does not want to take property for merely whimsical purposes. Why, the member cannot have examined this section that we had adopted the other day. There is no proposition to take property here for whimsical purposes. If you will read Section 14 as amended, you will see that it must be a matter of necessity that these rights of way are taken—the necessary use of lands for the construction of reservoirs or storage, etc. Now that implies a good deal, Mr. President. It implies that before a party can take the private property of another for use it must be from a matter of necessity; it must be an actual one. It is not taken simply at the whim of anyone; he must have some actual use for it. Now there has been a great deal said here as though some private rights would be interfered with, as though some great damage would be done. Why, gentlemen, the law will provide accurately as to how these rights are to be taken. I can't go and condemn any person's property simply because I want it. It has got to be obtained by a regular process of law. It comes before a court, or before such a jury as the legislature may provide. The opponents of this measure argue and talk as though we were leaving it virtually to one individual

to go and take the property of another without any process of law. That is not the fact at all. Every step will be accurately provided for by the legislature, and every man will be protected in his rights and interests, and it is only because of the actual necessity that this law is urged. Now, gentlemen, you forget one thing. We are referred so often to what has been done in the older states, that there they have no such provision as this. Why? Because the necessity does not exist there. I will point you to instances where the necessity does exist, and where it has been the law for a hundred years. Suppose you have a farm inside of another or other farms; has not the law for a hundred years or more given you the right of way across one farm to another? This law exists in every state in the Union, and I say to you here now that Indiana, Ohio, Virginia, and all the older states, for a hundred years have had just the same law there that they have now with reference to right of way across the land of another. This law is urged because of its actual necessity. They do not need this law back in the eastern states, because they have no irrigation there. But I am not talking alone—I am not advocating this alone for the benefit of those who need the law for irrigation. There is another interest that I am looking after and that I am very much interested in. Many gentlemen who have advocated this law because of its actual necessity for farming and irrigation purposes forget that there is another interest, and that is the mining interest, and I am as much interested in that as I am in the agricultural interest. The two in this country must go together. If you protect one you must protect the other, for I say the two are dependent on each other. Now this section my colleague from Alturas proposes to introduce instead of the one we have adopted—in other words, the section as originally reported—if you will examine it carefully you will see that it makes precious little provision for the mining interests. It leaves out all reference to tunnels, shafts, hoisting works, etc., all

of which are just as essential for mining purposes as your ditches are for agricultural purposes, and I insist that Section 14 as originally reported—whether it be from Colorado or not, I do not care—does not fill the bill as well as the section which we almost unanimously adopted in this matter, and I hope the old section as reported by the committee will not be adopted instead of the new. If you will take it you will see a great difference: (Reading) "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"—now they simply provide for flumes and ditches across the land of another—"mining, milling, domestic, or sanitary purposes." Where is that right of way for a tunnel? Where is your right of way for hoisting works? Where is your right of way for a road across the mining claim of another and all the easements necessary in developing a mine? This section points almost entirely to agricultural interests, and I say the miners here cannot support that section. The only section they can consistently support is the amended section.

Mr. SHOUP. What is a private way of necessity except for a road? Private ways of necessity are provided for in the original section in line 2.

Mr. BEATTY. Private ways of necessity—well, that may cover a road; it would not cover a shaft; it would not cover hoisting works; it would not cover a tunnel. Possibly it might be construed so, but I am very doubtful about that, and we don't want any doubt about this. We want the mining interests protected just as much as your agricultural interests.

Mr. VINEYARD. Allow me to ask the gentleman if the mining interests cannot be protected in line 4: (Reading) "Private property shall not be taken or damaged for private or public use without just compensation." Wouldn't that cover it?

Mr. BEATTY. No, sir, not at all.

Mr. MYER. Allow me to inquire if the five-minute rule is being enforced?

The CHAIR. It is not being enforced.

Mr. BEATTY. If my time is up, I shall not intrude. (Cries of "question.").

The CHAIR. The question is upon the adoption of the substitute of the gentleman from Alturas.

Mr. MAYHEW. I call for the ayes and nays.

Mr. CAVANAH. I would like to hear the substitute read.

SECRETARY reads:

"Section 14. 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. Private property shall not be taken or damaged for public or private 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 court for the owner, the property shall not be needlessly disturbed or the proprietary rights of the owner divested."

Mr. CLAGGETT. Mr. President and gentlemen of the convention: When this question first came up it contained in the Bill of Rights the proposition which has now been offered in the shape of a substitute by the gentleman from Alturas. It was antagonized then by the same gentlemen, so far as my observation goes, as are now insisting upon re-inserting it. It was antagonized upon the broad proposition that it was taking private property for private use, and their criticism in that regard was well taken, for although it is competent for the state in the exercise of its sovereign powers to take private property for private use, and although they may so declare in their organic law, it is so much in violation of the theory or idea of taking private property as known to the common law, as known to precedent, that I for one most strenuously objected to it in that form. in every sense of the term. It is not the taking of private property for private use to say that a right of way shall

be given to any number of people or to a single individual to go across a piece of land in order to utilize the material resources of the state. What is the question which determines the matter of public use? Why, that it is necessary to the interests of the public. It is upon that theory that rights of way for the construction of railroads have been justified and maintained in every state in this Union. You take the right of way from the private individual and give it to the corporation. If you carry your criticism to its legitimate extent, it will amount to this: that you are taking that private right of way—or that right of way consisting of the private property of an individual—and giving it to another corporation or individual, and yet why is it justified? We call it, however, a public use, and why? Because it is necessary that it should be done, in order to promote the general prosperity of the people. That is the test as to what is or what is not a public use. And so will any gentleman who criticises this substitute, will he say it is not an absolute public necessity that the rights of individuals, upon compensation being made, shall be compelled to give way in order to construct a great reservoir or storage basin for the storage or reserving of water, in order to cultivate these great plains? Will anyone say it is not a matter of public necessity and public use to take a mere easement upon the land of another for the construction of a ditch across it? Will anyone say that it is not a public use to provide for the condemnation by a proper act of easements upon mining property necessary to their complete development, and specially when the congress of the United States has declared in specific terms as long ago as 1866[1] that in the absence of legislation by congress, the local legislature shall have power to make rules for the drainage of mines and the working thereof, by establishing all the easements and rights of way and uses necessary to their complete development? That is already the law, and with the exception of three classes, namely, the one in

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1—14 U. S. Stat. at Large, p. 252.

regard to storage basins and reservoirs, and the other proposition in regard to any use necessary to the complete development of the material resources of the state, and to preserve the health of its inhabitants, there is not a single thing that is in Section 14 that is not already the law of this territory and has been for years past. Now in this criticism, when gentlemen get up and criticise Section 14, what clause of it do they object to? They do not object to anything in particular; they simply object in a broad and general way. Their first objection was, it was taking private property for private use. Then they objected to the substitute, and when the convention acted upon that theory as to these necessities, as to public uses, and so declared in this article as it now stands, now they wheel around and say they want the old original section back again, and have it there in specific terms in the constitution that private property shall not be taken for private use and only for public use. There is not a single clause in this section as it now stands that is subject to any legitimate criticism, and no legitimate criticism has been made upon it. I again call the attention of the convention to this fact, that this matter has been discussed for two whole days and settled by a vote of 49 to 11, that being the vote in the committee of the Whole upon this section as it not stands; and when the convention is largely dissipated and many gentlemen who heard this matter discussed have gone home, and when this thing was considered as finally settled, it seems to me in good faith to the absentees, if nothing else, that in the absence of some great and overwhelming and true reason to the contrary, the previous action of the convention should be sustained. When the matter came up on the report of the committee on Irrigation the other day, and my friend from Custer insisted on incorporating a copy in Section 4, it was nevertheless stricken out of that report for the reason that it was already incorporated here. But as stated by the gentleman from Alturas, this is not a question of irrigation only; it is a question of

mining development, and it is as absolutely necessary that it should go in for the mining interests as it is for the irrigating interests. I was informed by the gentleman from Custer (MR. SALISBURY) at the close of the last discussion, that it was absolutely necessary for the miners, and for the poorer miners rather than the richer ones. He went on and stated to me that he had patented the whole of the Ramshorn hill, and around the margins of his patented claims were a large number of mine owners, owning small claims, but who had no means of dumping upon his land, and, as he said to me, they should have the right to dump upon his land—I am allowing them to do it now as a matter of neighborhood custom and as a matter of convenience and kindness, but they should have the right to come in and dump on the surface portion of my land, if it is necessary for the working of the mine. Why did congress provide this? Everything that is done under the law—

Mr. MAYHEW. I insist on the rule. I understand we cannot extend the time.

The CHAIR. No, sir, he has more time.

Mr. CLAGGETT. Why did congress make this provision? Why did the territory make the provision that is contained in here in regard to rights of way for the construction of ditches, which you will find in the law of your territory today? Why was it that two years ago there was such a strong discussion in the legislature, participated in and advocated by my distinguished friend from Shoshone county, in a bill which gave these rights of mining easement and so on, for the purpose of storage and the development of the mining resources of the country? If you were to strike out "use," by the way, from this section, and put in "easement," it would be precisely the same thing in principle and in effect.

Mr. REID. I am prepared to vote for this new section that has been put in, if you will strike out one clause in it. I know we may be fooled by the gentleman's eloquence and his appeal, and all that. Colorado

today is as much a mining state as Idaho ever will be, and this committee, by offering Section 14 in the bill, has covered every possible phase of the mining law as it is in the Colorado constitution, but they have put in a clause there that I never will support. I am willing to go as far as any gentleman on this floor to protect mines and agriculture and domestic uses and anything else.

Mr. MORGAN. Will the gentleman describe what it is?

Mr. REID. Yes, I will. I am not going to offer a motion, because the vote is now on the substitute. If that is lost I shall offer an amendment. After providing in line 3 for ditches, flumes and pipes, they say: "for any useful, beneficial or necessary purpose." You can take it for any purpose on God's green earth that you want to take it. Now if you will cut that out, it will provide for agriculture, for mining or anything else, but they have gone and put that clause in there, and they won't find it, I take it, in another constitution in this Union. That is the reason I support the substitute. I will support the original section if they will strike out that clause, but here we are called upon to say that you may take it for any useful, beneficial or necessary purpose.

The CHAIR. Will the gentleman permit me to suggest, it will be noticed in line 2: "the necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, 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 purpose."

Mr. REID. Yes, for any useful, beneficial or necessary purpose, not limited to mines or irrigation, but for any purpose in the world.

The CHAIR. Suppose it is for domestic purposes?

Mr. REID. That is all provided for in the irrigation clause—agriculture is provided for in the irrigation clause. But here we propose to provide for mining.

That is right, but instead of providing to do that they let down the bars and conclude by saying "for any useful, beneficial or necessary purpose." That will give rise to a whole lot of litigation, and when you carry it up into the courts it will be in conflict with the constitution of the United States.

Mr. SHOUP. There is no provision in the irrigation bill for right of way.

Mr. REID. There is a provision here for it. I don't object to any part of it in the world but that particular clause, "for any useful, beneficial or necessary purpose." And I don't propose to be drawn into this thing and vote for it, notwithstanding the gentleman's appeal. I take it there are as many away opposed to it as there are that were in favor of it. But if you gentlemen who have been through this vain struggle—for a week or ten days it has been a proposition that has been one of difficulty to deal with, and for quite good reason—after getting the Colorado constitution, and we are afforded an opportunity to compare each line, if you strike that clause out, then I am willing to have it in the constitution—the fourteenth section as originally reported, or I am willing to have it as it is now, because they are both, in substance, the Colorado constitution. I think the last section goes a little farther than the other and is the better, if you strike out this clause. As the question is upon the adoption of the substitute I shall vote for it, and I shall vote to strike out that clause, "for any useful or beneficial purpose;" then you have all the protection you want for mining, agriculture or anything else; but I don't think the members should be held down to use such broad and sweeping terms as "useful, beneficial or necessary purpose." Who is to say it is a beneficial purpose? Necessary to what? Useful to whom? You may consider any sort of thing, and all a man has to say is that it is necessary or beneficial, and no matter what the damage to his neighbor is he can carry through his project. I say it is in violation of the constitution of the

United States, and the convention knows we have made innovations enough.

Mr. McCONNELL. I want to ask the gentleman a question. What could be done in that way that would damage anybody, if it was for a useful or beneficial purpose?

Mr. HEYBURN. Take out the comma after "useful."

Mr. REID. Yes, take the comma out, and this would limit it to mining. There is no argument made here for anything but mining. We have protected irrigation in another clause. No gentleman will go further than I will to protect mining, but without jeojardizing any part of our development here.

Mr. McCONNELL. What damage could be done to any person's place by taking water across it for a useful purpose?

Mr. BEATTY. I desire to ask Mr. Reid a question; whether, if you were to construe the clause as you propose, there is any provision left in the section by which you can convey water across the land of another for placer mining purposes. I am not personally interested in that, but would like your understanding of it.

Mr. REID. I think the second line covers it; that is the reason I voted for it—the right of way for the construction of canals—the latter part of the second line.

Mr. BEATTY. I would ask you, Mr. Reid, if that clause does not all refer to "purposes of irrigation,"—"the necessary use of lands for the construction of reservoirs or storage basins for the purposes of irrigation"?

Mr. REID. No, the disjunctive conjunction is there, you see. This, too; "or for the drainage of mines or the working thereof."

(Cries of "question.")

Mr. HAMPTON. I am opposed to the substitute for the very reason that my friend from Nez Perce seems to be in favor of it. He says he is in favor of

it because it restricts the operation of this part of the constitution to mining and agriculture. I propose to consider that part which relates to any other useful or beneficial purpose, and leave the parts about mines and agriculture. That is the very reason why the constitution of Colorado is not what we want here; it is too narrow; it is not broad enough. We want something that will cover every industry. We don't want the legislature to favor agriculture and mining alone. It seems to be the argument of the gentlemen here who represent the mining districts that this legislation, or this part of the constitution will be in favor of maintaining the rights of the agricultural districts alone, but such is not the case. The language of the section proposed to be adopted, as amended in committee of the Whole, is broad; it covers everything, and that is the reason I am in favor of it, and that is the reason I believe every gentleman should be in favor of it. But there is a phase of this question that seems to have been overlooked in the discussion. It is that which has come up in California and has given rise to a great amount of litigation. It has been found in the courts there, and has been decided in the courts, that riparian rights, that is, the rights of the old common law, obtained in California, and that the system of appropriation which has grown up on our Pacific coast did not prohibit riparian rights, and so it does not. But the constitution of California has a clause that provides that private property may be taken for public use, and under that section the courts have held that riparian rights can be taken away and can be applied to a great extent to the more beneficial use which is provided for by appropriation. It is well known that the old doctrine of riparian rights to a great extent has been against this doctrine of appropriation. It has been said that men who have settled on a stream and have acquired riparian rights have been enabled, as they have been in California and other territories, to entirely do away or in other words prohibit the very execution of the law of appro-

priation.. Now, sir, this will cover the ground. It has been decided, I say, in the courts of California, as all attorneys on the floor will remember, that the rights which have been acquired under the old riparian system have been held to be subject to be condemned to private use, and water may be taken to supply the needs of an irrigating community where it might otherwise be cut off. That is the reason I am in favor of this part.

Gentlemen on the floor have made out a very strained and peculiar kind of argument. It was said yesterday—and the statement seemed to have had a great deal of effect upon the convention—that an honorable and distinguished member of this convention has left the convention because he was disgusted with a vote of this convention. Now I say, gentlemen, that this either reflects upon the gentleman himself, or it is unjust to him to make such a statement here. If any gentleman of this convention is so imbued with the importance of his own judgment that he will forget his duties to the state and leave this convention for some particular idea of his, which may be a pet idea, after it has been sat down upon by the convention, it is fair at least to say that it is not wholly creditable to him. But I believe the gentleman has been misrepresented to some extent. If possibly he made such a remark in the heat of his excitement, it is unfair, almost childish, for a member of this convention to get up and make an argument on that kind of proposition, and unfair to him to make such a statement as coming from him, because it might be a mistake. I never met the gentleman before, but I have seen him in this convention, and I believe him to be a gentleman of ability and discretion. I say it is unfair, both to the gentleman himself, and unfair as an argument to this convention.

The CHAIR. The gentleman's time is up.

Mr. SHOUP. I rise now to explain how I shall vote on this question, and why I shall so vote, as regards this Section 14, or the substitute which is now offered for the original report of the committee. This section

has not been before this convention. Before this section came up the substitute was offered; it was the substitute that was adopted. The whole discussion was upon the substitute, and this Section 14 was not discussed at all in the convention as originally reported by the committee. I have contended all the time that the original report was better than the substitute. The substitute goes entirely too far. There is in effect no end to it, and whenever a case comes in court under this substitute, I think the courts will decide that every use in the world can be made a public use and there is no such thing as a private use, and the word "private" may just as well be stricken out of the English language. How are we ever going to tell when to stop?

Mr. HAMPTON. I rise to a question of order; the gentleman has spoken twice on this question.

Mr. SHOUP. I have only spoken once on this question.

The CHAIR. I think he has only spoken once.

Mr. SHOUP. I have this bill in charge, and I think I should be allowed to proceed, if any gentleman desires to hear me.

Mr. HAMPHON. I withdraw my objection.

Mr. SHOUP. Now, I do not believe that the substitute gives the guarantees the original does. The original section is plainer; but it does not tie it up in any shape or manner whatever, but says for certain things private property can be taken for private use. But the other section does not make any exceptions whatever. It says it can be taken for anything necessary to the complete development all through the state, but I believe, in my opinion, that will ultimately destroy the entire section and it will be of no use whatever. When this question was under discussion in the committee of the Whole, the gentleman from Bingham (MR. MORGAN) arose and asked the gentleman from Shoshone (MR. CLAGGETT) this question: He said; do you think that under this substitute it will be construed that the individual—one individual alone—will have a right of way

across the ranch of another person? He said; I have some doubt about that, but there is a provision in the irrigation bill that effectively covers that case. That was Section 4 in the irrigation bill, which was finally stricken out. I am in favor of the original section, for I believe it is stronger, and the guarantee just what we want and just what is needed for a right of way in individual cases.

The CHAIR. The question is on the adoption of the substitute. (Cries of "question.") As many as—

Mr. MAYHEW. I call for the ayes and nays. (Seconded.)

Mr. AINSLIE. I shall vote against the substitute and against the proposition incorporated in the bill both, until it is got in better shape.

Roll call.

Yeas: Batten, Chaney, Clark, Heyburn, Jewell, Kinport, Lamoreaux, Mayhew, Pefley, Pierce, Pyeatt, Reid, Shoup, Vineyard—14.

Nays: Ainslie, Allen, Anderson, Armstrong, Beane, Beatty, Bevan, Campbell, Cavanah, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Hogan, King, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Pinkham, Savidge, Sinnott, Underwood, Whitton, Wilson, Mr. President—33.

The substitute is lost.

Mr. REID. I offer the following amendment. (Seconded.)

Mr. SHOUP. I now move the adoption of Section 14.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Nez Perce; the secretary will read it.

SECRETARY reads: Section 14, line 3; strike out the following: "for any useful, beneficial or necessary purpose."

The CHAIR. You have heard the amendment read; are you—

Mr. BEATTY. I want to ask the gentleman a question before that is put. (Mr. Claggett rises.) I will yield for Judge Claggett.

Mr. CLAGGETT. I simply wish to explain this matter of punctuation in Section 14 as it now stands. (Reading) "The necessary use of lands for the construction of reservoirs or storage basins for the purposes of irrigation." There should be a semi-colon; "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." If my friend from Nez Perce will turn to the decisions of the Pacific coast, he will find that the whole doctrine of the appropriation of water is limited to useful and beneficial purposes under the decisions. If he will turn to the law relating to the appropriation of water, of the territory, and which has been the law from the time this territory was first organized, he will see that the territory of Idaho has provided that all kinds of appropriation may be made for useful and beneficial purposes.[1] If he will turn to the report of the committee on Irrigation, which has already been passed by this convention, he will see that he himself voted for this proposition, namely, that (reading from Section 3, Article XV.) "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied." Now we have read in the decisions of our court—all forty-nine of those here, and in the twenty-five years of legislation on the part of this territory, as well as in the very article which has been adopted by this convention, the doctrine laid down that appropriations of water are limited to useful and necessary purposes. But why give the right to lead it from the point of diversion to the place of use? There is where the law ends, in a nutshell. If water may be appropriated for a useful and beneficial purpose, what is the object of appropriation if you deny to the appropriator a right of way across lands for the purpose of getting that water to the place of use? Read the section again, and the gentleman will see I am correct.

1—Rev. Stat. 1887, Sec. 3156.

A right of way for "ditches, flumes or pipes, to convey water to the place of use, for any useful, beneficial or necessary purpose."

Mr. BEATTY. I would like to ask the mover of this amendment a question; it is this, Mr. Reid. If you strike out that clause; "for any useful, beneficial or necessary purpose," and insert nothing else in lieu of it, what provision will you have in that section for a sawmill, or say any manufacturing establishment, carrying water across the lands of another for that purpose?

Mr. CLAGGETT. Or domestic use.

Mr. BEATTY. Yes, for any purpose; but I refer particularly now to manufacturing interests.

Mr. REID. If you will read the last part of the second line; "for rights of way for the construction of canals," etc., you can carry water over anybody's land for any purpose. I will admit that I have not been practicing quite as long as he has, but I have as much respect for constitutional rights as the distinguished and learned gentleman. In this committee, I had, as several of us have, discussed the matter, and I have heard more than one member of the committee say that by taking the well-considered articles on the rights of irrigation in our statutes prepared by Mr. Johnson,[1] who has been as long as the gentleman engaged in this water right business, we would have had everything this territory or state will need for years to come. In that it is provided for useful and beneficial purposes. But the gentleman goes beyond the question. It is just the very error pointed out to you by the chairman of this convention that you are led to commit now. As a lawyer, if I desired litigation to spring up, and litigation which would be susceptible, from so many considerations, to throw people into trouble and make business for lawyers, I should vote for this, but I am legislating for the good of the people, and I think the matter should be put certain and definite, and you have

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1—Referring to Richard Z. Johnson, Chairman of the Commission which codified the Revised Statutes of 1887.

made it so broad it is going to be inoperative, and you destroy the very purpose you wish to achieve. Limit it to what you propose. That is the reason I offer the amendment. I offer it in good faith. I do not want the law to be a nullity on our statute book. I want to say we have made many innovations, and in trying to protect mines we are going to throw down every safeguard surrounding them. I have never seen a better statute—I have studied the question of law carefully, the decisions, too, and no state or territory has any better statutes than we have so far as I have been able to find, and I have read them carefully, and I think if we stick to them we would be all right, but we propose to go further than Colorado. Colorado has more need for irrigation than this state has. Colorado has more mines than this state will ever have, or as many, and yet they find the law there sufficient. It has been construed, their rights are adjudicated, and we have their decisions and statutes to govern us by, and yet we propose to go to an extent here beyond what was ever put in a statute before, and, as the chairman of the committee says, in going that far we shall nullify everything that we are trying to accomplish.

The Chair puts the question.

Mr. MAYHEW. I call for the ayes and nays.

SECRETARY reads: Section 14, line 3, strike out the following: "for any useful, beneficial or necessary purpose."

The CHAIR. Is the call for the ayes and nays seconded? I did not hear a second.

Mr. CLARK. I second it.

Roll call.

Yeas: Ainslie, Batten, Blake, Campbell, Chaney, Clark, Hasbrouck, Heyburn, Hogan, Jewell, Kinport, Lamoreaux, Mayhew, Pefley, Pyeatt, Reid, Vineyard—17.

Nays: Allen, Anderson, Armstrong, Beane, Beatty, Bevan, Cavanah, Coston, Crutcher, Glidden, Hampton, Harris Hays, King, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Savidge, Sinnott, Shoup, Underwood, Whitton, Wilson, Mr. President—31.

The CHAIR. It is lost. The question is on the adoption of the section.

Mr. AINSLIE. I have an amendment to offer to lines 6 and 7.

SECRETARY reads: Amend by striking out in lines 6 and 7 "or any other use necessary to the complete development of the material resources of the state." Also insert "for" after "or" in line 7.

Mr. AINSLIE. I move the adoption of that amendment. (Seconded.) Now upon that I desire to say a few words. This section as it stands, without this in the sixth and seventh line, covers every imaginable purpose that water can be used for, and the right of eminent domain to condemn private property for public use, or public property for private use, without leaving the words in, can be extended to any useful or beneficial purpose. Now after these rights are given we have covered agriculture and the irrigation interests, and the mining interests, and we have covered any other useful or beneficial or necessary purpose. Now the words proposed to be stricken out, "or any other use necessary to the complete development of the material resources of the state," is a regular rainbow-chasing expression, is something that you cannot give a definition of in any words of the English language, as to what is "the complete development of the material resources of the state," and it just leaves a loop-hole there, as my brother Reid from Nez Perce says, to make more trouble and litigation for lawyers. Now the lawyers have been abused for trying to make litigation for themselves in legislatures as well as in conventions, but I think the question as to what is any use necessary to the complete development of the material resources of the state, is one of the largest and most sweeping in its terms I ever saw embodied in any act of a legislative assembly, or any act of congress, or anything else. I think those words had better be stricken out. We have covered everything else before that, and putting the word "for" in there, it says; "or for the preservation

of the health of its inhabitants." And I think it would do away with a great deal of the objection that has been manifested to this section all the way through.

Mr. PIERCE. This question seems to have been pretty thoroughly discussed, and I move the previous question. (Seconded.

Mr. AINSLIE. I call for the ayes and nays on that last motion. (Seconded.)

The CHAIR. The chair does not hear a second.

Mr. PIERCE. It was seconded, Mr. President.

Mr. GRAY. I would like to have the amendment read again.

SECRETARY reads: Amend by striking out in lines 6 and 7 "or any other use necessary to the complete development of the material resources of the state." Also insert "for" after "or" in line 7.

The CHAIR. The question is on the adoption of this amendment. (Vote and carried).

Mr. AINSLIE. There was a demand for the ayes and nays.

Roll call.

Yeas: Ainslie, Batten, Beane, Blake, Campbell, Chaney, Clark, Gray, Hasbrouck, Heyburn, Hogan, Jewell, Lamoreaux, Mayhew, Morgan, Pefley, Pinkham, Pyeatt, Reid, Shoup, Sweet, Vineyard—22.

Nays: Allen, Anderson, Armstrong, Beatty, Bevan, Cavanah, Coston, Crutcher, Glidden, Hampton, Harris, Hays, King, Kinport, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Moss, Pierce, Sinnott, Underwood, Whitton, Wilson, Mr. President—27.

The CHAIR. The amendment is lost. The question is upon the adoption of Section 14; are you ready for the question? (Cries of "question.")

Mr. MAYHEW. Before we vote on that I desire to have Mr. Claggett answer a question—what he means by "the complete development"? I would like to understand that term. That has been determined by a court?

Mr. CLAGETT. No sir; it is to be adjudicated by the court on the judgment of the people as expressed in the legislature of the state through their representatives. There is no power given under this section

except such powers as are necessary. The word "necessary" being put in the constitution cuts off all need of any interpretation on the part of the legislature, and will enable the court to say as to whether it is or is not necessary, provided the legislature should abuse the power which is here conferred. Section 14 is to arm the state with all the power which is commensurate with its needs.

Mr. MAYHEW. To its complete development?

Mr. CLAGGETT. Yes, to its complete development; provided the use of lands is necessary to that complete development.

Mr. MAYHEW. He has not answered my question. I asked the gentleman if he could tell me what he meant by the complete development of a mine—if you can explain it to me—does it mean to take all the ore out, or—

Mr. CAVANAH. Develop it until it pays.

Mr. MAYHEW. To develop it to such a condition that it can be worked. What is complete development? What is the meaning of the words in the sense intended to be used here? I mean now in a legal sense?

Mr. CLAGGETT. If the gentleman will go back to the law of 1866, the first mining act, he will see that congress provided those words, and we have taken it, word for word, from that act of congress; that it shall have power, in the absence of legislation by congress—the local legislature shall have the power to make rules for the drainage of mines or for the working thereof by means of drainage, and a number of other things, means or easements, necessary to their complete development.[1] What does the act of congress mean? We have been operating under it for nearly twenty-two years?

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[1]—The exact wording of the statute referred to (Sec. 5, 14 U. S. Stat. at Large, p. 252) is as follows: "In the absence of the necessary legislation by congress, the local legislature of any state or territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development."

Mr. AINSLIE. There is nothing of that kind in the Colorado constitution.

Mr. CLAGGETT. There is in the laws of the United States, though.

The CHAIR. The question is in the adoption of Section 14.

Mr. REID. Is this on its final reading?

Mr. MAYHEW. Oh no.

Mr. REID. Has it been engrossed?

The SECRETARY. No sir; it was reported back from the committee of the Whole with amendments and laid on the table and ordered printed with the amendments. It is unfinished business. It has not been engrossed. (Vote.)

The CHAIR. The ayes seem to have it; the ayes have it. Is there a division called for?

Mr. MAYHEW. The ayes and nays are called for —if I can get the support.

The CHAIR. Is it supported?

Mr. SHOUP. It is too late now.

Mr. BEATTY. It is too late now; the vote has been announced.

SECTION 15.

Section 15 read, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I move that the section be stricken out. I don't see how it got into that shape. It started in a pretty respectable section, but there is nothing definite left to it now. Who is to declare the fraud, and what is the fraud?

Mr. REID. There is the same provision in the North Carolina constitution.[1]

Mr. HEYBURN. It is a very ridiculous one, whatever it is.

Mr. CLAGGETT. If you strike it out, it will be

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[1]—Art. 1, Sec. 16, North Carolina Const., 1876.

competent for the legislature then to provide for imprisonment for debt in all civil cases.

The question was put by the chair. The vote was taken and the section adopted.

SECTION 16.

Section 16 read, and it is moved and seconded that it be adopted. Carried.

SECTION STRICKEN OUT.

Section 17 was read.

Mr. SHOUP. I thought that section was stricken out.

Mr. CLAGETT. In case that section stands where it is I was going to move to strike it out by unanimous consent in the judiciary bill.

Mr. SHOUP. I thought it was stricken out in this bill.

Mr. HEYBURN. Section 5 was adopted in the judiciary bill yesterday.

Mr. CLAGGETT. But it is not the same as this. The object of the bill which it aims at particularly is against the legislature bringing in bills of attainder, and that is not covered by the article in the judiciary bill. The Constitution of the United States simply applies to the United States, but not to the states.

The CHAIR. The motion is out of order unless there is a motion to reconsider. The secretary will read it.

Section 17 was read.

Mr. HEYBURN. I move to strike Section 17 out.

The question was put by the chair and a viva voce vote taken. The chair being in doubt a rising vote was required, the result of which was Yeas 26; Nays 4; and the motion to strike out prevailed.

SECTION 18.

Section 18 read, and it is moved and seconded that it be adopted. Carried.

SECTION 19.

Section 19 read, and it moved and seconded that it be adopted. Carried.

SECTION 20.

Section 20 read, and it is moved and seconded that it be adopted. Carried.

Mr. CLAGGETT. Before Section 21 is read the gentleman from Boise desires to offer a section, which was passed upon by committee of the Whole, and by mistake the committee has left it out in this printed bill.

Mr. AINSLIE. Section 17 was in the first printed copy of the Declaration of Rights, and amended by the committee of the Whole by changing one word, and it was left out by the printer.

SECTION 17.

The CHAIR. Does the chair understand that this is a motion offered to amend Section 17?

Mr. AINSLIE. It is one that was put in originally and inadvertently left out. It was in the original bill and adopted by the committee.

SECRETARY reads: "The right of the people to be secure in their persons and houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized."

Mr. SHOUP. That was in the original report, Mr. President.

The CHAIR. Yes, this is offered as an additional section, I suppose.

Mr. AINSLIE. It would have to be so now, inasmuch as it has been left out. Before we put the motion I would suggest that that section be marked Section 21, and that 21 in the reprint be numbered 22, so as to make 21 the last section.

The CHAIR. That can be fixed by the committee on Revision. The question is on the adoption of the section. Put to vote and carried.

The CHAIR. By unanimous consent that section may be placed in the place of Section 17.

Mr. SHOUP. Section 17, which is read now, was stricken out in committee of the Whole, and this other section which the gentleman from Boise proposes was not stricken out, and that is where the mistake occurs.

The CHAIR. If there is no objection it will be inserted in the place of Section 17.

SECTION 21.

Section 21 read, and it is moved and seconded that it be adopted. Carried.

SECTION 9.

Mr. SHOUP. I ask unanimous consent to offer an amendment to Section 9. I don't think it will give rise to any debate at all.

SECRETARY reads: Add after the word "liberty" in line two, the following: "In all prosecutions for libel the truth thereof may be given in evidence."

Mr. CLAGGETT. The gentleman has got it too narrow. That would authorize the truthful publication from merely scandalous motives, which is the very thing we want to avoid. If the gentleman will offer what was stricken out I shall support it, not because I think it is necessary; but because I think it will be due to the people at large as a law on the subject.

The CHAIR. Do I understand the gentleman from Shoshone to object?

Mr. SHOUP. I do not ask unanimous consent to have it inserted, but I ask unanimous consent to move it as an amendment.

The CHAIR. If there is no objection the gentleman will be permitted to move it as an amendment to the section.

Mr. AINSLIE. Let us hear it read first.

SECRETARY reads: Add after the word "liberty" in line 2, Section 9, the following: "In all prosecutions for libel the truth thereof may be given in evidence."

Mr. AINSLIE. You can do that anyway.

The CHAIR. The question before the house—

Mr. SHOUP. The section as originally read was objected to on the ground that it stated that the truth could be given when spoken for justifiable ends. I copied this from the best state in the Union, the state of Missouri.[1]

The question upon the adoption of the amendment was stated by the chair. A viva voce vote was taken and the chair being in doubt a rising vote was required, which resulted as follows: Yeas 6, contrary not counted, but the amendment was lost.

The CHAIR. The question is now on the adoption of the preamble. The secretary will read.

Section 18.

Mr. HAMPTON. I move to reconsider Section 18 for the purpose of striking out the word "sale" in the third line.

Mr. AINSLIE. I object; we shall never get through.

The CHAIR. There is no second to the motion.

Mr. REID. I move the adoption of the article as read.

The CHAIR. The preamble has not yet been adopted.

Mr. REID. I thought that was to be adopted after the constitution.

Article I. Adopted.

The CHAIR. I think that is correct. The question is upon the adoption of the article as amended. Are you ready for the question?

"Question, question." Put to vote and carried.

Mr. CLAGGETT. I move that the article, with the exception of the preamble, may be considered as en-

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[1]—Art. 2, Sec. 14, Missouri Const., 1875.

grossed and referred to the committee on Revision and Enrollment, simply for the purpose of expediting the business of that committee. (Seconded.)

Mr. REID. I think we would have to suspend the rules for that, and I think we had better take the usual course. It won't take but an hour or so to engross it, and the gentleman can move that it be taken up at two o'clock.

The CHAIR. I am informed by the secretary that the bill is almost engrossed now.

Section 2.

Mr. ALLEN. Mr. President, in Section 2, line 2, the words occur, "to alter, reform or abolish the same whenever they may deem it necessary." I do not find in other constitutions the word "abolish," but only to "alter or reform." I do not really believe it is intended the state shall have the right to abolish its government.

The CHAIR. The chair is of the opinion that it is not properly before the house now.

Mr. CLAGGETT. I move the convention now take up Article XVII. (VII.), the report of the committee on Revenue and Finance.

Mr. SHOUP. I think we can fix a time for the final reading of the bill. I move that we fix a time at nine o'clock tomorrow morning for final reading.

Mr. MAYHEW. Put it at two o'clock this afternoon; it is nearly engrossed.

Mr. SHOUP. Very well, I will accept the amendment. (Put to vote and carried).

Article VII.—Finance and Revenue.

Mr. CLAGETT. I move now to take up Article XVII. (VII.), the report of the committee on Revenue and Finance. (Seconded.)

Mr. Claggett in the chair.

Section 1.

SECRETARY reads Section 1, and it is moved and

seconded that it be adopted. Carried.

SECTION 2.

Section 2 read, and it is moved and seconded that it be adopted.

Mr. BEATTY. The words "legislative assembly" I suppose the clerk is authorized to change to "legislature."

The CHAIR. Yes, by journal order.

Put to vote and Section 2 is adopted.

SECTION 3.

Section 3 read, and it is moved and seconded that it be adopted. Carried.

SECTION 4.

Section 4 read, and it is moved and seconded that it be adopted.

Mr. KING. Mr. President, I have an amendment.

SECRETARY reads: I move to amend Section 4 by inserting after the word "taxation" in the third line the words "and the legislature may provide for the exemption of a limited amount of the improvements on land from taxation." (Seconded.)

Mr. MYER. I have an amendment.

Mr. KING. Mr. President, I am sorry I have so little time to speak upon this subject. It is one of the most important subjects that can possibly come before this convention; next to the taking of a man's life and his liberty, is the question of taking his property. It it a question that is agitating every civilized government on the face of the earth. The reputation of men as statesmen have been founded upon this question. It is a question that reaches into every man's pocket, and the right to take a man's earnings from him for the public good, should be so clearly defined that every person may feel satisfied that he is dealt justly by. The laws of this country are as loose, probably, as they are upon any country on the face of the globe. We find that the great bulk of all the valuable property, the most valu-

able property that there is in the United States, is practically exempt from all manner of taxation. The holders of that property do not contribute one solitary cent for the support of this government. I allude to that class of property called bonds, notes, mortgages and stocks. We have an amount of property of that description that exceeds belief; it is almost impossible to conceive of the amount of it. For instance, we have railroad bonds and railroad stocks amounting to over eight thousand millions of dollars. It is the most valuable property there is in the country. Much of that property, if you look at the reports every day in the paper and see the quotations of it, is for sale at from 2 to 50 and 60 and 70 and 80 and 100 per cent premium, and yet it pays no tax. There is a vast amount of bonds that are issued by towns, counties, cities and states, and the school districts, together amounting in the aggregate to over three thousand millions of dollars, drawing a rate of interest far greater than that amount of capital can earn if invested in the ordinary pursuits of life. No portion of that is taxed; you cannot find any instance upon record hardly where you have seen a dollar's worth of these bonds ever taxed. There is besides that in private mortgages the private property of individuals more than that; it is estimated at five thousand million dollars. Five billions of dollars, and scarcely a dollar of that is ever taxed for the support of our government. But in the aggregate what is it? Over eight thousand million dollars of railroad stocks and bonds; over three thousand million dollars of our state, town, county, city and school district bonds; and five thousand million dollars of mortgages upon private property. Why, the income derived from that amount of bonds exceeds the net earnings of every working man that is upon the continent of America. And yet you cannot show me a law that will reach one of them. A year or so before William H. Vanderbilt died he had listed his property according to the laws of the state of New York, that was required to be listed, but he did not list any of his

bonds or stocks. The commissioners of taxation of the city of New York summoned him before that committee with the ablest counsel that could be found and questioned him why he did not list his property? He died about a year after that time, leaving, as it was stated in a paper, $220,000,000; and the ablest lawyers that could be brought before that committee could find no law by which it could be taxed, nor did he contribute out of that vast wealth as much to the support of the paupers, of the common schools and the support of the government as was paid by many a farmer on forty acres of land. It is very evident that there is something loose in this manner or form of taxation. We attempt in all ways to do fairly. The constitution of the United States provides that the rule of taxation shall be uniform. Then how is it all this vast wealth escapes taxation? The constitution of every state in the Union provides, too, that the rule of taxation shall be uniform. The provisions that have been reported here by the committee on Finance virtually say the same thing. "The legislative assembly shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided." And then it provides for the exemption of certain property. That looks fair and square; it looks as though under that every man could be taxed. I want to call the attention of this convention to the practical workings of that law. I will show you to the satisfaction of every man in this house that that provision is in the exclusive interest of the money-lending class and the speculator in real estate. No living man can derive any benefit from that but that class of men, as I will attempt to show. For instance, here are two pieces of land lying side by side, each a quarter section, equal in value and of equal quality. The assessor comes along under this law, and looks at those quarters and values them at what? He says, "I think they are worth $500 each."

and so sets it down. There is a tax to be collected upon that land the same as every other quarter section, amounting to $10, we will say. As long as those two quarter sections remain unimproved each individual will pay $10 tax, two percent upon the valuation. Now, let us see what will be the effect. One of those owners goes on his land and makes an improvement amounting in value to $1,000. The tax to be collected upon it is the same as it was before, $20 on that half section, $10 upon each. That is, it would be if it were equal; but under the provisions of this law the assessor must assess the improvement amounting to $1,000. The consequence is what? The land that has not been improved is assessed as it was before, at $500; the land of the settler is assessed at $500, and in addition to that, $1,000 of improvements, so that the assessment upon the property of the settler is then $1,500, and upon the property of the speculator it is $500. There has to be $20 collected upon that, and as a natural consequence the settler has got to pay $15 and the speculator but $5. If that is not the correct practical working of this taxation system, then I know nothing about the business, and I have had a good many years experience one time and another in the assessment and collection of taxes. This would be the result. You reduce the tax of the speculator $5 upon his quarter section, and increase the taxes of the settler $5. You may think because it is only a couple of instances, a couple of pieces of land, that it would not work so on a large scale; but let us take a township of land in which there are thirty-six sections, and twenty-five of them are rented. That would make 100 quarter sections in that township. The amount—

Mr. BEATTY. I would like to interrupt the gentleman a moment. Mr. President, I desire to call the committee on Revision out into the other room for consultation a few minutes. I will state that I have made two calls and have nobody present. I desire to notify the convention of the amount of work we have before us,

and upon the report of this committee depends our early adjournment, and I would like to have the committee excused immediately, that we may go out and consult upon our work.

Mr. AINSLIE. As the gentleman has been interrupted in his argument, I move that we take a recess until two o'clock. (Seconded.)

Mr. GRAY. Before that motion is put, might I ask the committee on Schedule when they wish to meet?

Motion to adjourn put to vote and carried.

AFTERNOON SESSION.

The CHAIR. The special order for this hour is the final reading of the article on Judiciary.

Mr. SHOUP. The committee on Apportionment desires to report.

SECRETARY reads: Mr. President, your committee on Engrossed Articles have the honor to report that they have carefully examined the articles in relation to Judiciary and Declaration of Rights and find the same correctly engrossed. Hasbrouck, Chairman.

The CHAIR. The secretary will read the articles.

ARTICLE V., JUDICIARY, ADOPTED.

SECRETARY reads the Judiciary article.

SECTION 6.

Mr. WILSON. I would suggest that the words "as hereinafter provided" in line three of Section 6 be stricken out, because we do not provide hereinafter for their election at all. Then the section will read, "The justices of the supreme court shall be elected by the electors of the state at large." I would ask unanimous consent that that be done.

Mr. MAYHEW. I think that had better go to the committee on Revision.

Mr. WILSON. That was intended to refer to Section 18, and we have struck that section out.

The CHAIR. If there is no objection the secretary will strike out the words "as hereinafter provided."

Mr. MAYHEW. It does seem to me, Mr. President, that this article on amounts, etc., ought to be in the report of the committee on Schedule.

The CHAIR. The matter can be re-arranged by the committee on Revision.

Mr. HEYBURN. We were ordered by the convention to report it.

Roll call on the Judiciary article.

Yeas: Ainslie, Anderson, Armstrong, Batten, Beane, Bevan, Blake, Campbell, Cavanah, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Vineyard, Whitton, Wilson, Mr. President—47.

Nays: None.

And the article was adopted and referred to the committee on Revision.

ARTICLE I. ADOPTED.

SECRETARY reads the article on Bill of Rights.

Roll call upon the adoption of the article.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Blake Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Hasbrouck, Hays, Hogan, Jewell, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Vineyard, Whitton, Wilson, Mr. President—44.

Nays: Parker, Pefley—2.

Mr. PARKER. I would like to have my vote recorded in the negative as to Section 4 and Section 14 of the Bill of Rights.

The CHAIR. It will be so recorded. The article is adopted, and referred to the committee on Revision and Enrollment.

All the special orders of the hour having been disposed of, the next business before the convention is the

consideration of Article XVII. (VII), being the report of the committee on Revenue and Finance. The secretary will read, beginning with Section 4.

ARTICLE VII.—FINANCE AND REVENUE.

Mr. REID. I make the point of order, that when we adjourned for recess the gentleman from Shoshone was discussing Section 4 and its amendment.

The CHAIR. Yes, but we want the section read.

SECRETARY reads Section 4.

Mr. HAYS. I move that Section 4 be stricken out.

Mr. KING. Mr. President—

A MEMBER. My recollection is the gentleman's time had expired.

Mr. REID. I hope the gentleman will not make that point on the gentleman from Shoshone. He has not taken up much time in this convention, and I know the rule has not been observed, because some gentlemen today have spoken as much as fifteen minutes. I ask the unanimous consent that he be allowed to proceed.

The CHAIR. Is there any objection? There is no objection and the gentleman from Shoshone is entitled to the floor.

SECTION 2.

Mr. KING. Mr. President, the committee on Revenue informs me that the section I was speaking on they will ask leave to withdraw, and the section preceding it. Therefore my amendment will not apply to that, and so I ask leave to offer the same amendment to Section 2, and send it up. It is the same thing and with the same object.

SECRETARY reads: I move to add after the word "tax" in the sixth line of Section 2 the words "provided the legislature may exempt a limited amount of improvements upon land from taxation."

The SECRETARY. Mr. President, the section has been adopted.

The CHAIR. Is there any objection to entertaining this amendment to Section 2, which has been adopted?

There is no objection and the gentleman will proceed.

Mr. KING. Section 2 provides for the taxation of all property at its full value, I presume it means, "except as in this article herein otherwise provided," and then they have stricken out the sections providing for the exception of certain property. What I want to show to this convention is, that the strict adherence to that rule works an injustice upon the industrious, energetic business men of the country, for the exclusive benefit of those men who live by speculating upon land and loaning money. If we are going to tax property according to its value, then of course all the work that you do upon land increases its value. You tax those improvements. The assessor goes on and finds improvements made upon the land and he increases the assessment upon that land to the amount of the value of the improvements. Upon the land that is not improved of course there is no increase of assessment. Now, I wish to show to the convention the practical workings of that law. We will take for instance a township of land in which there have been twenty-five full sections entered. That would be one hundred quarter sections of land. Now, suppose fifty settlers go on to those lands, and the other fifty quarter sections are left in the hands of speculators. Those lands are all of equal value to begin with, and the assessor assesses them $500 apiece. The amount of the tax that is collected in that township for all purposes to contribute their portion to the state tax, county tax, to defraying the expenses of the township, supporting the public schools, is $1,000. Now, if there are one hundred quarter sections of land in that township of equal value the amount levied upon each quarter section would be $10, would it not? And it would remain so for years and years, so long as no one made any improvement. Each quarter section would pay the same amount, $10. But let fifty of those men go on to those lands and improve them, build houses, fence them, dig ditches, and make improvements to the extent of $1,000 each; what is the result? The result is that when the assessor

comes along the next year he will assess those farmers each $500 on his land as the valuation of his land, because it has not decreased the value of the land; he will assess the speculator $500 upon his land, and he will assess the farmer, who has made $1,000 worth of improvements, $1,000 therefor. This then will make each quarter section of land that has been improved assessed by the assessor at $1,500 while the land speculators' land will be assessed at $500 only. The consequence is that the fifty settlers in that township have got to pay three-fourths of the tax, would they not, if there was to be $1,000 collected. Those fifty settlers then upon their property would have to pay $750 out of the $1,000, because they are assessed three times the amount of the fifty speculators. Then they would pay $750 out of the $1,000, and the speculators would pay but $250. In other words you reduce the tax of the speculators $250, and you increase the tax of those men, who by their labor, have done something for the benefit of the country in the way of building fifty houses and fifty barns, and breaking up a large amount of the land, just as much as you decrease the tax of the speculators.. Is there justice in that? They have done nothing but increase the value of the speculator's land. His land is more valuable than before they made the improvements, and they have then to pay three-fourths of the tax assessed for the benefit of that township. In addition to that, each settler is compelled to work two days in the year in building roads and bridges, which are built throughout the township, benefiting alike the settler and the man who owns the land that has not been improved, but which land has been enhanced in value in reality, and has a greater selling value than it had before these men made their settlements, and yet their taxes are reduced $250, and to that same extent put upon the land of the men who have made the improvements. Now, take it in the whole country and it works precisely the same. Suppose there are two thousand quarter sections of land in the county all of about equal value, whether

that value be $500 a quarter or $1,000 a quarter. For the purpose of making these calculations we will suppose them to be worth each $500. The county board meets to ascertain the amount of tax apportioned to them; they make calculations of the amount of tax required for all county purposes, support of schools and everything else, and it is found it is necessary to levy a tax of $20,000 upon that 2,000 quarter sections of land. It so happens that 1,000 of those quarters may be in the hands of speculators, and the other 1,000 in the hands of farmers, who go on them and work and build a thousand houses and a thousand barns, and break up thousands of acres of ground, dig ditches, build fences, and do something to benefit the country, giving employment to the mills to furnish them lumber, to the manufacturer to make them their tools, and everything of that kind; they do something to make that country good and glorious and a good country to live in, something to benefit the state, and you go on and assess their land and every dollar's worth of improvement they make, and the result is, if you tax it as in this other case—the result is the settlers must pay three-fourths of the tax, three-fourths of that $20,000 to support the county. While, if the land was of equal value, before they made the improvements, it is now of more value, yet the tax is reduced to $5,000. There is no justice in such a law as that, but that is the practical working of the law, and any man of common sense who studies it will say that is the practical working of the law; it cannot be any other way—you cannot come to any other conclusion regarding it. The more you raise the tax of the settler, the less must be the tax of the speculator. If there were to be a tax levied, instead of levying it by valuation—say there should be a tax of one, or two or three or four or five per cent on the valuation; the tax on the speculator's land would be just the same; if we valued a quarter section at $500, and the assessment was two per cent it would be $10 for his tax; and the tax upon those men that have made the improve-

ments which enhance the value of the farms in the country to twice or three times or five times the value of it theretofore, would of course go away up, and there would be raised then a larger amount of money than could possibly be used in paying the expenses of the government. It would be unnecessary to raise so large an amount. You cannot keep the even tax upon the speculator. But if you adopt the system laid down here, because it is done in every state in the Union I have lived in, it enhances the burden of taxation upon those men that are a benefit to the country and decreases it upon those who hold it for speculation. You cannot arrive at any other conclusion. The section I have put in here is not for the purpose of exempting any of the property from taxation by constitutional amendment; but I simply want to have this clause put there in order that the legislature in the future may not be tied down by a cast iron rule they cannot break, that they never have the power of exempting any property from taxation. I apprehend, gentlemen, that the day is coming when the people of this state will find it will be to their interest for them to pass a general law exempting certain kinds of property from taxation, which they cannot do under the provisions in that section, because all property must be taxed according to it. The day is coming, I apprehend, when it will be something of an object if the legislature could provide by law that the poor settlers that in the future are going to settle up this vast plain along here for hundreds of miles—it would be an inducement to them if we could say to them "you are poor men, you have a hard row to hoe, and we will exempt the first $500 of improvements you make from all manner of taxation." Wouldn't it be a great inducement for men to come in; wouldn't it relieve the burden that rests upon the best class of society you can get into the country, that class which produces something by their labor, and not tax them for the simple benefit which no man can derive unless he be a speculator? Again, we may find in the future that it

would be largely for our interest if we could pass a general law providing that men who introduce machinery into this country—for instance, provide by law that men who come in here and take the risk of expending money in the building of flour mills for the benefit of the people—should not be punished by a heavy tax for doing it. And I want to provide that in the future we can say to the men of capital in the country, "We have valuable mines that cannot be worked without machinery, and we want to offer you an inducement in the way of exempting your industry from taxation." Not by giving them any bonus; I don't believe in that way of levying a tax upon one class of people for the benefit of another class; but I want to have the legislature given power, if they see fit at some future day, to pass a law providing that the necessary machinery for the development of mining may be exempted from taxation. For what term of years I have not fixed; I leave that to the discretion of the legislature. I have a case in my own mind that occurred in our county when one of our citizens came there years ago and found a prospect which he bought; he then went to work and set a lot of men to work developing it. It was far out in the wilderness, with nothing but the merest trail to it, no roads, and no railroads within a great many miles. He went in there and built a house and cabins in which men could live and set them to work, and kept them to work month after month in the development of that property. After he was satisfied it was a good property he spent some $60,000 in bringing machinery into it; he put up that machinery and the necessary buildings, built a road over the mountains so he could haul ore to the railroad, and with fifty to one hundred men at work he made a market for a large amount of farm produce for the nearest farmers, made customers for a large amount of merchandise, and made work for a large number of men, and did the country a benefit; the whole country for miles and miles around was benefited by the labors and risk of that one man. What did he

get in return for it? Why, the county turns in and fines him $2,000 every year of his life as long as he runs that mill, just because he did that. Is there any justice, is there any sense in it; punishing a man who comes here and benefits your country, giving employment to hundreds of men, giving employment to your railroads? He has furnished at least a thousand tons of freight for your railroad; given employment to the farmers, and it takes a large number of farms to supply that mill. And there is another mill right along side of it doing the same thing, which is also punished by a heavy fine. Have they ever done the country any harm? Had they not put those mills in, there would be no taxable property there, would there? Now, because they have done this, and have put this property in there, giving employment to a vast number of men, giving employment to the railroads and building up the country, then you punish them by making them pay $2,000 cash every year as a fine for doing it. Now, I want this legislature in the future to have that power; that it is understood that it is to offer inducements to capitalists to come into the country and spend their money, and when they take all the risks a miner has to take as to whether he will ever get any return for it, he should not be punished for it. I ask nothing more. I just want to break down this cast-iron rule of taxing all property, and take it out of the power of the legislature ever to repeal it. I think we could do nothing better, gentlemen, than to leave that thing open to the future legislature. The people will discuss this matter, and when they see the necessity of it, I have no doubt in a few years there will be provision made to encourage men to come in and develop our mines, and encourage hundreds of thousands of settlers to come here and settle on these vast plains and do something to redeem the country.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone (MR. KING). It is the same amendment renewed to Section 2.

SECRETARY reads: I move to add after the word

"tax" in line 6, Section 2, the words "Provided the legislature may exempt a limited amount of improvements upon land, from taxation."

"Question, question."

A viva voce vote was taken and the chair being in doubt called for a rising vote, resulting: Yeas 33; nays 6; and the amendment was adopted.

Mr. AINSLIE. Mr. Chairman, was Section 4 stricken out?

Mr. VINEYARD. No, there is a motion pending.

The CHAIR. By unanimous consent we went back to Section 2.

Mr. MAYHEW. Isn't it necessary now to adopt Section 2 as amended?

The CHAIR. It was already adopted, and the amendment was added to it. But all in favor of adopting Section 2 as amended say Aye. (Vote.) It is carried and the section is adopted.

SECTION 4.

Section 4 was read.

Mr. MAYHEW. Has Section 3 been adopted?

The CHAIR. Yes, this morning.

Mr. MYER. Here is an amendment to Section 4.

Mr. VINEYARD. I move to strike out Section 4.

SECRETARY reads: Amend line 2, Section 4, by striking out the words "and private."

Mr. MYER. Mr. President, private libraries are now exempt from taxation[1] by the state of Idaho, and if the legislature in its future wisdom sees fit to continue that provision, I see no occasion for private property being exempted from taxation in this constitution.

Mr. AINSLIE. I think if you strike that section out it would be something unusual. I don't know any state in the Union where the property of the United States, state and towns and other municipal corporations, are placed in a category with other property, and allowed

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1—Sec. 1401, Subd. 8, Rev. Stat. 1887.

to be taxed by the legislature, and leave it to say whether it shall be or shall not be taxed. I think the constitution of every state provides for the exemption of the property of the United States and towns and cities and counties. It is an organic prohibition upon the legislature to tax anything of that kind. Without that provision the legislature could tax state property, and I am willing to support the amendment of my colleague from Boise to strike out "private libraries," and I have prepared a substitute for the section; but his amendment covers the same thing.

The CHAIR. It is moved and seconded that Section 4 be stricken out.

Mr. HEYBURN. Before voting on that I would call the attention of the convention to the fact that in the enabling act of all these other states that are forming constitutions, they are required by the terms, to act in an affirmative manner, namely, that those lands shall never be taxed.[1] If we do not do it here we will be compelled to do it somewhere else.

Mr. SHOUP. The enabling act also provides that the land owned by Indians shall be exempt from taxation.

Mr. PARKER. I have an amendment.

SECRETARY reads:

"Substitute for Section 4. Property, real and personal, of the United States, and property of the state and counties, and property of municipalities and common school properties, cemeteries not owned or used for private or corporate profit, public libraries, growing crops, livestock under six months old, and all mines and mining claims, both placer and in rock in place, containing or bearing gold, silver, copper, coal or other valuable mineral deposits, shall be exempt from taxation: *Provided*, That all machinery used in mining, and all property and surface improvements appurtenant to or upon mining claims, which have a separate and independent value, shall be taxed as provided by law, and all laws exempting from taxation property other than hereinbefore mentioned shall be void."

1—Sec. 4 of the Congressional Enabling Act of Feb. 22, 1889, for North and South Dakota, Montana and Washington. 25 Stat. at Large, 676; 7 Fed. Stat., Ann. 121.

Mr. PARKER. Mr. President—

Mr. MAYHEW. I will support the amendment to hear the speech (laughter).

Mr. PARKER. This substitute is practically a consolidation of two sections, and I have submitted it with the intention of preventing in this constitution the making of any exemptions whatever in private or theological seminaries; not that I am opposed to those exemptions, but they are not democratic.

Mr. PEFLEY. Read the substitute.

Mr. AINSLIE. I believe this is a substitute for one section we have not reached yet. I understand the chairman of the committee has a substitute for Section 5, which covers the same ground.

The CHAIR. Is there any second to the motion of the gentleman from Idaho?

Mr. MAYHEW. I second it.

The CHAIR. The first question is upon the adoption of the substitute of the gentleman from Idaho.

Put to vote and lost.

The CHAIR. The question now recurs upon the motion to strike out Section 4.

Put to vote and lost.

The CHAIR. The question now recurs upon the amendment of the gentleman from Boise, to strike out the words "and private" in the second line of the fourth section.

Put to vote and carried.

Mr. MAYHEW. I now move the adoption of the section as amended. (Carried.)

SECTION 5.

Section 5 was read.

Mr. HAYS. I have a substitute for the section.

Mr. PYEATT. I move to strike out the section.

Mr. AINSLIE. I have an amendment.

SECRETARY reads:

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax,

and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; provided that mines and mining claims bearing gold, silver or other precious metals, except the net proceeds and surface improvements thereof, shall be exempt from taxation for a period of ten years from the date of the adoption of this constitution, and thereafter may be taxed as provided by law; and provided further that the household goods of every person being the head of a family to the value of $200 shall be exempt from taxation; and ditches, canals and flumes owned and used by individuals or corporations for irrigating land owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose; and lots with the buildings thereon, if said buildings are used solely for religious worship or for charitable purposes; also cemeteries not used or held for corporate or private profit, shall be exempt from taxation unless otherwise provided by general law. All laws exempting from taxation property other than that herein mentioned shall be void."

(Seconded.)

Mr. SHOUP. Mr. President, I would like to have the secretary read the restrictions placed on other states in the enabling acts in regard to taxation. I have them here and send them forward. I think it is necessary for us to follow these enabling acts.

The CHAIR. If there is no objection the secretary will read for the information of the convention.

SECRETARY reads:

"And said conventions shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

"First, that perfect toleration of religious sentiment shall be secured; and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second, that the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that

the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of congress may prescribe.

Third, that the debts and liabilties of said territories shall be assumed and paid by said states respectively."[1]

Mr. SHOUP. That is all, Mr. Secretary.

Mr. AINSLIE. I will state to the gentleman from Custer that these provisions were provided in the Colorado convention, and provided under ordinances which form no part of the article on revenue and taxation. After the constitution was finished and signed, it was provided by ordinances subscribing to those provisions. That was expecting the ordinances would be put in by the schedule committee, by which they would agree upon those propositions. We would have to formulate our ordinances similar to that of some other state.

Mr. McCONNELL. Mr. President, I believe the question is on the adoption of the substitute. This substitute is quite a lengthy one, and something we can hardly analyze by hearing it read from the desk, and it provides for quite a number of exemptions from taxation. I would like to have this printed. It is a very important matter. I would like to have it where I can examine it carefully before voting upon it. I may feel like voting upon it, and I may not. As it is now, I certainly would not feel like voting for it.

1—Taken from Sec. 4 of the Congressional Enabling Act of Feb. 22, 1889, for North and South Dakota, Montana and Washington. 25 Stat. at Large, 676; 7 Fed. Stat. Ann. 121.

Mr. AINSLIE. It is taken right from the Colorado constitution,[1] combining several sections in one, that is all.

Mr. McCONNELL. Well, mining interests predominate largely there, and I cannot see why net income of mines should be exempt for ten years any more than farm property should be exempt ten years or any other property. Because Colorado exempted it ten years, I don't think it is any reason why we should.

Mr. CHANEY. Colorado does not do it.

Mr. AINSLIE. I don't think it excepts that.

Mr. McCONNELL. I think we can take up the printed section and amend it so as to satisfy everybody. But I certainly would not feel like supporting that substitute unless I was in a position to examine it.

Mr. MAYHEW. I don't feel like supporting that substitute in whole.

Mr. AINSLIE. Here is the Colorado section.[2]

2—Art. 10, Sec. 3, Colo. Const. 1876.

"Provided, that mines and mining claims bearing gold, silver and other precious metals (except the net proceeds and surface improvements thereof), shall be exempt from taxation for a period of ten years." It does not exempt the net proceeds, but mines and mining claims, etc.

Mr. McCONNELL. What else is exempted?

Mr. AINSLIE. That is all—oh, irrigation ditches, "ditches, canals and flumes owned and used by such individuals or corporations or the individual members thereof." That is a provision similar to the Colorado section. It does not exempt them from taxation, but assesses them in connection with the improvements owned by the individual; that is, if I own a ditch on land they do not assess my farm and the ditch in two places, but assess them both together. The same way with a company owning a lot of land; if they build a ditch to irrigate it, it is assessed together and not sep-

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1—Not in the Colorado constitution, but the substance of it is found in the Colorado Enabling Act.

arately, where used solely for the purpose of irrigating those lands. But whenever they go to selling the water upon different lands, then the ditch is assessed separately.

Mr. MAYHEW. It does not exempt those corporations having water for sale?

Mr. CHANEY. I think it does.

Mr. MAYHEW. Then it is a bad provision.

Mr. AINSLIE. It reads thus: "ditches, canals and flumes owned and used by individuals and corporations for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed, so long as they shall be owned and used exclusively for such purpose." That is all.

Mr. SHOUP. I think the convention should have time to consider this substitute. It makes no difference whether it is in the Colorado constitution or not.

The CHAIR. The substitute has been seconded. Unless some motion is made to print it, there is nothing to do but consider it and act upon it.

"Question, question."

Mr. MAYHEW. I move it be passed over until tomorrow morning, and be printed and laid on the table. (Seconded.) Vote and carried.

SECTION STRICKEN OUT.

Section 6 was read.

Mr. HAYS. I move that Section 6 be stricken out.

Motion seconded.

Mr. BEATTY. I don't think it is proper to strike that section out now; our action on this section may depend upon our action on the snbstitute. If we adopt the substitute, it goes out. If we do not adopt it, we may want it; and I move it be passed over until tomorrow after we have considered the other.

Mr. HAYS. I will withdraw my motion to strike it out.

The CHAIR. It is moved and seconded that Section 6 be passed over until tomorrow. (Carried.)

SECTION 6.

Section 7 (6) read, and it is moved and seconded that it be adopted.

Mr. BEATTY. It strikes me that the language of that first line is rather obscure. "The legislature shall not impose taxes for the purpose of any county," etc. It ought to be that "the legislature shall not impose taxes upon the property of any county," if I understand the meaning of it.

Mr. HEYBURN. I do not understand that to be the meaning.

Mr. BEATTY. Then I do not know the meaning of it, and I call upon the chairman for an explanation of it.

Mr. AINSLIE. I believe I could explain that to the gentleman. I understand this is taken from Colorado also.[1] "The legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation." Now, under the revenue law the state may exact a levy of so much for state purposes; and authorize the county to levy a tax, not exceeding so much more; and then the county commissioners of each county levy their own rate. In one county it may be more than it is in another. If the state makes a levy itself, if the legislature makes a levy, the rate of taxation in each county in the territory would be exactly the same; but they authorize the different counties to levy a rate of taxation between so much, not to exceed so much, and they can go under that any amount they please. In some counties they might make a higher levy than another. It is to levy a tax not to exceed so much.

"Question, question."

Put to vote and carried.

SECTION 7.

Section 8 (7) read, and it is moved and seconded that it be adopted. Carried.

1—Art. 10, Sec. 7, Colo. Const. 1876.

SECTION 8.

Section 9 (8) was read.

Mr. PARKER. I have an amendment.

SECRETARY reads: Amend Section 9 (8) by omitting in line 4 and 5 the words "and not by this constitution exempted from taxation." (Seconded.)

Mr. HEYBURN. I would like to hear the reasons of the mover of that amendment.

Mr. PARKER. I have offered that amendment with the idea of having no exemptions in this constitution at all. Here is a clause which provides that certain properties, corporations, etc., may be exempt from taxation. Now, in a democratic government we ought not to have any exemptions whatever.

Mr. AINSLIE. There is no doubt but what it is the disposition of this body, as of any in the mining territories, to exempt mining claims from taxation. You can tax improvements on them, but I have no doubt it would be the unanimous thing to exempt the claims themselves. Now, corporations may own mining claims the same as individuals, and if you exempt the mining claims themselves, it is necessary for that provision to stay in there, and that will come up tomorrow at nine o'clock when the substitute is submitted by which the property, ground itself, is exempted from taxation; but improvements, machinery, hoisting works and everything of that character, will be taxed. I don't believe anybody in the territory expressly contemplates taxing a mine itself, because it may not have anything in it, and it might. You don't know what value to put on it, and I think it is necessary to keep that provision in.

The question was put by the chair on the adoption of the amendment. Lost.

The CHAIR. The question now recurs on the adoption of Section 9 (8). (Vote and carried.)

SECTION 9.

Section 10 (9) was read.

Mr. McCONNELL. I move to strike the section out.

Mr. HEYBURN. I second the motion,

Mr. AINSLIE. I would like to know the reason of that. I am not ready to vote on it yet; I would like to know what the object of the gentleman is to strike it out. You have got to place some limit on the legislature or they might swamp us. They might put it up to twenty-five mills for state purposes, if you don't put any limit on them, and it is not very inviting for foreign capital to come in if you give the legislature power to impose unlimited taxation.

Mr. McCONNELL. I am sorry to learn there is a change of mind come over some of these gentlemen. They had unlimited confidence in the legislature a few days ago. I dislike to have it in the constitution because it will be necessary every year to advertise to the world what our taxation is, and there may occasions arise when it will be necessary for us to either issue bonds or increase the rate of taxation. And the rate of taxation would have to be increased to pay these bonds the next year. I have confidence in the legislature not running the territory in debt, any more than the United States.

Mr. AINSLIE. If I am not mistaken, I think there has been restrictions placed on the legislature now in regard to the amount of debt they can contract in the territory. I think one and one-half per cent; I think the gentleman made the amendment himself, to make it one and a half, and it carried. Now, if you do not place safe restrictions on the legislature they might have an immense fund on hand, increase the taxation unnecessarily, and then come up your schemes in the legislature for getting away with the surplus you have on hand. The surplus was not very popular in the last campaign; it may be more popular in this legislature when the legislature have that power of imposing taxes. We want the legislature to have authority to make a sufficient levy to pay the interest upon our state bonds, and pay all the expenses of carrying on our state government; but we don't want them to have power to impose taxation upon the people over and above what

is necessary, and absolutely necessary, for that purpose. I think if the gentleman will examine the constitutions of a great many states he will find they all limit the legislature in regard to the limit at which they shall levy taxes on the people. If seven mills is not enough, in the first line of the section, on taking an abstract of the amount of taxable property in the territory, and the amount estimated by the committee to carry on the state government, you can increase it to seven and a half or eight mills, if necessary; but I think it is absolutely necessary that some limit should be put upon the legislature, that they shall not burden the people with unnecessary taxation.

Mr. MAYHEW. Upon that proposition I hope this section will not be stricken out. I do not desire to go into any discussion, but just call the convention's attention to another fact. By having these provisions in here limiting the legislature for the amount of taxation to be levied, it will have this tendency, in addition to what has been said by the gentleman from Boise, namely, a tendency to prevent the people in the different sections of the territory, and in fact the legislature, from becoming extravagant and running the territory in debt. There is no doubt, if you put these restrictions in the constitution upon your legislature, the provision as provided here has the tendency to prevent their extravagance. And in addition to that I believe in giving some advertisement to the outside world that taxation is limited by the constitution; that the legislature is limited by the constitution, so that persons with capital, who come in and desire to invest in mines, farms and other interests in the territory, will not be taxed to death and ruined by taxation. I think it is a wise provision to be placed in the constitution, and therefore I hope the motion to strike it out will not prevail.

Mr. SHOUP. I wish to offer an amendment before the vote is taken.

SECRETARY reads: I move to strike out all after

the word "valuation" in line 2 to the word "and" in line 4.

Mr. MORGAN. I second the motion.

Mr. HEYBURN. Mr. President, I second the motion of the gentleman from Latah, because it would seem to me that this is inconsistent with the provisions we had made and passed upon finally, I believe, in the article on public indebtedness. There we limit the indebtedness to one ond one-half per cent. Now, we limit that limitation by this, as I understand it. The rate of five mills on fifty millions would give $250,000 income; so would a rate of two and a half on one hundred millions. The rate on three hundred millions at one per cent would give $300,000 income. Now, I understand, if I have not forgotten the proceedings of the convention, that we have given the authority to make an indebtedness of one and one-half per cent on the taxable property. Now, the question is whether this is inconsistent with that. One and a half per cent on our present valuation would be more. Under the provision of that article on public indebtedness, I believe we might now levy a tax or create an indebtedness of more than the limit of this first provision. One and a half per cent of our assessed valuation would be $345,000, as near as I can figure it briefly; and the question is whether or not this is not inconsistent with that provision. I only second the motion in the interest of consistency in our financial arrangements.

Mr. AINSLIE. That provision is contained in Section 1 of the report of the committee on Public Indebtedness and Subsidies. That section 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." Now, there is no conflict at all between the provisions of this section and that section in the revenue and finance bill. While you cannot allow the indebtedness to exceed one and a half per

cent, you can still go on and stuff your treasury full of greenbacks that you have no use for at all. The state may go into debt to the extent of one and a half per cent of its whole valuation; but the tax is not a debt due by the state, but you are taking from the pockets of the people an unnecessary amount of money, and have nothing to do with it. That is the trouble.

Mr. McCONNELL. Upon the examination of this, with the consent of my second, I will withdraw the motion to strike it out.

Mr. MORGAN. I am in favor of the amendment introduced or offered by the gentleman from Custer (MR. SHOUP), for this reason. It strikes out all after the word "valuation" in the second line, down to the word "and" in the fourth line, as follows: "and whenever the taxable property of the state shall amount to $50,000,000 the rate shall not exceed four mills on the dollar of valuation." I don't think we ought to admit to congress that we have not a valuation of $50,000,000 now, and if we do, I don't think they will admit us.

Mr. MAYHEW. I am in favor of that, if we can fool them.

Mr. HAYS. I shall oppose the motion to amend in the manner desired by the gentleman from Custer, for this reason: You strike out that portion, "and whenever the property of the state shall amount to $50,000,000 the rate shall not exceed four mills on each dollar of valuation." The legislature may tax them seven mills on the dollar. And when we make a tax of seven mills on the dollar on $50,000,000 valuation it would bring the net income to $350,000. If you leave that phrase out you can do that, and for that reason I am opposed to the amendment. I move that the word "eight" be substituted for the word "seven" following the word "exceed" in line 2. I do this for the reason that considering the expenses of the state government, our committee, and I did myself, forgot to estimate the expenses of the university. We would have to make it about eight mills; there will be $8,000 or $10,000,

and I would suggest eight mills, and let the section stand as it is.

Mr. SHOUP. I do not desire to offer any amendment without being able to give some reason for it. My reason for offering this amendment is, first, I don't believe in parading our poverty before congress and the people. In regard to the objections offered by the chairman of the committee, I do not believe there is any danger of the legislature coming up to the full limit unless it is necessary to do so, and it will never be necessary. I think those words should be stricken out.

Mr. WILSON. I hope the amendment of the gentleman from Custer will prevail. For the simple reason, advanced by Judge Morgan, that it is policy that we do not show on the face of our constitution that we only have $50,000,000 worth of taxable property in the territory. As a matter of fact we have more than that right now if the property was assessed as the law requires at its true valuation; but it is not so assessed. I don't think there is any danger of the legislature swamping us in debt, and I think it would work great good. I think representations of that kind have been made in congress, and I think for that reason we have received much encouragement towards this statehood movement already, and I should therefore favor striking out that clause; and as soon as it reaches $100,000,000, the guards are there all right, but I would not admit on the face of the constitution that we have not $50,000,000 of taxable property.

Mr. MAYHEW. My reasons for supporting that proposition are different. We cannot fool anybody about our valuation of property unless we do away with the publication of any statistics of the taxable property in this report. It has gone abroad and the report is made and published, and I suppose every member of the legislature last winter sent more than fifty—at least eight or ten—of those copies to his constituents, and all those reports go to Washington as to the amount of the taxable property; and we cannot fool anybody at all.

But I am in favor of it, and then dropping from seven to two mills when it reaches one hundred million; but it is not to deceive anybody, because we will be deceived ourselves.

Mr. HEYBURN. I would like to ask the chairman of the committee for information. I turn to the last page of this bill and find an estimate of the expenses of the three departments, executive, judiciary and legislative, fixed at $140,000; and then we find there is an indebtedness unprovided for of $110,000. And I find there is a funded debt due a year from the first of December of $46,000; that makes $296,000 to be provided for next year. Now, taking the present valuation of the assessed property of this territory on the basis of eight mills, it will not create that much of a fund. Now, how are you going to make up the balance? Is there not going to be a deficiency there? How are you making a sufficient provision, or are you hampering the legislature so that we will be about $65,000 short? There is $296,000 to be provided for within a year after the adoption of this constitution, which is very much in excess of what the legislature will be authorized to levy under this bill.

Mr. PARKER. I have an amendment.

SECRETARY reads:

Substitute for Section 10 (9). For the purpose of defraying the extraordinary expenditures, the state may contract a public debt, which shall not for the first fifteen years exceed $50,000, and it shall never exceed $100,000, and every such debt shall be authorized by law for some purpose or purposes to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal within ten years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest, and such appropriation shall not be repealed nor the taxes postponed nor diminished until the principal and interest of such debt have been wholly paid."

The CHAIR. Is there any second to the amendment? There is no second. The gentleman from Washington has the floor now.

Mr. HASBROUCK. Mr. President, I hope this first limit of seven mills on the dollar will not be changed. As to the policy of striking out $50,000,000, as the gentleman from Custer suggests, that is another matter. I leave that with the sense of the convention. This amount of seven mills on the dollar was figured on the basis that the assessed value of the territory at the present time is about $22,000,000. That at seven mills would amount to $154,000. We find by carefully going through the comptroller's office, and in consultation with other parties, who we believe had a right to know the most about those matters, that the current annual expenses would amount to about $140,000. This matter of this funded indebtedness that comes due December 1, 1891, was also taken into consideration; but we do not feel warranted in going before the people with taxes enough to raise that additional amount, and it was suggested that it would be better to refund this amount when it became due. If we go before the people with an exorbitant rate of taxation, or have the legislature limited, it will have a tendency to cost the constitution a great many votes. At least, that is what the committee who had this matter in charge thought, and it was for that reason that the limit of seven mills was placed as the first limit. I myself, was of the opinion, and really favored the amendment to the section as it was amended by the gentleman from Custer, for the purpose, as the gentlemen who have preceded me have said, that we do not exhibit our poverty to congress. And it may be well to do so yet, though I presume, as the gentleman from Shoshone said, they are as well posted perhaps on that matter as we are, only they may not take into consideration that we have a great deal of property more than the assessment shows. I think Governor Stevenson, in his last report, stated that if the property had been properly assessed it would have made a much better showing, perhaps even to the amount of $50,000,000. I hope this limit will not be increased, and that it will pass as has been reported by the committee.

Mr. BEATTY. Mr. President, I take it from what I have heard stated here that this estimate is intended to barely meet our expenses. The estimate as made amounts to about $154,000 a year at seven mills. Now, our expenses will probably reach that amount. We are leaving no latitude whatever for extraordinary expenses that may occur. Now, Mr. President and gentlemen, I have in view one object that I believe this state, when it becomes a state, will want to adopt. It will have to resort, in my opinion, to some internal improvements in the way of taking out ditches and redeeming our arid lands. To do that it will be necessary to issue our bonds. If we issue our bonds we must meet the interest on them from time to time until those bonds shall be redeemed by the sale of those lands. I think a scheme of that kind is plausible. I know it is under consideration, has been discussed, and in all probability will be put into execution if we do not hamper our legislature so that they cannot provide the means. Instead of keeping that at seven mills, I am in favor of making it more than eight. We have to trust some matters to the legislature; we cannot provide for all time to come for what we need, and contingencies will arise that we cannot now anticipate. I have listened to the remarks of the different gentlemen here, and I come to this conclusion, that they are trying to make a very close estimate of what the expenses will be, and then limit the legislature to the exact amount of expenses. We nearly do so by this provision as it is. If we add one mill to eight mills it is not enough in my opinion; and with this idea in view I believe it would be better if this section were left out entirely. We have other provisions of the constitution by which the power to create debt is limited. We are putting in a second limitation, and I think we are cutting it down too close entirely. I would prefer myself to see the section entirely omitted; but as it seems to be the sentiment that it shall remain, I propose that that limit shall be, instead of seven mills, ten mills, and I make a motion accordingly.

Mr. CLARK. It seems to me, also, that the restriction upon the legislature here is altogether too close. At the second stage of the particular section, when the assessed value rises to $50,000,000, the limit is placed at four mills, giving an income of $200,000 per year. Now, if while we have an assessed valuation of $22,000,000, we need an income of $150,000 or more, why is it probable that, when we have doubled our population, and doubled our property valuation, we can run the state government upon $200,000? Even this, however, is possible. But rise to the next stage; when we reach $100,000,000, when we have multiplied our population, our business, our capital, our means, by four—when we are four times as large as we are now—they say then that the restriction shall be reduced to two mills on the dollar; that is, we still shall be compelled to run a state government on $200,000. It seems to me that the mere statement of the proposition ought to convince gentlemen that it is entirely impracticable; that if it takes $150,000 a year for our present population and a wealth of $22,000,000, when we multiply all this by four, it certainly will be impossible to get along on $200,000 a year.

Mr. HEYBURN. Mr. President, there is still the idea I advanced when I first seconded the motion of the gentleman from Latah. You have authorized the creation of a debt of about $345,000; that is, one and a half per cent on the assessed valuation; that means an interest of about $20,000 a year in round figures. Now, suppose the legislature or the state sees fit to borrow that much money that we have authorized it to; that is, to contract that much indebtedness. There is absolutely no provision here by which the legislature can provide for the payment of the interest on it; because this committee has estimated that the expenses of the government, aside from any of its extraordinary indebtedness—the expenses of the three branches of the government—are $140,660. Now, that would leave a margin of about $10,000, without counting any extraor-

dinary expenses at all—a margin of $10,000 over this close estimate based on these salaries we have agreed to. Yet you have authorized the legislature to create a debt upon which the interest will be $20,000 a year. Now, suppose the state takes you at your word, and creates the debt; how are you going to pay the interest? You haven't half money enough to do it, not counting anything for extraordinary expenses of the state government. These estimates are all very close estimates; there is no margin in them at all; there have been some cuts made on it, you have raised the governor's salary above what it is estimated here, and also the attorney general's salary; and by that you have increased the expenses of these departments. Yet you confine the legislature to seven mills on the dollar, which will produce a fund of about $154,000, with the possibility of having this interest to pay on the debt you have authorized the state to contract. There is such a thing as being too close, especially in a state government, and in a state we claim to be a growing state, with new possibilities and new expenses necessary to be incurred which we cannot contemplate now; especially that suggested by the gentleman from Alturas, Mr. Beatty, or irrigating the lands and assisting our settlers in irrigating them, at least partly, at state expense. You are tying the legislature up in such a way as to absolutely cripple your state government, and you are doing it in the constitution where it cannot be changed. It is a dangerous place to make a mistake of that kind. It may be necessary to ask relief from the people, if you do it, in the way of an amendment to this constitution inside of five years. Now, just take it for granted that you are going to refund all this other indebtedness of $110,000. Well, there is the interest on that $110,000, to pay which will come pretty near absorbing this entire balance, leaving you with not a dollar's margin in the end. It seems to me it is a mistake.

Mr. McCONNELL. I will renew my motion, Mr. President, to strike out this section. (Seconded.)

It has been urged that if the door is left open, the legislature may tax the people of the territory very heavily, and pile up that money in the treasury for which we have no use. The legislature, as I understand, has to convene every two years; there can be no great accumulation of money in the interim, and when the next legislature meets they can make provision for paying this money out, if they have too much money in the treasury; and I do not believe in locking the state up to such an extent that it cannot undertake any internal improvements, or build necessary buildings for the state. We may need a new insane asylum, we may need a new penitentiary; and it may be a necessity for the state to raise considerable money and have to pay interest on that money; and I believe in trusting it to the legislature. We cannot tell what contingencies may arise in the future. I am not afraid, as a taxpayer, to trust the legislature of the state of Idaho.

Mr. KING. Mr. President, if I remember right, we have already incorporated in one section of the constitution, a provision by which this state may run in debt to an indefinite amount. It provides, first, that we can only incur a debt amounting to one and a half per cent of the assessed valuation of the property in the state. The section goes on further, and says that a debt for some specific purpose may be created upon submission of the question to a vote of the people. Now, I apprehend that the time is not far distant when the people of this state would be willing to incur a vast debt for a specific purpose; probably a debt of one million dollars, probably of two million dollars, perhaps more, and that is for the purpose of irrigating these plains. We have several million acres of land that can be made as fertile as a garden, you might say, capable of supporting a vast population. Now, that clause we have already adopted provides that we may incur a debt for any specific object that the people see proper. And I think it would be good policy in the near future to provide a debt of a million dollars for

the purpose of irrigating these plains. But if we are tied down by this provision that we can never levy a tax exceeding so many mills on the dollar, then of course we can never incur that debt.

Mr. HEYBURN. We couldn't pay the interest.

Mr. KING. Couldn't pay the interest, because, of course we cannot borrow money without paying the interest, and if we are limited to the amount that we might levy by the amounts put in there, it would not begin to pay one-quarter of the interest, in addition to paying the debts we already have, and support our state government. Therefore, I think if we adopt this we had better go back and reconsider that clause we have adopted, and say nothing about incurring any debt or any extraordinary expenses. Now, I think that one of the best things that could ever be done in this state would be, as soon as the proper estimates can be made, the proper surveys made, to go to work in a systematic manner, to dam up this big river for the purpose of obtaining water to irrigate these vast plains, and make homes for millions of people—hundreds of thousands at the least calculation; add them to the wealth and glory of the state—a thing that we cannot do unless we borrow the money to do it. Therefore I am in favor of striking that section out entirely.

The question was put by the chair.

Mr. AINSLIE. I call for the ayes and nays on that vote.

Roll call.

Yeas: Anderson, Beatty, Chaney, Coston, Hampton, Heyburn, King, Kinport, Lewis, Maxey, McConnell, Morgan, Parker, Pierce, Pinkham, Mr. President—16.

Nays: Ainslie, Armstrong, Batten, Bevan, Campbell, Cavanah, Clark, Crutcher, Glidden, Hasbrouck, Hays, Hogan, Jewell, Lamoreaux, Mayhew, Melder, Myer, Pefley, Reid, Sinnott, Shoup, Vineyard, Wilson, Woods—24.

The CHAIR. The question now recurs on the amendment offered by the gentleman from Alturas to strike out the word "seven" in line 2, and insert the word "ten." (Vote taken viva voce.) The chair is in doubt.

(Rising vote results: Yeas, 19, Nays, 11). The amendment is adopted.

The question now recurs on the motion made by the gentleman from Custer, to strike out all that after the word "valuation" in line 2 of Section 10 (9), down to the word "and" in line four.

Mr. AINSLIE. I call for the yeas and nays.

Roll call.

Ayes: Anderson, Armstrong, Beatty, Hampton, King, Maxey, Mayhew, Morgan, Pinkham, Reid, Shoup, Sweet, Wilson—13.

Nays: Ainslie, Batten, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hasbrouck, Hays, Heyburn, Hogan, Jewell, Kinport, Lewis, McConnell, Melder, Myer, Pefley, Pierce, Sinnott, Vineyard, Whitton, Mr. President—25.

And the amendment was lost.

Mr. HEYBURN. I have an amendment.

The CHAIR. The trouble with it now is, that if in the second line the word "whenever" is stricken out, and "if" put in, it will avoid this question of advertisement of which you speak; "whenever the taxable property of the state shall amount to fifty million dollars the rate shall not exceed four mills on each dollar of valuation." The word "if" leaves it indefinite.

SECRETARY reads: Amend Section 10 (9) by striking out the word "four" in line 4, and inserting "six."

Mr. MAYHEW. I second that amendment.

Mr. HEYBURN. That is inconsistent with the amendment we made in the second line, of "ten" mills. Ten mills would give us $230,000 on our present valuation; six mills on $50,000,000, would give us $300,000, which is just about the proper proportion in the growth of people represented by $23,000,000 and $50,000,000 assessment. I also propose in the sixth line to strike out "two" and insert "four," which would maintain the same proportion; and in the eighth line strike out "one" and insert "two," which, it seems to me, would be in proportion to the growth of the people. The people are supposed to increase with the increase of property.

Mr. HASBROUCK. Mr. President, I shall not favor this amendment. The whole theory, as it seems to me to be, is to run the state in debt as much as possible; at least, collect taxes for the purpose of paying debts of the state. I am in favor of the state not running in debt. The estimate made may not be as close as the gentleman supposes. It is not supposed that for the next three years our assessed valuation will remain at $22,000,000; but that is the theory the whole argument is made upon. I would not be at all surprised—and I hope it will be so that before three years roll around we will have $50,000,000; and if so, seven mills would be sufficient to meet the interest on these debts that the gentleman wishes to contract; but I am opposed, in any instance, for the state to run largely in debt. I do not believe in the principle; I don't believe it is a correct principle, and I am afraid, further, that this constitution will fail of meeting with the approval of the voters, and will not be ratified if these excessive rates of taxation are maintained, or put in this constitution. I know that it is the great cry in my county, that the state government will cost so much more than the territorial government is costing, so that if it is a fact that the constitution provides and shows that that will be the case, they will not vote for it. I have had dozens of men tell me that, and that the expenses will be greater; and to show that fact to this convention, these statistics were prepared; to show that it is not in accord with the proclamation of the governor, that the expense would be comparatively little more for the state government than we are paying for the territorial government. I do not believe it is good policy, and I shall oppose these amendments.

Mr. SHOUP. I desire to offer an amendment.

Mr. CLARK. Mr. President, I move the amendment offered by the gentleman from Shoshone be amended by striking out "six" and inserting "five," so as to limit the tax to five mills.

Mr. HEYBURN. I will accept that amendment.

SECRETARY reads the amendment offered by Mr. Shoup: Strike out the word "whenever" in line two and insert the word "if."

The CHAIR. The question first is on the amendment offered by the gentleman from Custer, to strike out the word "whenever" in the second line, and insert "if."

The vote was taken and a division called for. The rising vote resulted: Yeas 19; Nays 9; and the amendment was adopted.

The CHAIR. The question recurs on the amendment offered by the gentleman from Shoshone on the acceptance of the amendment to the amendment offered by the gentleman from Ada to strike out the word "four" in line four and insert the word "five," so that it will read "exceed five mills on each dollar of valuation."

Put to vote and carried.

Mr. HEYBURN. Now, Mr. President, I move to strike out "two" and insert "three."

Mr. MAYHEW. I second the amendment.

Put to vote and carried.

Mr. HEYBURN. I move that we strike out the word "one" in the eighth line and insert "two."

Mr. MAYHEW. I second the amendment.

Mr. SHOUP. I move that we make it one and a half.

Mr. HEYBURN. I will accept that amendment.

Mr. MAYHEW. I will have to make another demand for a call of the house. There are only thirty-six present.

Mr. MORGAN. I second the call.

The CHAIR. It is moved and seconded that Section 10 (9) be amended by striking out the word "one" in line eight, and inserting "one and a half."

Put to vote and carried.

Mr. AINSLIE. I move the adoption of the section as amended.

Mr. HAMPTON. I have an amendment.

SECRETARY reads: I move to amend Section 10

(9) by striking out in line 8 the word "unless" and insert instead thereof the words "provided that." Also add "s" to the word "rate," and immediately thereafter add the word "respectively" in the ninth line.

Mr. HAMPHON. It will be seen, Mr. President, that the latter part of this section, which I suppose was intended to apply to the whole section, provides that the people might vote upon a higher rate of taxation, only applies to the condition where there is over $300,000,000 of taxable property. It ought to apply to the whole section, and I think if it is changed it will enable them to do so. The people cannot vote upon increasing taxation, I take it, until the taxable property in the state reaches over $300,000,000. With the amendment suggested it would apply to the other circumstances and conditions when you had $100,000,000 or $200,000,000.

Mr. HASBROUCK. If that amendment prevails you might as well strike the section out; because there would be no limit on the legislature whatever. I understand this section is to place a limit on the legislature, that they shall not levy any tax to exceed the amount named here. If you break that down by saying they may do so by a vote of the people, there is no limit at all, and it does not amount to anything.

"Question, question."

The question was put by the chair. Vote and lost; and the amendment was rejected.

The CHAIR. I would like to ask the chairman of the committee, Mr. Hays, as to whether it is the intention of the committee—I ask this as a member—to make these various levies or designations upon future levies based upon the assessed valuation?

Mr. HAYS. Yes.

Mr. CLAGGETT. I would suggest then that in the second line it would be a good plan to make it so appear, because it is very indefinite now; and put in the word "assessed" after the word "of" and before the

word "valuation." Otherwise the legislature would have no strings on them in spite of all limitations.

Mr. HEYBURN. I move that amendment, Mr. President.

Mr. AINSLIE. I ask unanimous consent for it.

Moved and seconded that Section 10 (9) as amended be adopted. Carried.

SECTION STRICKEN OUT.

Section 11 was read.

Moved and seconded that Section 11 be adopted.

Mr. PARKER. I have an amendment.

SECRETARY reads: Amend Section 11 by adding after the word "therefor" in line 11 the following: "The legislature shall require him to give a separate bond to secure the safety of the school moneys entrusted to his custody."

Mr. PEFLEY. I second it.

Put to vote and lost.

Mr. REID. Mr. President, I would like to ask the chairman of the committee if they made any estimate of what that publication is going to cost in line 6, "and give the number and amount of every warrant." It seems to me that is going to be a pretty big item. The convention will understand we have those little books or pamphlets issued by the comptrollers and treasurers in pamphlet form, in which all those expenses are itemized. I am as much in favor of holding public officials to account as anyone; but I think there is a cheaper way to do that. It costs a good deal to publish those matters in newspapers, and if you publish the number and amount of every warrant, it is going to a thousand or two thousand dollars. I just ask to know what it is going to cost.

Mr. HAYS. We estimated that it would be about $1,000 a year.

Mr. REID. Then I am opposed to it. I move to strike out the sentence in line 6, "The governor shall cause every such report to be, etc., as the legislature may require." (Seconded.)

Mr. HASBROUCK. I move to strike out the whole section, for the reason that it is of a legislative character and I don't think it is needed.

Motion seconded. Put to vote and carried.

Mr. McCONNELL. Mr. President, I move to strike out Section 12.

Mr. HEYBURN. I second it.

The CHAIR. The motion is out of order now. The secretary will please read the section.

SECTION 10.

Section 12 (10) was read.

Mr. McCONNELL. I move to strike out Section 12 (10). My object in making the motion is this: A great many of our officers now, treasurers of school districts or counties are interested in banks, either as stockholders or in some other way, and there are but few officers who are fixed to guard these moneys at their own homes. They are largely deposited in banks, and if they are shareholders in the bank they would be indirectly interested in having it. If it is adopted, you would have some difficulty in some localities in getting a treasurer. We had it urged here as a reason why the treasurer of the territory should receive so small a salary as was fixed in the report on salaries, that he would have a large amount of money on hand and derive a benefit from that. Now, you have a treasurer in this territory, he will doubtless be a citizen of Boise City; and if he is a man who can give bonds (and he will have to give bonds or he cannot be treasurer) there is a very large chance that he will be interested in one or the other of those banks. Under this provision he could not deposit the money in the bank; he will have to pile it up in a room here some place, or hire a man or half a dozen men to watch it with shotguns. I think the money of the territory would be safer with these banks than it would in this building. I suppose the treasurer will have an office in the building, but if there is any provision made for taking care

of the funds safely out in a back street like this, I don't know it. I have had occasion quite recently to investigate the matter of burglar-proof safes, and I am told by manufacturers of safes that there is no such thing in existence today as a burglar-proof safe. With all the modern devices of safe-makers, they can get into any safe if they have a little time. You might employ a guard, as the state of Oregon does, and perhaps this state does, to guard the building; but they can't have more than two or three men, and the guard can be captured, and then they would have all night to work on the vault. I don't believe in having this provision in here that the treasurer cannot deposit the money with the bank if he happens to be a stockholder in the bank.

Mr. HAYS. I don't see anything in Section 12 (10) to prohibit the treasurer from depositing the money in the bank.

Mr. McCONNELL. If he is a stockholder in the bank?

Mr. HAYS. Well, he need not necessarily be the treasurer because he is a stockholder in the bank. We don't propose to make the bank the treasurer. That does not necessarily mean that he has got to be a stockholder in the bank, because he is the treasurer of the state. And even if he is a stockholder in the bank, he need not put it in his bank account. He need not mix it up with bank money. The money should be kept separate; the law requires him to keep it separate, and we want Mr. Treasurer to keep this money in the bank so that he won't have the handling of this money all the time for his own benefit.

Mr. MAYHEW. Do you mean it has to be placed in the bank as a special deposit so it cannot be drawn against?

Mr. HAYS. The treasurer can draw against it.

Mr. MAYHEW. The gentleman does not seem to understand. There are two kinds of deposits; a special deposit and a general deposit.

Mr. HAYS. Certainly.

Mr. McCONNELL. The chairman of the committee does not seem to understand me. I think it is more than likely that any gentleman who will be able to give a bond so large as the treasurer of this territory will have to give will be the owner of more or less bank stock. I think upon investigation you will find nearly every citizen of any considerable amount of wealth possesses some shares of stock in these banks. If this town does not, it is an exception to the towns in the territory. And having an interest in any one of those banks, or in all of them, he could not deposit the money in the bank under this law, because that bank is not going to hold that money in a sack in the vault, and be responsible to the treasurer and receive no benefit from the money. There isn't a bank in the country that would do it. They are accountable to the treasurer for that money; they give a certificate of deposit to the treasurer and are accountable to him for the money, and he as treasurer can draw his warrants against it at any time; but at the same time, if that treasurer owns one single share of stock in that bank, he is indirectly receiving a profit from that money, because the bank has a profit in handling that money and holding it, or it would not hold it. So I venture to say there is not a gentleman in this town who could give the bond as treasurer, who has not a share in some of these banks, one or more shares, because the responsible men of the town naturally try to get into the bank; even if they do not care about the investment, they get them in there to act as officers of the bank; they have to have a certain number of local officers in these banks, and that is one reason why I object to it, because I think the money is safer with a bank than it would be in the hands of an individual, but it would necessitate the man selling his shares of bank stock if he has any, before he could take the office of treasurer.

Mr. WILSON. I would like to answer the statement of the gentleman last made, that no man in this town

could give bond as treasurer, who is not a stockholder in a bank. Mr. ——— gave a bond for $100,000, and on that bond as sureties there was not a man who was a stockholder in any bank in this county.

The question was put by the chair. (Vote and lost.)

Moved and seconded that Section 12 (10) be adopted.

Put to vote and carried.

SECTION 11.

Section 13 (11) read, and it is moved and seconded that it be adopted. Put to vote and carried.

SECTION STRICKEN OUT.

Section 14 was read.

Mr. WILSON. Mr. President, I move Section 14 be stricken out.

Mr. BEATTY. I second the motion.

Mr. WILSON. I make the motion for the reason that I think it would impair the power of municipal corporations to borrow money. If nothing but the public property of the corporation was pledged as collateral for it to borrow, I don't think you could borrow any at all. I think all property ought to be pledged for anything you borrow.

Mr. AINSLIE. I don't see how you are going to take the property of a private individual of this city to pay the city's debts. You cannot go and take John Smith's property to pay the debts of Boise City. It is a very proper provision.

Mr. MORGAN. I would like to ask the chairman of the committee what it was intended to cover; what is the intention of it?

Mr. HAYS. It means just what it says, Judge Morgan.

Mr. MORGAN. I don't understand that it can be done, without any such provision as this, or ever is. I don't know but it was to prevent them levying taxes for the purposes of building sidewalks or improving streets or some such thing as that.

Mr. WILSON. You can take either horn of the dilemma. If the section is any good, which I don't think it is, I don't think you could sell the private property of an individual for a corporate debt; and if not, then it ought not to be there. If you take the other horn, that you impair the power of the municipal corporation to borrow money, it ought not to be there.

The question was put by the chair, and on the vote a division demanded. On the rising vote the result was: Yeas 14; Nays 15.

Mr. BEATTY. Mr. President, upon adoption of that, I would like to ask simply a question of the chairman of the committee. I presume private property shall not be taken or sold for the corporate debts of municipal corporations. I would like to know whether under that provision, if a tax is levied to pay corporate debts, whether in view of that, the property of any individual, or any property can be sold to pay the tax.

Mr. HAYS. Why, yes, I judge so.

Mr. BEATTY. Well, it says not; "Private property shall not be taken or sold for corporate debts of municipal corporations." You levy a tax to pay a corporate debt. The tax itself is not a corporate debt; you have to levy the tax to pay the debt, and then you have to sell the property under that tax, it strikes me.

Moved and seconded that Section 14 be adopted.

The vote was taken, and the chair being in doubt, required a rising vote, which resulted: Yeas 16; Nays 16.

The CHAIR. The chair votes—

Mr. MAYHEW. There is not a quorum present.

The CHAIR. We will take the vote over again. (Rising vote: Yeas 18; Nays 18.) The chair casts his vote in the negative, for the reason that he had very grave doubts as to whether there would not very serious difficulty arise. I am very strongly impressed with the idea that private property may be taken where the corporation does not meet its tax, and that the supreme court of the United States has so held; but if you put

it into the constitution that it may not be taken, it is a question whether you shall not have trouble in Washington.

Mr. BEATTY. Now, what becomes of the section?

The CHAIR. It is not adopted.

Mr. AINSLIE. I would like to have the yeas and nays on that proposition of adopting the section. I think some members voted twice.

Mr. PINKHAM. I think the gentleman from Boise voted on both sides of the question.

The CHAIR. The question is now about adopting the section.

Mr. BEATTY. Are we voting to adopt or strike out?

The CHAIR. That there may be no confusion about this matter, the chair will state that the motion to strike out was voted down. The vote now is upon the motion to adopt.

Roll call.

Yeas: Ainslie, Anderson, Batten, Bevan, Cavanah, Coston, Crutcher, Hays, Hogan, King, Kinport, Maxey, Mayhew, Melder, Parker, Reid, Sinnott, Vineyard, Whitton—19.

Nays: Allen, Armstrong, Beatty, Campbell, Chaney, Clark, Gray, Hampton, Harris, Hasbrouck, Heyburn, Jewell, Lewis, McConnell, Myer, Morgan, Pierce, Pinkham, Wilson, Mr. President—20.

And the motion to adopt the section is lost.

Moved and seconded that Section 14 be stricken out.

Mr. AINSLIE. I demand the yeas and nays. It is taken exactly from the Colorado constitution.[1]

Mr. BEATTY. Well, we know as much as Colorado, don't we?

Mr. MORGAN. I rise to a point of order, Mr. President. I think the vote refusing to adopt is equivalent to a vote to strike out. Nobody has offered any amendments.

Mr. AINSLIE. That is not a parliamentary rule

1—"Private property shall not be taken or sold for the payment of the corporate debt of municipal corporations." Colo. Const. (1876), Art 10, Sec. 14.

at all. If it is not adopted, it may be open for amendment.

Mr. MORGAN. Nobody has offered any amendment.

Mr. AINSLIE. Well, you make a motion to strike it out.

Mr. WILSON. A motion to strike out is not in order, because we have had the motion once.

Mr. REID. We have done some business with it since then, and it is in order again.

The CHAIR. Yes, the point of order is not well taken. The question is now upon striking it out.

Roll call.

Yeas: Allen, Armstrong, Beatty, Campbell, Chaney, Clark, Gray, Hampton, Harris, Hasbrouck, Heyburn, Jewell, Kinport, Lewis, Maxey, McConnell, Myer, Morgan, Pierce, Pinkham, Pyeatt, Sinnott, Wilson, Mr. President—24.

Nays: Ainslie, Anderson, Batten, Bevan, Cavanah, Coston, Crutcher, Hays, Hogan, King, Mayhew, Melder, Parker, Reid, Vineyard, Whitton—16.

The section was stricken out.

SECTION 12.

Section 15 (12) read, and it is moved and seconded that it be adopted. Carried.

SECTION 13.

Section 16 (13) read, and it is moved and seconded that it be adopted. Carried.

SECTION 14.

Section 17 (14) read, and it is moved and seconded that it be adopted. Carried.

SECTION 15.

Section 18 (15) read, and it is moved and seconded that it be adopted.

Mr. REID. I would like to inquire about that last line, "All moneys in the county treasury at the end of

each fiscal year not needed for current expenses." Would that exclude the school fund, special taxes, road taxes, or does that take all the money?

The CHAIR. If it is not needed for payment of current expenses.

Mr. REID. I shall oppose that last part of it. That would take the school fund, bridge fund, hospital fund and all the special funds.

The CHAIR. It reads: "All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund." If the gentleman will send up an amendment covering that point—

Mr. BEATTY. I move to strike out all after the word "fund" in line 9. (Seconded.)

Mr. HEYBURN. Mr. President, I want a little information on this subject. My memorandum shows that Section 4 of the bill (number 7) (Article VIII.) on Public Indebtedness, was stricken out. That is the section that by implication authorized the county to incur a debt not exceding five per cent of the assessed value. Now, that section preceding that in that bill provides that "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." Now, you provide in this Section 18 (15) that the legislature shall provide by law such a system of county finances as shall cause the business of the several counties to be conducted on a cash basis; putting these three things together, these three sections, there is no possible provision by which a county can incur indebtedness for any purpose, for the purpose of building public buildings, or any other necessary purpose. We have limited them; "Provided, they shall never incur any indebtedness exceeding the income for that year." We have stricken out the section allowing them to incur an indebtedness of five per cent of their assessed valu-

ation, and adopted the section preceding, being number 3 of Article VII. (VIII.), and now provide that from this time on they shall do business on a cash basis; and the natural result, the inevitable result, is that they could not create any indebtedness for the purpose of building any buildings, and they could not levy any tax for that purpose, because they cannot levy any tax under Section 3 of Article VII. (VIII.), exceeding the income and necessary expenses of that year.

Mr. AINSLIE. Without a vote of two-thirds of the qualified electors.

Mr. HEYBURN. I am coming to that. Whenever they want to incur any expenses over the income, they would have to submit it to the people and obtain a two-thirds vote of the qualified electors of the county; and counties only have elections every two years, so that if public buildings were burned down immediately after an election, there is no provision made for such a contingency; they would either have to have a special election, for which no provision is made by law, or wait until the general election two years afterwards to submit this matter.

Mr. AINSLIE. To vote at an election to be called for that purpose.

Mr. HEYBURN. If you called an election for that purpose, you would have the expenses of the election, you would have to wait until you submitted the matter to the people to provide a temporary shelter for your office. It seems to me that we have tied the county down pretty tight in that section. If Section 4 had been left in, it would have made ample provision, because they could then incur an indebtedness.

Mr. REID. If the gentleman will allow me to interrupt him, it provides that they shall not exceed the levy which is made, but in making the levy they can take those expenses into consideration and levy enough to meet them.

Mr. HEYBURN. I am speaking of a case where a calamity occurs after levy is made. I think if we put Section 4 back into that act and allow them to incur

that indebtedness, there will be no difficulty about the matter.

Mr. WILSON. I moved to have Section 4 stricken out for the reasons stated at that time, and would regret to see it reinstated. I don't think the objection the gentleman from Shoshone makes is well taken. I think the counties could create indebtedness greater than he refers to. I read Section 3 of the article he refers to: "No county, city, town, township, board of education, or school district, or other subdivision in 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 of the qualified electors thereof, voting at an election to be held for that purpose, nor 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," etc. That, as I take it, would make the necessary provision. Counties could contract indebtedness for public buildings, provided they made provision at that time for the payment of the interest on the debt, and for a sinking fund to pay the principal as it fell due, not exceeding twenty years.

Mr. REID. I will withdraw the objections I had to this last section. "All moneys not needed for current expenses" limits that. It is, all money not needed for current expenses must go into the sinking fund.

Mr. GRAY. I would ask for information, if this prevents in any manner the issuance of county warrants?

Mr. HEYBURN. Yes.

Mr. AINSLIE. This bill provides that no money shall be drawn from the treasury except on warrants.

Mr. GRAY. Can they issue warrants if the fund is exhausted? It is much more convenient for a county to have the privilege of drawing warrants for any ordinary expenses. If it does not prohibit that, I have no objections to the section.

Mr. AINSLIE. I call the attention of the gentle-

man from Ada to Section 3 in Article VII. (VIII.), of this bill passed, that "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." That is, they cannot incur any indebtedness outside the amount of the revenues collected for that year. If they could, they could run the county in debt without limit.

Mr. GRAY. Then I understand the county cannot issue warrants unless there is money in the treasury to pay them. If that is the case, I oppose the amendment.

The CHAIR. For the information of the gentleman from Ada, it seems to me there is nothing in this section at all that prevents the issuance of warrants. It provides that the legislature shall provide such a system of county finance as will enable the business of the county to be conducted in a cash basis. That for the purpose of paying up your outstanding warrants they are required to provide a special fund, and after that old warrants are paid out of that fund, and new warrants may be issued; but that system of finance must be provided by the legislature to enable warrants being taken up that year by the money coming into the treasury.

Mr. HAMPTON. It seems to me the last two lines "All moneys in the county treasury at the end of each fiscal year, not needed for current expenses" are transferred to the redemption fund, are inconsistent. The fiscal year ends in January, and we do not have any more taxes collected until fall. We have all the moneys turned over in January to this redemption fund; you leave no money to pay current expenses for the year from January until November or December. I don't think I am in favor of striking it out if it can be made consistent with the rest of the section.

The CHAIR. If there is no money there, the section will be inoperative; but there may be coming in from licenses, there may be some money left in the treasury

at the end of the fiscal year, and there may be plenty of money coming in from licenses along to carry the county government on. That is a matter to be left to the provisions of the legislature.

It is moved and seconded that the section be adopted. To that an amendment is offered by the gentleman from Alturas, Mr. Beatty, to strike out all after the word "fund" in the ninth line.

Mr. BEATTY. Mr. President, on that question to strike out, I make it because I think that had better be left to the legislature. I know how often it becomes necessary to change the rule upon that question, and from time to time different provisions have been made in the legislature for disposing of the surplus funds. Sometimes they want to go one way, and sometimes another, and I think it is better that it be left to the legislature, instead of pinning them down at the end of the fiscal year to transfer all funds that may be left on hand into some other fund. It ties it up in such a way that it leaves no latitude whatever. As the county commissioners may need them, or require them, I would say.

Mr. AINSLIE. I think that is a very important provision there. The moneys in the county treasury at the end of the fiscal year, not needed for current expenses shall be transferred. It simply prevents the county commissioners from squandering that money on some unnecessary purpose. Better sustain it. Then at some time, maybe at the time they make their levy for county purposes, their revenue may run over their estimate of current expenses, besides having an additional redemption fund itself. If it does run over a few hundred dollars, or two or three thousand dollars, I think it is nothing more than proper that it should be devoted to clearing up old debts and stopping interest than to be squandered or used for some new purpose. I think it is the life of the bill.

Mr. GRAY. I have just comprehended the explanation made by the president in regard to levying a special tax. My idea is, I like the idea of changing these

funds, when there is more money accumulated in a fund than necessary therefor. I will not support the amendment of the gentleman from Alturas. If there should be for some reason a large amount of money in the fund to be used for some other fund, let the county commissioners have some discretion. Let them see whether it will pay expenses, and then transfer. But it seems this section contemplates that in the event the indebtedness should exceed what had been contemplated by the board in their levy, then it would be necessary for them to make a separate and distinct levy, and they have got to go through with some method of perhaps assessing and collecting as they did in the original levy made at the commencement of the year. I cannot see anything wrong in allowing the board of county commissioners to issue warrants when necessary, and to be provided for out of some future year's levy. If they cannot get their money, they want their interest. But this has got to be a special tax; it cannot come in the general levy of the next year. I think it might work a hardship.

Mr. HEYBURN. Mr. President, I like the object of that section. I like the result of it, as far as putting the counties on a cash basis is concerned. But I am led to look at the result as applied to the existing condition of affairs. I find that taking a county with $65,000 in warrants outstanding, if they assess the limit of ten mills, one per cent, every year it would prolong the payment of that debt over seven years, and the interest account—the additional interest account involved in prolonging that debt—under the rate of interest those warrants are bearing, would be $25,000. That is to say, that a debt of $65,000 now, by the time it was paid, would be a debt of $100,000; that is, it would take $100,000 to pay it, so that it would take ten years to clear up that much debt. It might be that that is the least of the evils, but it is a great evil. It may be that is the only way of curing it, but it is not satisfactory to my mind. If a county could go on a cash basis, and instead of issuing warrants or rather—of course it

would issue warrants—suppose there was a fund in the treasury to pay them, which of course the first two lines of the section provides in substance, because it provides that it shall be done on a cash basis, I take it that would not authorize the issuance of any warrants unless there was a fund to pay the warrants. And if the parties holding this indebtedness would be satisfied, leaving it to bear the rate of interest, which is paid, say taking ten years in which to pay it, it is a pretty good investment, I admit that, but the county is paying pretty dearly for the use of that money. The county is paying in the end pretty near 33 1-3 per cent for that money. I suppose probably it is the best measure that can be provided. It is a pretty hard situation to cover.

The CHAIR. The question is upon the adoption of the amendment offered by Mr. Beatty to strike out all after the word "funds" in line 9 of the section.

Put to vote and lost.

Mr. AINSLIE. I move to adopt the section as amended.

The SECRETARY. There is a substitute here by Mr. Parker.

The CHAIR. The secretary will read it.

SECRETARY reads Section 18 (15). No county, city, town, township, school district or other subdivision shall contract any debt unless authorized and limited by law, and no scrip certificate or other evidence of debt whatever shall be issued by them, except in accordance with the provisions of such law.

The CHAIR. There is no second to the substitute. The question is on the adoption of the section. (Put to vote and carried).

Section 16.

Section 19 (16) read, and it is moved and seconded that it be adopted. Carried.

The CHAIR. What is your pleasure with this bill?

Section 2.

Mr. HAYS. By unanimous consent I would ask to

have the word "per capita" instead of "poll" in Section 2, line 6.

The CHAIR. If there is no objection the change will be made.

Mr. HAYS. I now move the adoption of this article.

The CHAIR. The article has been laid over until tomorrow morning.

Mr. BEATTY. I move we adjourn until tomorrow morning at nine o'clock.

Mr. HAYS. I will ask that this go over until tomorrow morning, until we have considered the other sections.

The CHAIR. It is moved and seconded that we adjourn until tomorrow morning at nine o'clock.

Mr. HEYBURN. I move to amend that by taking a recess until 8 o'clock this evening.

Mr. BEATTY. There is a committee to report; there is more work before it than can be done in twenty-four hours' time—the committee on Enrollment and Revision. Unless they get together and do this work we will be detained a week.

The motion to adjourn was voted upon and carried, and the convention adjourned until tomorrow morning at 9 o'clock.

TWENTY-FIFTH DAY.

FRIDAY, *August 2, 1889, 9:00 A. M.*

Convention called to order by the president.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Stull, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Ballentine, Brigham, Crook, Hagan, Hammell, Harkness, Hendryx, McConnell, McMahon, Pefley, Poe, Pritchard, Salisbury, Standrod, Steunenberg, Taylor, Woods.

The journal was read and approved.

Presentation of petitions and memorials. None.

Reports of standing committees.

COMMITTEE REPORTS—SCHEDULE.

Mr. GRAY. The committee on Schedule wishes to report both a majority and minority report.

SECRETARY reads: Boise City, Idaho Territory, August 2, 1889. To the President and Members of the Constitutional Convention: Your committee on Schedule hereby respectfully submits the following majority report; and it is the sense of the committee that the minority report by the committee may be hereafter submitted. Gray, Chairman.

Boise City, Idaho Territory, August 2, 1889. To the President and Members of the Constitutional Convention: Your committee on Schedule directs the submission of the following minority report. Gray, Chairman.

The secretary thereupon read the majority report.

Mr. MAYHEW. I want to say this just now (before the secretary reads the minority report), that while I am a member of that committee and in favor of the majority report, I was just requested by Mr. Sweet, who is preparing or has prepared a minority report, and desires to submit it to this convention, to state to this convention that he had just got a telegram to the effect that his house, where his family is now residing, is consumed by fire, and he would ask if the convention would give him until the coming in of the afternoon session to make his report, and I told him I would do so. He stated this further, that he might desire to make some changes; it is written in pencil and he thought perhaps it could not be read very well, and desired until that time. I merely submit this.

The CHAIR. The report of the majority of the committee will lie upon the table to be printed according to the rules. Is there any objection to withholding the minority report until coming in of the convention

this afternoon? There is no objection, and it is so ordered.

Mr. GRAY. Mr. Sweet made no such request to me.

Mr. MAYHEW. Just a moment after the convention convened I met him in the corridor and he gave me these facts I have stated.

Mr. GRAY. Very well, I have no objection.

The CHAIR. Are there any further reports of standing committees?

Mr. HAMPTON. Mr. President, I desire to state that the minority report was by one individual, and that the majority report was by the others, and I think that statement was not exactly in accord with the facts. It was agreed that the majority report should be submitted; there was no formal vote taken, because the matter was not fully considered. We did not know what the minority report would be.

Mr. REID. So far as that is concerned, the gentleman is mistaken about the formal vote. The chairman put the question and everybody said Yea, and nobody said No, of the eight members present, and thereafter they all agreed to it; and then I included in the motion that Mr. Sweet be allowed to put in his report. If the gentlemen say that is a minority report, it is a mistake, because I know the vote was taken and everybody answered Yea.

Mr. MAYHEW. Yes, and the gentleman was there himself when the vote was taken, and he never said yea or nay; made no dissent at all.

Mr. GRAY. I will say this, that it was included as Mr. Reid has stated; it was included in the motion that we adopt the majority report, and permit the minority report to be brought in; if it was not ready this morning, as soon as it could be ready. Probably the gentlemen from Cassia understood that all went together.

The CHAIR. In order that we may have no trouble about this matter in the future, the rules provide, if my recollection is correct, that these reports shall be signed by the members presenting them to the conven-

tion, and I think it would be better for the gentlemen, who represent the majority here, to take the report from the speaker's table by unanimous consent, and see that it is signed at least by the chairman.

Mr. MAYHEW. And let every member sign it.

The CHAIR. Yes, let every member sign it who concurs in it, and let every one who concurs in the minority report sign that.

Reports of select committees. None.

Final readings.

Mr. BEATTY. Mr. President, I would ask unanimous consent for a suspension of the rules in order to hasten the work of the committee on Revision. The committee, on examining the papers before them, find that there is no article in here such as is provided in nearly all constitutions for the distribution of the powers of the legislative, executive and judiciary; and I have prepared, or rather I have quoted from another constitution, what is the usual provision, and I will read it for information, and then will ask its adoption, if the convention so agree.

ARTICLE II.

"Article —. Distribution of Powers. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted."

I will state that there is not among the papers referred to your committee any provision of that kind; and I think it is proper that there should be, as it is in almost all constitutions, although some of them do not have it, but simply start off with Executive, Legislative and Judicial. I will move the adoption of this article.

Mr. MORGAN. I second the motion.

The CHAIR. The gentleman from Alturas asks unanimous consent to adopt the additional article as sent

to the secretary's desk. Is there any objection to the article? There is no objection; the secretary will read.

SECRETARY reads the article as above set forth.

Moved and seconded that the article be adopted.

Mr. BEATTY. I suppose it is proper that the rules be suspended, if there is no objection.

The CHAIR. If there is no objection, by unanimous consent the rules will be suspended. (Put to vote and carried.)

Mr. BEATTY. I now move that it be considered engrossed, the rules suspended, and that it be placed upon its final reading. (Seconded. Put to vote and carried.)

The secretary thereupon read the article as above set forth.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Reid, Robbins, Savidge, Sinnott, Shoup, Stull, Underwood, Vineyard, Whitton, Wilson, Mr. President—48.

Nays: None.

The CHAIR. The article is referred to the committee on Revision and Enrollment.

ARTICLE XX.— AMENDMENTS.— SECTIONS 1 AND 2.

Mr. BEATTY. I beg the indulgence of the convention for another matter pertaining to the duties of this same committee. The committee is endeavoring to arrange the constitution in the order in which it should be finally adopted, and among the first provisions in the constitution, comes that of the judicial, legislative and executive. In the report of the committee on judiciary are two sections with reference to the amendments of the constitution. There is no question that amendments of the constitution, in all constitutions, which I have examined, are made a seperate article; but they are now included in this report on judiciary. The committee

does not feel it is authorized to transfer those two sections to another article, but desire the authority to transfer them and make them a separate article.

In addition to that, there is no provision anywhere yet adopted in the constitution, by which the legislature can call a convention. The only provision now adopted is merely for the adoption of separate articles to be submitted to the people. And I have here, cut from another constitution, two additional sections, which I desire to submit to the convention, which provide that in addition to submitting separate articles to the people, the legislature may call a general convention to revise the constitution. I do not say that it is absolutely necessary that such a provision should be in the constitution, but it is a common one in all constitutions, and for the information of the body I will read the two additional sections which the committee proposes. Section 3 this would be if you allow the committee to transfer the other two sections to a separate article, and they will constitute Sections 1 and 2, which you have already adopted.

Mr. MAYHEW. In what article?

Mr. BEATTY. In the article on judiciary. Provided you authorize us to transfer them to a new article they would be Sections 1 and 2, and now follow Sections 3 and 4 as follows:

SECTION 3.

"Section 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it ncessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members not less than that of the most numerous branch of the legislature.

SECTION 4.

"Section 4. Any constitution adopted by such convention shall have no validity until it has been submitted to, and adopted by the people."

Now, the motion I make first is that your committee be allowed to transfer these two sections, now a part of the report on judiciary, to a separate article; and then I will follow that motion, if adopted, by a motion to adopt these two sections.

Mr. REID. I would like to ask the gentleman first why not make the number of members of the convention equal to the number in both houses?

Mr. BEATTY. I will answer the gentleman, that I am not now asking the adoption of this section. I am simply now proposing the first motion, asking authority to transfer those two sections.

Mr. REID. But to bring the whole matter up, it is usual to put it in a separate article; the only reason the Judiciary committee put it there was that it came under our head, and then we left it to the committee on Revision. I see no objection to the articles, except you say that it shall not be less than the members in the lower house.

Mr. BEATTY. I have no objection to amending this.

The CHAIR. The question is now on the motion of the gentleman from Alturas to give the committee authority to transfer the proposed sections and incorporate the two sections in a separate article.

Mr. MAYHEW. So far as I am individually concerned I agree to the proposition made by Mr. Beatty, chairman of the committee. I think the suggestions he has made are correct. The question is with me, whether you adopt it or not, does the adoption of the suggestion he makes come up in the convention so that it can be made as suggested by my friend Reid? (Vote and carried.)

Mr. BEATTY. Now, Mr. President, I will ask consent to introduce these two sections, and at the suggestion of Mr. Reid, before introducing them I will

make that amendment as suggested, although, I will state this article allows the legislature to name any number they please.

Mr. REID. I would rather fix the minimum. Thirty-six is too small a convention to change a constitution.

Mr. BEATTY. "And such convention shall consist of a number of members not less than that of the most numerous branch of the legislature."

Mr. SHOUP. I will ask the gentleman what constitution it was taken from?

Mr. BEATTY. I got it from the constitution proposed by Washington territory.[1]

Mr. SHOUP. In some of the states they have two hundred members in the lower house.

Mr. BEATTY. But that would have no application here, because this one is only thirty-six. Then this amendment as suggested by the gentleman would read this way: "And such convention shall consist of a number of members not less than double the number of the most numerous branch of the legislature."

Mr. MAYHEW. I move an amendment, by saying house of representatives. I merely suggest it to the chairman.

SECRETARY reads: "Section 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at the next session, provide by law for calling the same, and such convention shall consist of a number of members not less than double the number of the most numerous branch of the legislature."

"Section 4. Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people."

1—Art. 23, Sec. 2, Washington Const. 1889.

The CHAIR. It is moved and seconded that the rules be suspended, and that the two sections just read by the secretary may be considered engrossed and put upon their final reading for incorporation in the article relating to amendments to the constitution. Are you ready for the question? ("Question, question.")

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pinkham, Pyeatt, Reid, Robbins, Savidge, Shoup, Stull, Underwood, Vineyard, Whitton—45.

Nays: None.

Mr. Reid in the chair.

PREAMBLE.

Mr. SHOUP. Mr. President, the committee on Revision would like to have the preamble acted on at this time in order that it may be enrolled. That is the first part of the constitution, and I think there is no reason why it may not be acted upon at one time as well as another.

The CHAIR. The chair will state to the gentleman that it can be done by unanimous consent.

Mr. SHOUP. I ask unanimous consent then that the preamble be taken up and considered.

Mr. BEATTY. Mr. President, I, as chairman of the committee on Revision, requested the chairman of the committee on Bill of Rights to make this motion this morning, and I hope it will be done. Your committee on Revision are making every effort to have the constitution prepared as rapidly as possible, and not delay you by neglect of their work; and this is the first thing that comes in our constitution. We have our clerk at work and would like to prepare it from the beginning so that it may be completed as we proceed.

The CHAIR. Is there any objection? The chair hears none. The clerk may read the preamble.

SECRETARY reads the preamble, and it is moved and seconded that it be adopted.

The roll was called and the yea and nay vote taken.

Mr. PARKER. I vote no on this article because of my objections to Sections 4 and 14.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Shoup, Stull, Underwood, Vineyard, Whitton—45.

Nays: Parker—1.

And the article was adopted and referred to the committee on Revision to be incorporated in the constitution.

RESOLUTION.—ADDRESS TO THE PEOPLE.

Mr. AINSLIE. Mr. President, I ask leave to introduce a resolution, and desire to state that the resolution was intended to be introduced by the present member in the chair, but Mr. Claggett being out, I desire to introduce it for Mr. Reid.

SECRETARY reads: Resolved, That a commtitee of ten, including the president of the convention, be appointed to prepare an address to the people recommending the adoption of the constitution framed by this convention.

Mr. MAYHEW. I move the adoption of the resolution. (Seconded.)

Mr. AINSLIE. I think resolutions have to lay over one day, and I move that the rules be suspended, or ask unanimous consent therefor. (Seconded.)

The CHAIR. Is there any objection? The chair hears none. The question is upon the adoption of the resolution. (Carried.)

MEMORIAL.—IRRIGATION DEVELOPMENT.

Mr. MORGAN. I ask unanimous consent to introduce the following memorial, and ask the secretary to read it.

SECRETARY reads:

"*Whereas*: The government of the United States has taken steps toward redeeming the arid lands of the west; and

Whereas, For the purpose of establishing a thorough system of storage reservoirs, canals, and irrigating ditches, engineering parties are making surveys for this purpose, and

Whereas, It is learned that the plans of the government are threatened to be thwarted by speculators having men to follow up these surveys to make filings on lands, reservoirs and canal locations; and

Whereas, It is learned that one corporation is seeking to seize and control Bear Lake, together with large bodies of land adjoining its shore lines with the intentions of making that lake a great storage basin; and

Whereas, The same corporation is seeking to control the waters of Bear Lake together with all the waters of Bear River with the tributaries thereof, and gulches, for a distance of about 150 miles in Idaho, with a view of monopolizing all these waters to their own uses, one purpose of which is that they may dispose of a very large portion thereof within the territory of Utah, greatly to the injury of Idaho and against the interests of her people.

Therefore, Be It Resolved, That it was not contemplated by the government or territory of Idaho, that any such monopolizing of the lands and waters of Idaho should be permitted.

Resolved, That steps should be taken at once to prevent such seizures of reservoirs and canal locations, and the same be preserved for the people.

Resolved, That Bear Lake should be retained for a public storage reservoir; and the lands immediately adjoining the lake should be withdrawn from market to aid in carrying out such purposes.

Resolved, That the Idaho Constitutional Convention now assembled at the capital of said territory, having the good of the general public and the good of the people of Idaho with the prosperity of the territory at heart, do hereby memorialize the Department of the Interior to take such action at once as will remedy the evils which threaten this fair territory in the manner outlined in this memorial.

Resolved, That this memorial be spread upon the journal of this convention, and a certified, engrossed copy thereof forwarded by the governor to the Secretary of the Interior."

Mr. MAYHEW. I think you had better say "enrolled copy" instead of "engrossed copy."

Mr. MORGAN. I have no objection.

The CHAIR. Is there any objection to referring it to the committee on Memorials?

Mr. AINSLIE. I think it goes to the committee on Federal Relations.

The CHAIR. The gentleman asks unanimous consent to consider it now? The chair hears none. What is your pleasure?

Mr. MORGAN. I move its adoption. (Carried.)

ARTICLE VII.—REVENUE AND FINANCE.—SECTION 5.

The CHAIR. The next regular unfinished business is consideration of the substitute for Section 5 of the report of the committee on Revenue and Finance.

Mr. KING. This is the substitute for Section 5.

The secretary reads the substitute.

Mr. KING. I desire to make an amendment to that section.

Mr. HARRIS. I desire to make an amendment.

SECRETARY reads: I move to amend the substitute for Section 5 by inserting after the word "goods" in the eighth line the words "tools and implements of industry," and strike out the word "two" in the ninth line and insert the word "four." King.

Mr. MAYHEW. I move the adoption of the amendment.

SECRETARY reads: I move to strike out the words following the word "solely" in line 13 down to the word "for" in line 14. Harris. (Seconded.)

Mr. KING. The object I have in making this amendment is, it will make it read this way: "household goods, tools and implements of industry, shall be exempt from taxation" to the amount of $400 instead of $200. Whatever arguments may be brought up in favor of exempting the goods—and it seems to me there could be worlds of argument brought up in favor of it—will apply also to the tools of a man's trade. The tools of a man's trade, the implements he uses, whether as a laboring man, mechanic, miner, farmer, are an essential to his work; he must have the tools to work with or he cannot live. A man cannot live well without his household goods, and these absolute necessities for a man to live and make

a living with, ought, I think, to be not only exempt from taxation, but ought to be exempt from execution for debt; and I apprehend that when the legislature meets they will make a provision to exempt them from debt. We want to make them now exempt from taxation. When the tax gatherer assesses property, and cannot find anything but a man's tools of his trade, if they are not exempt he seizes upon them. He may not take his household furniture, but he will take his tools with which he works to make a living for himself and his family; he may take from the farmer his plow, his drag, his scythes and mowers and everything of that kind. He must have those things, and if he be so unfortunate as to be unable to pay his taxes, and there is nothing for the collector to take, but to take those things, he will take them unless they are exempt; and I am in favor of exempting them, as well as the necessary household furniture and goods. I think it will strike the sense and justice of all, that those things shall be exempt. It exempts the poorest class of the community, not the wealthy; it is something in favor of the great mass of people who are the foundation of our government. It is to them that we are indebted for all the wealth and improvement of our country, and the necessary means to produce that wealth certainly ought to be exempted from all manner of taxation and from execution for debt.

Mr. HARRIS. I desire to hear it read again. (The amendment was read.) Mr. President, in its present sense it would exempt all the hardware implements of large hardware companies; they are implements and tools of industry. If it said the tools and implements of the artisan, then it would have some meaning as applying to the persons whom the gentleman wishes to relieve, but as it now stands it will just as well apply to those large hardware stores in trade as to those who use the tools, and I will vote against it.

Mr. BEATTY. I ask for a division of that question. The first is exemption of tools and implements, and the second is as to the amount.

Mr. VINEYARD. I offer an amendment.

Mr. PARKER. I have an amendment.

SECRETARY reads: Strike out all after the word "taxation" in line 6, including the word "law" in the seventh line. Vineyard.

Substitute for Section 5.[1] All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such general regulations as shall secure a just valuation for taxation of all property, real and personal, provided, that (farm produce, while in the hands of the producer) and mines and mining claims bearing gold and silver or other precious metals (except the net proceeds and surface improvements thereof) shall be exempt from taxation. Also cemeteries not used or held for profit shall be exempt from taxation. All laws exempting from taxation property other than that herein mentioned shall be void. Parker.

Mr. ARMSTRONG. I have an amendment.

Mr. SHOUP. I think the amendment last read was voted on yesterday.

The CHAIR. It is now offered as a substitute.

SECRETARY reads: Amend Section 5 by inserting after the word "mines" in line 4 the words "not patented." Armstrong.

The CHAIR. The question first is on adopting the amendment offered by the gentleman from Shoshone upon which a division is asked. The clerk will read that part which amends line 8.

SECRETARY reads: I move to amend Section 5, or substitute for Section 5, by inserting after the word "goods" in line 8 the words "tools and implements of industry."

The question was put by the chair. Vote and a division called for. A rising vote resulted: Yeas 21, Naye 18; and that part of the amendment was adopted.

The secretary thereupon read the other part of the amendment offered: strike out the word "two" in the ninth line and insert the word "four."

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[1]—See Colo. Const. 1876, Art. 10, Sec. 3.

The question was put by the chair, and vote taken. A division was called for and a rising vote resulted: Yeas 10, Nays 25; and that part of the amendment was lost.

The CHAIR. The question is now upon the amendment offered by the gentleman from Washington.

SECRETARY reads: Strike out the words following the word "solely" in line 13 down to the word "for" in line 14.

Mr. HARRIS. The purpose of that amendment, as will be seen by glancing over the substitute, is to not exempt church property and church buildings of any kind. I do it, not out of any prejudice at all, but that every class of property may be made to pay its equal proportion of state expenses; while it claims protection under the laws of the state, I maintain it should pay for the protection it gets from the laws of the state. In this connection I will read some short extracts from men whose character and standing in this land will not be disputed, for instance, General Grant:

"In connection with this important question I will also call your attention to the importance of correcting an evil that if permitted to continue will lead to great trouble in our land before the close of the nineteenth century. It is the accumulation of vast amounts of untaxed church property. In 1850, I believe, the church property of the United States which paid no tax, municipal or state, amounted to $83,000,000; in 1860 the amount had doubled; in 1875 it was about $1,000,000,000. By 1900, without a check, it is safe to say this property will reach a sum exceeding three billion dollars. So vast a sum receiving all the protection and benefits of government without bearing its proportion of the burdens of the same, will not be looked upon acquiescently by those who have to pay the taxes. In a growing country where real estate enhances so rapidly with time as in the United States, there is scarcely a limit to the wealth that may be acquired by corporations, religious or otherwise, if allowed to retain real estate without taxation. The contemplation of so vast a property as here alluded to without taxation, may lead to sequestration without constitutional authority, and through blood. I would suggest the taxation of all property equally."

Grant's message of 1875.[1] And in this same con-

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[1]—Richardson, "Messages and Papers of the Presidents," Vol. 7, p. 334.

nection President Garfield put himself on record in congress by saying:

"The divorce between church and state ought to be absolute. It ought to be so absolute that no church property anywhere, in any state, or in the nation should be exempt from equal taxation, for if you exempt the property of any church organization, to that extent you impose a tax upon the whole community."

Mr. GLIDDEN. I have an amendment.

Mr. SHOUP. I have an amendment.

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

Insert after the word "that" in line 8 the following: "all farm produce, while in the hands of the producer."

The CHAIR. The question is now upon the adoption of the amendment offered by Mr. Harris, to strike out all after the word "solely" in line 13 down to the word "for" in line 14. (Put to vote and lost.)

The CHAIR. The question is now upon the adoption of the substitute offered by Mr. Vineyard.

Mr. VINEYARD. I would like to have Mr. Glidden's amendment considered first.

The CHAIR. The rule requires them to be considered in order except by unanimous consent.

Mr. VINEYARD. I ask unanimous consent.

There being no objection it was so ordered, and the secretary read Mr. Glidden's amendment, as follows: "Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

Mr. MORGAN. I think this amendment ought not to be adopted. I am willing, so far as I am concerned, to do every thing in favor of the developing and working of mines in this territory; but to strike out this provision in that section in my opinion would do a great injustice to the people of the state. Let me refer to one instance I know of in this territory. In the county of Custer is a mine that has been worked by people who live in San Francisco and New York who are very wealthy people. It has been worked for six or seven years, and out of that mine, over five and a half million

dollars have been taken. At least three million dollars of that money has been taken out of this territory; the rest of it has been paid to hands who are working the mine. The county of Custer has not a court house today, and is not able to build one, simply because it has not revenue sufficient. The county is poor. This vast amount of money, three and a half million dollars or more, from one single mine has been taken from Custer county.

Mr. MAYHEW. I would like to know who represents that mine in this territory; who represents that mine in Custer county?

Mr. MORGAN. Represents the mine?

Mr. MAYHEW. Yes, you say it is owned by people outside of the territory, in Boston and New York and other places, and has taken out over five million dollars of money.

Mr. MORGAN. I don't think it is necessary for me to answer the gentleman's question; I don't think it is pertinent to what I am saying.

Mr. MAYHEW. Very well; I may have something to say on that proposition after you get through.

Mr. MORGAN. I have no objection to your saying whatever you choose. I was saying that this vast amount of money has been taken out of this territory and almost no taxes have been paid upon it at all. It is true, that now and then a small amount of bullion has been taxed; and yet the people of that county, and the people of other counties where such mines exist—and there are some other counties—are overburdened with taxation; farmers, agriculturalists, and other property owners in the county are paying their money for the support of the govenrment, and that mine and those mines get the same protection as the rest of the people. Now, I believe in fostering the mining industry, in helping it along as much as we can, but to tax the net proceeds of mines injures nobody. If you have a poor mine, which does not pay you anything, you pay no tax. If you have a rich mine, out of which you are taking large amounts of money, I say that the tax should be paid upon the

net proceeds of the mine as a matter of justice to the people of this territory. Nearly all the money produced in those mines, or a large amount of it, is carried out of the territory to build up mansions and rich homes in other places. I am glad to see this money taken out of these mines, and I am glad people are able to build mansions, and that people can become wealthy from these mines; but while they are becoming wealthy I desire that they shall pay some little tribute to the government of the state, and we do not get it in any other way than by taxation.

Mr. MAYHEW. Mr. President, the gentleman misunderstood me in asking the question I did. He seemed to think it was striking him by asking who was the manager and principal agent of that mine. I did not desire to ask him the question, and have it understood that I was asking who the individual person was further than to ascertain whether it was a citizen and resident of this territory, who was managing and controlling that mine. Now, I have this to say in relation to the taxation of mines. In the first instance, you understand, and every member of the convention understands, that no mine and no mineral land can be taxed under the laws of the United States, which is the supreme law of our land, unless those mines have been entered in the land office and a patent secured. That being the law, that any person or persons, associations or corporations, which have the power under the system of entering in the United States, can enter a mine if they desire, and they may omit it if they desire. But so long as they have not procured a patent from the government of the United States that mine is exempt from taxation. That is an admitted proposition. But as soon as the mine may be entered in the land office, and patent procured, then it is susceptible under the present system of taxation to be taxed. Now, I am opposed, Mr. President, to striking out in this article the words "net proceeds of mines."

Mr. SHOUP. I would like to have the gentleman read some of the law he quotes.

Mr. MAYHEW. Why, Mr. President, I did not presume for a single moment that there was a man in this convention who did not know that all mines and mineral lands to which a patent has not been issued were exempt from taxation. Quoting the law to this convention—if you will give me time to send for the laws of the United States, certainly it would be all right—but I presume to say, Mr. President, there is not a member of this convention but what knows that where a mine is not patented or title thereto secured, it is exempt from taxation.

Mr. GLIDDEN. Farm land the same way?

Mr. MAYHEW. Certainly. The gentleman is living on from 160 to 1,000 acres of land, in the county which he represents. Does he pay any taxes on this land? No. Does he pay any taxes on the land where he herds his cattle? No. And the same way it is with the mines. Unless you have a patent for the mine, you pay no taxes. It is right; it is the law of the United States, and we do not assume, as a constitutional convention, to tax this property. The question now before the convention is, that the net proceeds of mines be exempted from taxation. While I am in favor of fostering and protecting the mining interests of this territory as strongly as any member of this convention, yet I am not in favor of exempting the net proceeds and profits made by corporations and miners in this territory.

Mr. AINSLIE. This does not exempt the net proceeds.

Mr. MAYHEW. I understand that, but the amendment does. The amendment of my friend representing the county of Shoshone with myself. Now, I say this: that there is a good deal of plausibility in that proposition, namely, that those men who spend a large amount of money in the development of mines ought to be encouraged. That if a mine does not turn out to be a good mine, that money is lost. But, Mr. President, when that mine is placed upon a paying basis—when there is a dividend paid by those mines—I believe that mine should pay taxes. Let us see for a moment. The per-

sons or the corporations who work the mines in this territory, if the mine or mines yield dividends, should they not pay taxes upon the profit? Every person connected with that mine, even to the laborer and the miner himself, has to pay his taxes; and why not the persons who own the mine when it is upon a paying basis, and there is a dividend, that is, net proceeds—why should not he pay his taxes as well as anyone else? If there is any other view to be taken of this subject, I hope some member who is more conversant with the interests of these mines than I am will enlighten me upon this subject; but I maintain, where the net proceeds are over and above the net working and developing expenses, the owners of the mine should pay their taxes the same as a farmer or mechanic or merchant or anyone else. I am in favor of this law or this article as it now appears.

Mr. SHOUP. Mr. President, I do not like to discuss questions of law against a gentleman of legal ability like the gentleman from Shoshone. I have great respect for his opinions, and I believe he is honest in every word he says; but unpatented land has been taxed in this territory.

Mr. MAYHEW. Unpatented land?

Mr. SHOUP. Yes sir. It has been done and used to be done on farm lands as well. And here was the position taken. It was claimed that the land itself was not taxed, but that the possessory right to the land was rightfully taxed; which is substantially the same thing.

Mr. MAYHEW. Well, I do not pretend to say that the improvement placed upon the land could not be taxed.

Mr. SHOUP. Regardless of the improvement, it was placed at so much an acre, as has been done in this territory. But it was on the theory that the possessory right was assessed, and not the land. Now, as regards this question of exemption of mines, I do not believe in the exemption of any property from taxation. I believe all property that has a valuation should be taxed; I believe that is the true theory of taxation. It is true

that the men who operate mines have done a great deal to develop this territory, there is no question about that; but they have been assisted all right by those who are not directly interested in the mine. It has been claimed that the farmers depend on the miners for a market. This may be true; but the miners are just as much dependent on the farmers for cheap produce as the farmers are dependent on the miners. You must bear in mind that all the time these great mines are being worked, so much wealth of this territory or state, which it will be, is going away from the state. These mining men are not philanthropists; they do not come into this country and work the mines for the good of humanity; they work them for the sake of the profit; they buy everything as cheap as they can. Mr. President, I believe I have worn out at least two hundred feet of lead pencils in figuring on supplies to be furnished to mining companies. How do they do it? They will give the local merchant their list of supplies; they will say, "You bid on this." Then they will send to Chicago or San Francisco or Omaha, and get the wholesalers to bid there; and you have got to come down to those prices if you supply those miners, if you are a merchant. I allude now to the large companies. If you are a farmer, they will make out a list of vegetables they want, and every farmer figures on it, and the one that figures the lowest is the one that gets it for ten years. They figure very closely, and the result is that the supplies that are sold directly to the mines — merchandise, vegetables and everything else, have to be sold at a very close margin. It is not so with the men who work in the mines, the miners themselves; they are willing to allow the merchants a profit on everything they use, clothing, tobacco, etc.

Mr. MAYHEW. Will the gentleman allow me to interrupt him? My attention has been called to a statute of this territory. I do not wish to argue this proposition, but simply inform the gentleman of the fact that property liable to taxation, he will find under Section

1401 of these statutes,[1] and that possessory rights to the public lands are exempt from taxation.

Mr. SHOUP. Very well, that is an argument against the gentleman himself. If they are exempt what would be the necessity of that statute? I say in former years they were assessed, and hence the necessity of introducing that statute. And that is the reason. If they were exempt without it, there would be no necessity for it.

Mr. MAYHEW. Allow me to answer that proposition. The reason that statute is placed in there is to inform the people generally upon that subject, like the gentleman, who are not aware that all this land was exempt by the general law of congress; it seems to be following the law of congress itself, so as to give information to the people of the territory.

Mr. SHOUP. But it does not inform the people and make them believe that those possessory rights were assessed before that statute was there.

Mr. MAYHEW. Well, they did not know it, it seems.

Mr. SHOUP. It is the truth, and it is the history of the territory that those rights were assessed. I only wish to say this, as regards the taxation of mining property. I don't believe mining property should be assessed in excess of other property, but I believe all property should be assessed at its actual value as near as can be ascertained. I believe this to be the true theory of taxation.

Mr. PARKER. Mr. President, this convention has already incorporated a good many anti-democratic papers in this constitution (laughter), and if this report of the committee is adopted, you will have another crime to answer for; I mean this question of exempting a lot of little things from taxation. It says in Section 4 of your Bill of Rights, "the exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity, on account of his religious opin-

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[1]—Rev. Stat. 1887.

ions." With one hand you give rights to the people and with the other you take them away again. And so with this section, you say, "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," * * * "of all property, real and personal;" and then you take it away and virtually authorize the assessor to assess a man's printing office, and let his next door neighbor go free. Where is the justice in that, Mr. President? Certain irrigating ditches escape taxation, while another ditch is taxed for every cent it is worth. There isn't a man on the floor who can give any logical justification for such a proceeding as that. I recollect in the last presidential campaign the democrats went into the campaign with one of their documents announcing "unnecessary taxation is unjust taxation." We were beaten on it, but it remains a fact nevertheless; and I will say on this floor, that unequal taxation is unjust taxation, and when you tax me and let my neighbor go free you do me an injustice. What we want in this country is equal and exact justice to all, and we want it incorporated into this article on revenue and finance, so there will be no kick coming from anywhere, so we can go home and work for this constitution so that there will be no exemptions whatever. I have no particular objections to churches or societies; I contribute toward two churches, I belong to three secret societies, and I will say right here that these societies and churches are better able to pay taxes on their property than I as an individual man. Now, I submitted a substitute this morning, which leaves out all the objectionable anti-democratic, anti-republican sentiment of this substitute reported by the committee, and if it is in order I would like to have it read again.

The secretary reread Mr. Parker's substitute heretofore set forth.

Mr. VINEYARD. Mr. President, I stated the reason of my being in favor of this amendment. I shall support it. Of all the industries we have in the territory and in these mining states, mining is the most precarious of

all others. It takes more money for its development than all the remaining industries; and it requires that they should be fostered. If you ever expect to develop the mining industries of the state or territory, and put them upon a proper plane whereby they will yield and become wealthy, and be a source of wealth to the state, they must be fostered and encouraged. How much money do you, or does any member of this convention, suppose it takes to develop a mine; all on a blind chance, so to speak? Not so with the agriculturalists; not so with the manufacturing interests. The mining man expends thousands and thousands of dollars before he ever reaches a point where his mine begins to yield him anything. And in order to encourage this industry I say that the proceeds of the mine should be exempt. The improvements to the mine are not exempt. These large mining corporations, the mining men who work large mines, put up large amounts of improvements in the way of machinery, hoisting works, tramways, all the appliances necessary for the proper working of the mines, to the extent of thousands and thousands of dollars; and all this, Mr. President, together with the indirect output of the wealth of these various improvements is taxed by the state, and yet, it is contended that this money, the proceeds of the mine, must be taxed as well. You might as well close them out, these enterprising mining men who are seeking to develop this industry. Why should there be discrimination, as my friend Parker says, in favor of an institution, in favor of church property in this state by exempting it for all time? If it is such a menace in the way of accumulations of property in the aggregate in these church corporations, it has become now, as has been stated by one of the members of this convention, an evil that must in some way or other be made to contribute its just proportion of the taxes of the state. Now, it yields nothing so far as the material wealth of the people and the state are concerned—the church property does not. I suppose that it is exempted upon the theory and the basis of contributing to our spiritual welfare, or something of that kind;

but I insist that the mining industry in this territory, if our ideas shall run to such an extent in favor of churches and church property and other eleemosynary corporations of every kind, should be included and their property exempted from taxation; for upon what theory are these other institutions I have named exempted? Upon the high-sounding, highfalutin theory of morality, and of our spiritual well-being, when our mining industries are languishing all over this territory. And we cannot throw too many safeguards around it if you expect to build up this great industry of agriculture whereby this shall be made a great and glorious state in the future. The indirect sources of taxation that grow out of and issue from these mining enterprises are numerous beyond the question of the net proceeds. Therefore I am in favor of exempting them.

Mr. KING. Mr. President, this question is a very important one and it is a very difficult one to comprehend in all its bearings; but let me make a suggestion. Suppose that I should offer an amendment here that every man should be taxed on the net profits of his business, whatever it might be. How many of you would vote for it? That is just simply the proposition you are making here. You go into any profitable mine there is in this territory or any other territory and you will find an immense amount of capital invested in its machinery. As my friend from Shoshone says, their land is not taxable, but the machinery that is necessary to make that land valuable and yield a net profit is taxable, and the result is in our county the men that own the mining machinery to work and develop those mines, about ten or a dozen of them, pay more than one-half of all the taxes to support that county government. In addition to that, you want to come right in here and say to them, after paying one-half of the taxation of the county, that you will tax them also upon their net proceeds. After paying all these expenses, paying the wages of hundreds and hundreds of men, furnishing employment to the railroads who are taking out one, two or three thousand tons of ore per month; furnish-

ing a home market for all the produce the farmers raise; supporting your merchants; and after they have done all that, and paid taxes upon the valuation put upon their property—as, for instance, I can cite two men or companies in our county, that I partly represent, that pay one-twelfth part of all the taxes of that county, and now you want to go on top of that and tax them on their net proceeds. If you are going to do that, then I shall make a proposition that every bank in this state, after paying taxes upon its capital, shall come in and pay a tax upon its net proceeds. I propose that every farmer, every stockman, after paying taxes upon his property that he has got invested in the industry, shall come in and pay a tax upon his net proceeds. I propose to say to the merchants, that if you pay taxes upon the stock you have got, I want you to pay a tax also upon your net profits. Wouldn't it be equally as just as to make the miner pay it? Why, certainly it would; there is no difference in principle. Then I say it is unjust. If the miner has paid the tax—because no mine I ever knew is a profitable mine until there is a vast amount of machinery that is subject to tax, mind you, put up—after he has paid the tax upon those improvements, you then ask him to pay a still further tax upon his net proceeds. Why, it seems preposterous; it seems to me absurd that men cannot reasonably consider this proposition of taxing a man twice. I hope that amendment will prevail.

Mr. MAYHEW. Mr. President, it strikes me that some of the members misconceive this thing altogether, and are making rather strange arguments. One gentleman from Alturas calls our attention to the exemption of church property and religious institutions, houses of worship. So far as I am individually concerned, I am in favor of taxing that class of institutions. While I have no interest particularly in any of the churches, although I desire to be understood as having been brought up a Christian, yet I do not belong to any church, and I think any Christian institution should pay its taxes on its church property, as well as anyone

else. So far as I am individually concerned about these Christian institutions, I may be considered something of a heathen on that proposition. I am willing to take my chances in the future world without any of the teachings of these churches. I hear one gentleman say "that is good." Well, I think it is good, and I am willing to stand by it. But I don't care anything about that. Now, gentlemen of the convention, I say, that striking out this section, "net proceeds," has this result: I presume that the legislature will provide that the property and the improvements and the machinery that may be brought into this territory for the purpose of developing a mine, and the erection of it, and putting it into operation, will be considered the gross valuation of that mine. I am opposed to taxing the improvements of a mining claim, the vast amount of machinery, which they have brought into this territory for the purpose of developing that mine; I am not in favor of having that property taxed at all until the mine itself gets beyond the expense of working the mine. I am in favor of exempting that machinery for the development of that mine until the mine gets into that condition whereby it produces a net profit. Whenever that net profit does arise, excluding the machinery that is brought into the territory from taxation, then the property of the mine should be taxed. Their owners are the wealthy people of this country; they are the great corporations. The great monied magnates of this country; they are the great railroad magnates and the miners. Will gentlemen pretend to say to me that the great mine owners of this territory, and of the United States are not the monied people of the country; worth always from one million dollars to one hundred and thirty million dollars, and how have they become wealthy? Because they have been excluded from the taxpayers of the country in a great measure. I maintain this, Mr. President, that I am in favor of equal taxation, notwithstanding that I am in favor of fostering every mining interest of the territory; and I believe this, that if a man has purchased a mine at high figures from miners, say for

$100,000, and has brought into this territory a hundred thousand dollars' worth of machinery, that machinery should be exempt from taxation until that mine produces a dividend. That is my idea of it. But, if you put in this constitution a provision by which these mines are to be exempt eternally or for a number of years, then I think we are doing wrong. I am willing to exempt mines and their improvements until they do arrive at that point at which they pay a dividend. If we can arrive at that fact, then I say, Mr. President, we should tax them the same as anybody else. But I say that the people who own large and extensive mines in this territory are the wealthiest people there are in it, and I do not believe, notwithstanding I am representing a portion of the country devoted exclusively to mining, that they should be especially favored; but let us all be placed on an equal footing as to exemptions, and as to paying of taxes upon our property. I do not want gentlemen of the convention to understand that I am in favor of an amendment to the effect that if machinery is put into operation and the mine is immediately profitable, that it should then be taxed, because I do not believe that we can claim that as net profits. I believe every foot, every inch and every pound of machinery placed upon a mine should be paid for out of the proceeds of that mine before it should be taxed upon the net proceeds. That is my view of it. I believe in fostering and caring for these mines; but when they do arrive at that point I am in favor of their paying a tax the same as any other industry in the territory.

Mr. BATTEN. I did not intend to have anything to say upon this matter, but it does seem to me that it is a matter of vital concern to us all for various reasons, and therefore I desire to take up the time of the convention a moment or two. In discussing a matter of so much importance as this, we ought to get right down to the general principles. What is the general principle that underlies the whole matter of taxation? It is simply this, that all taxes should be uniform, equal and equitable. And each one of these words has a significant

meaning. The amendment, which is sought to be introduced to this Section 5, or this substitute for Section 5, I think to some extent violates that general principle. I am very well aware that sometimes general principles must yield to special cases; that sometimes special cases call for special treatment, and I think in some respects we have a special case in respect to these mines, and we are dealing with them in an unfair spirit. The burden of the argument in favor of this amendment is this: that mining is a precarious industry at best, and needs to be fostered. I will admit that, and this measure or substitute does foster this precarious industry. It simply goes to this extent; it says that so long as the industry is an uncertain one, has not yielded any profit or revenue, it shall be fostered, but the moment it becomes a productive industry—and you all know when it does become a productive industry it becomes very productive—that when once a mine begins to yield handsomely it soon enriches its owners immensely—the moment it ceases to be a precarious industry and becomes largely productive, then it should share its proportion of the burdens; and I think this measure proposes that. It simply amounts to this, that all along during the struggling period of the mine that shall be fostered, there shall be no tax levied; but the moment the mine passes out of that condition of struggle into one of absolute profit, then it should stand on a footing with all other property, and stand its reasonable proportion of the burdens of government. I think that is as far as this measure goes, and I think we can support it. For my part, I believe all the proviso in this measure ought to be stricken out.

Mr. SHOUP. Let me ask you a question. How do you know it will take ten years for a mine to get in that condition?

Mr. BATTEN. I was going to say, I am not in favor of so much of the proviso, although not particularly opposed to it. I believe all after the word "personal" in line 4 could well be stricken out. Up to that part we deal with the subject as it should be dealt with in

constitutions; simply as a matter of general principle. All after that is going into details, which I think properly falls to the legislature. I have just as a matter of curiosity glanced over. what to me is a very excellent authority, Cooley on Constitutional Limitations, and he lays it down that the subject of taxation, dealing with it in the main and in detail, devolves upon the legislature,[1] and should remain with the legislature, so that I think when Section 5 simply says this: "All taxes shall be uniform,"—I would like to see the word "equal" there, "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal;" and let it stop there; leave all those future matters of detail about mines and household effects to the legislature to deal with. I think that would be the proper thing to do. I think we are getting a very cumbersome and verbose document here at best, and I think that is as far as we need go. However, I shall not offer any proposition; just strike that out. I am content with it to some extent, not altogether content, but partially content with it as it is, although I think it would be wise to strike out that proviso.

Mr. BEATTY. If you strike that all out I would like to know under what provision you can exempt any property whatever. It says "all property shall be taxed." Now, what could you exempt?

Mr. BATTEN. Yes, there would have to be some provision; all property except what the legislature deems it expedient to exempt. Now, I see a very fruitful source of trouble in this matter. I know the grangers will complain here—I of course stand in that neutral position of being neither granger nor miner. I have dabbled in mines to my sorrow, and am able to deal with it as impartially as I know how, and I am trying to deal with it in that spirit; but I see a fruitful source of

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[1]—Cooley, Const. Lim., (7th Ed.) p. 698-708.

trouble and contention. If we adopt it as it is the people will say: You have discriminated in favor of one class of people as against another. The grangers will be in arms against it and say: We will never support a measure of that sort. And I think for that reason, as a mere matter of policy (although we should not always act upon policy)—I believe policy and principle alike should urge us and induce us to strike out this matter of detail and take the fore part of the section, the part I read, with some little amendment—"All taxes shall be uniform upon the same class of subjects within the tertorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; provided, that such exemptions as the legislature sees fit to provide for," something like that.

Mr. GRAY. I have an amendment.

SECRETARY reads: I move to strike out all of Section 5 from and after the word "personal" in line 4.

Mr. GRAY. I do it on the grounds suggested by the gentleman who just had the floor.

Mr. AINSLIE. Mr. President, do I understand the question is to strike out the whole of the section after the word "personal" in line 4? That is similar to the proposition of the gentleman from Alturas who just took his seat. If that is done, sir, there is no restriction upon the legislature as to the amount of property they can exempt from taxation. If you adopt the first four lines of that substitute for Section 5, the legislature has the exclusive power then to say what property shall be exempt from taxation; and what property shall bear the burdens of taxation.

Now, I have not read all of the constitutions lately of all the states in the Union, but I have been reading some of them, and I paid particular attention to the constitution of Colorado on account of the territory of Idaho being similarly situated. In fact, it approaches nearer the condition of affairs in Colorado than any other territory in the Union. The principal industry in Colorado

—in fact, it was first spoken of as Pike's peak was always spoken of, was gold mines. Afterwards they struck silver mines. Agriculture in Colorado today is secondary to the mining interests; and will be for all time, probably, or until those mines are exhausted, and we don't know when they will be exhausted, it may be hundreds of years yet. Idaho now is similarly situated to Colorado, as the mining industry in Idaho is the paramount interest. Now, I think we favor the mining companies sufficiently, or those persons who bring their capital here and invest in mines, by exempting from taxation the mine realty, as we might call it, at first.

In the first place, we cannot assess and tax property or real estate when the title is in the government of the United States. There is nothing to prevent those parties who own those gold mining or silver mining claims, either placer or ledges, from procuring their patents from the government. A mine under the substitute for Section 5, where the owner has only a possessory right —and ninety-nine hundredths of the gold and silver ledges are now held by persons operating them who have not taken the trouble to get patents from the government of the United States, and a great deal of our farm lands are held in the same way, patents not yet taken out—are exempt from taxation; but, as the gentleman from Custer remarks, it has been the habit of the assessors to tax the possessory rights. I don't know any law to prevent taxing possessory rights; it is like taxing a franchise; I don't think it would be contrary to any law of the United States to tax the possessory right of a person to a mine or to agricultural land. You tax his possessory right to occupy and use it as against any person except the government of the United States. Now, sir, if every quartz mining claim or placer mining claim in this territory was patented at the date of the taking effect of this constitution, parties who have probably paid hundreds of thousands of dollars—and some claims probably have been sold for as high as a million dollars —the property for which they paid that money is exempt from taxation under this provision for ten years. I

think that is a sufficient protection. A great many people believe in the protective tariff, but I do not agree with them on that theory. Exempting them from taxation on the amount which the corporation or individual invests in the mineral lands of the territory, under this provision, it is sufficient to exempt them from taxation for ten years, just exactly the same as it was in Colorado. At the expiration of ten years they may be taxed in such manner as may be provided by the legislature.

Now, my veneralble friend from Kootenai considers this would be double taxation, if you do not exempt the proceeds. I think he is mistaken in that proposition. We do not tax the capital at all; like you tax the principal of a bank or bank shares; we don't tax the capital of the companies or the individuals who own these mining properties, but we do say, "Gentlemen, for having afforded you that protection by exempting you from taxation upon your capital stock, you shall pay taxes upon the net proceeds." And that is a very fair and liberal way of deriving any revenue whatever from the immense amount of capital invested in mineral lands. While we exempt the capital stock of your banking institution, Mr. King,—if we exempt your capital stock from taxation, we have a right then to tax your net profits. That is exactly where we are placing your mining companies today under this substitute. We say "Gentlemen, bring your capital into the new state of Idaho; bring in your millions and invest in government lands, either placer mines or quartz ledges; we will exempt the amount you have placed in there by saying that the property you have purchased or patented from the government shall be exempt from taxation for ten years; but if your enterprise proves profitable you should pay upon the net proceeds the same as the livestock man pays upon the increase of his herds." You assess a man today upon five hundred head of cattle; the next year, if his herd increases, he is taxed upon the increase. Why should not the miner or the corporation who has invested in your mines, when his whole capital stock is exempt from taxation (while the livestock man's capital is not exempted from taxation)—why should not the miner

pay upon the net proceeds when he realizes it? This is for the purpose of encouraging the mining interests of this territory; to exempt the capital of companies, which is the principal they invest in *the land itself*. But if we go to amending this to extend that protection to every other industry, you will have your farmers, as my friend from Idaho wants to exempt crops of grain grown by the farmer while in the hands of the producer. Upon the same ground the lawyer might say "I have invested my brains in trying lawsuits and bought some law books; I want you to exempt my library from taxation." And you will find every man engaged in any pursuit in your territory will come to you and say he is entitled to equal protection by the law, and that his net proceeds would be exempt from taxation. We cannot carry it that far. It is admitted on all hands that mining is one of the most important industries of the United States, and where men are willing to come into your state and bring capital from the east to invest in your mines and develop them, where nine out of ten prove a failure, it may be well to encourage them, to say that the amount invested in the mining claim is exempt from taxation; but let them pay upon the net proceeds, the same as any other person. I think the substitute is carefully drawn, and if it is all knocked out after line 4, it leaves it altogether in the hands of the legislature and there will be no constitutional restrictions upon them whatever.

Mr. MAXEY. I have an amendment.

SECRETARY reads: I move to strike out all of Section 5 after the word "personal" in line 4. Gray.

Strike out all after the word "personal" in line 4 to the word "law" in line 7. Maxey.

The CHAIR. The question recurs upon the amendment offered by Mr. Glidden. The secretary will read it.

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

Mr. CLAGGETT. Mr. President, I want to call the

attention of the convention, and particularly of my friend from Boise, Mr. Ainslie, to the peculiarities of this proviso. I have been studying it very carefully, and I find, when you come to read it critically, this to be the case: That it provides that from the date of the adoption of the constitution the net proceeds of mining shall be taxed, and that after the expiration of ten years the net proceeds shall be taxed, and the legislature may in addition thereto, tax the mine itself. That is just exactly the way it stands today. "That mines and mining claims bearing gold and silver or other precious metals, (except the net proceeds and surface improvements thereof) shall be exempt from taxation," as provided by law. That is to say, that at the expiration of ten years you may tax the mine, but in the meantime, at no time, either during the ten years or thereafter, are the net proceeds or proceeds of any sort exempt, either gross or net. Now, I do not suppose it was the intention of whoever drew this substitute to provide anything of that kind. I apprehend it was not intended there should be any trap set with regard to the phraseology but that is really the amendment.

Mr. AINSLIE. I think it is drawn from the Colorado constitution.[1]

Mr. CLAGGETT. Yes, I know it is, and in reading that constitution itself I noticed the ambiguity, which arose from the language there employed.

Mr. MAYHEW. But that is not the construction placed upon it.

Mr. CLAGGETT. One court may place one construction upon it, and another court may construe it another way.

Mr. MAYHEW. I will ask the gentleman if he has not put a construction upon it.

Mr. CLAGGETT. Yes, I want this thing free from ambiguity, so that under no circumstances can the need of its construction arise. Leave it so plain upon its face that anybody can understand it. So far as the dis-

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1—Art. 10, Sec. 3.

cussion has developed, it goes to this extent. The gentleman's idea is that the improvements, in consequence of the uncertainty of the proposition should be exempt, but that the net profit should be taxed. I think that will be the general sense of the convention when the discussion is through. Now, if a mine should be exempt at all, while you tax the net proceeds, then why should the limit upon the exemption be put at any period of time? If the taxation of net proceeds is a proper method of taxation, and all the tax that ought to be imposed upon the mine, then if you propose to tax the net proceeds for all time, why not exempt the mining claim for all time, or until an amendment to the constitution? But instead of that we have exemption of the mine for ten years, and taxation of the proceeds forever. That is the plain language of this business. Now, Mr. Chairman, I want to say just one word with reference to this general proposition of the taxation of mining property. I am not in sympathy with the idea of making any pets of any one class of people or any industry or any enterprise. I say that taxes should be levied upon equitable principles, and that when we come to inquire as to what is equitable we must take into consideration the facts and circumstances, the nature and character of the property, and the business which is being taxed. And if in the nature of things there is a substantial difference between two different kinds of property, to levy a tax uniformly according to the then existing market value, independent entirely and without taking into consideration this radical difference, would be inequitable and unjust; although uniformity in terms it would not be uniformity in fact, and would be grossly inequitable and unjust. I believe the tax laws of every state should be, as far as possible, directed to make every man who casts a ballot pay some tax of some kind, in some shape, and at some period of the fiscal year. It is only by making a man pay a tax that you make a good citizen of him, and I have seen more than one man compelled to take an interest in the public affairs of his county simply because the laws were fixed in such a way that he had to pay

a tax upon his head. Just as soon as he contributes to the treasury he has an interest in the disbursements of the funds of the treasury, and you will get from him a more careful and conservative consideration of all public questions. For that reason I am opposed to exemptions, except where the circumstances are such that to refuse any exemption would be grossly unjust and inequitable, or calculated in any way, shape or form to prevent the development of the resources of the country. Now, so far as the question of the taxing of the proceeds of mines is concerned, I may as well state here that I drew and secured the passage of the first law that was ever passed on the Pacific coast for the taxation of mining property, and the first law that was ever passed was one which related to the gross proceeds. It was found that they could not be worked in such a way, but what it would be grossly inequitable, and it was repealed; and since then the general sense of the communities of the Pacific coast has been in favor of exempting the mine itself from taxation, but on the other hand, taking the net proceeds equitably arrived at. If those net proceeds can be equitably arrived at, I am distinctly and emphatically in favor of taxing them. Now, what constitutes the net proceeds? Here is a company or an individual that starts in with a mine—and Mr. Chairman, if my five minutes run out, I will not speak but once, and I request the indulgence of the convention—an individual or a mining company becomes possessed of mining property. They go on and work for years. If they have an unlimited amount of capital, it will nevertheless take about four years on an average to get that mine opened and developed when the money is in the treasury, and they are pushing forward the work of development to the utmost extent it can be carried on. Where, in addition to that, the mining prospect is owned by a poor man or a number of poor men, they will have to suspend operations and go out and work for a grub stake, and get money enough to come back and work on the mine, and keep that going five, ten, fifteen or twenty years, as has been frequently

done on the Pacific coast before they get the mine opened at all. Now, instead of making a failure, which is probably the case in ninety-nine cases out of a hundred—I think I am safely within the estimate when I say that only two out of a hundred are equipped in that way——

Mr. MAYHEW. I think perhaps that is an overestimate.

Mr. CLAGGETT. Yes, I doubt very much whether there is one in a hundred. They may reach a point where they can go to work, and you can go into any mining camp where there are fifteen hundred to two thousand locations made within the district, and after five or ten years' time and work you will find that the actual paying, producing mines of any mining district will never exceed more than three or four or five. That is the actual cold-blooded fact; so that whenever a company or individual finally reaches the point of taking money out, then what is it or he compelled to do? I am supposing now that his mine is all completely developed. He has got to pay out all the necessary expenses of running the mine, of running his mill or reduction works, if he has one, or transportation or shipment of his ores if he has none. In addition to that, he has got to put up permanent improvements, which are taxed, and in addition to all that, if he is a mine owner at all, who understands anything about his business, he sets aside from his net profits, as long as they are coming in over and above operating expenses, a certain percentage thereof for the accumulation of a surplus fund, which remains undivided as between the owners of the claim. What is this surplus fund for? Sometimes for the purpose of erecting further machinery and improvements, which when built are covered by your tax laws; generally, however, it is accumulated and held unutilized entirely by the owners of the mine for the purpose of covering the thousand and one contingencies and uncertainties connected with mining operations. For instance, you have your ore chutes upon which you are at work. Your ore chutes, notwithstanding your tunnels may, in mining parlance, show so

many thousand tons of ore in sight, nevertheless perhaps ten feet further you may find your chute comes to an end, your vein pinches out, and the most expert operator is entirely at sea. Or take the case of striking water in large quantities, which may call for the erection of large and expensive pumping works. In order to cover the cost of running out of ore, and avoid levying assessments, which will destroy the value of the stock upon the market and bring the whole mining operation to a summary end, all mining companies accumulate a surplus and hold it there to meet these uncertainties and contingencies. Can you call it a net profit? Nevertheless, it is net proceeds so far as the operating expenses of the mine are concerned; but nothing ever becomes net profit to a miner until the money is divided up, which practically comes down to a question of dividends. And when it comes down to that I am in favor of taxing them, and taxing every dollar of it. To cover these points made in this brief argument I will offer the following amendment by striking out in the substitute all after the word "provided" down to the eighth line and inserting in lieu thereof the following:

"*Provided,* That mines and mining claims bearing gold and silver or other precious metals, and the gross proceeds thereof shall be exempt from taxation; but the surface improvements and net proceeds thereof shall be taxed, and such net proceeds shall consist of the gross proceeds of the mine remaining after deducting all ordinary and proper expenses of conducting the business of the mine, the cost of all permanent improvements made during the fiscal year in which the tax is levied, and any surplus fund accumulated and undivided and held by the owner of the mine for the purpose of making further permanent improvements thereon, or for the working thereof, or meeting any disaster thereto, or unfavorable development therein."

In other words, it defines what the net profits are in the strict mining sense, and then taxes them as such.

Mr. MAYHEW. I second the motion, in order that we may have observation and discussion upon the proposition proposed by my colleague, Mr. Claggett, of Shoshone. And there is so much of it, and it involves so

many principles and questions that I move we take a recess until two o'clock this afternoon.

Mr. CLAGGETT. You can get it printed by two o'clock.

Mr. AINSLIE. I request that it be printed by two o'clock.

Mr. MAYHEW. I move that we take a recess until two o'clock, and that the amendment be printed in the meantime.

Mr. MAXEY. I wish to withdraw my amendment, as the amendment just offered covers it.

The CHAIR. Without objection the gentleman will be permitted to withdraw it.

The motion to take a recess was put and carried.

AFTERNOON SESSION.

Convention called to order at 2:00 P. M.

Mr. REID in the chair.

ARTICLE VII.—REVENUE AND FINANCE—SECTION 5.

The CHAIR. The question before the convention is the amendment offered for the substitute to Section 5 of the report of the committee on Revenue and Finance. The question is first on the amendment offered by the gentleman from Shoshone, Mr. Glidden. The clerk will read it for the information of the convention.

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

Mr. HEYBURN. I understand the question is now on the amendment offered by Mr. Glidden.

The CHAIR. Yes.

Mr. HEYBURN. I desire to say a word on that amendment. I understand this amendment provides that the net proceeds of mines shall be exempted from taxation. I am in favor of exempting the net proceeds of mines from taxation for two very substantial reasons. One is, that it is double taxation on the same fund, in the hands of the same person. The other is, that it is an income tax, which is always obnoxious,

except in cases of great necessity, such as occurred in our country during the last war. I am perfectly well aware of the fact that double and treble taxation must occur on the same property in very many cases; but it is a very obnoxious constitution or law that provides the same thing shall be twice taxed in the hands of the same person under different names. The net income from a mine is money; it cannot be anything else but money. It is not property, it is money, cash, because until it is, it is not an income from anything in any sense of the word. When it is cash it is taxed then as income from the mine. Then it is taxed as cash. Our money in bank is taxed now, and our cash on hand under our present law and under all laws. So that without that fund passing from one man to another, without it changing its character, within the space of five minutes two taxes can be levied on that fund. One can be levied on it as income from your mine, and the other levied on it as cash on hand. There is not such another instance in the history of taxation in the world where that thing can be done. I have just been looking through the standard work or authority on that subject, Mr. Cooley on Taxation, a very recent work, published only three years ago, in which he reviews this entire subject; and if the time was not so limited, or I thought the occasion really demanded it, I should ask the indulgence of this convention to go with Mr. Cooley over those cases. But I believe the practical business sense of the men of this convention will see the effect of taxing a man's income under two different names in order that you may levy a tax on it twice.

Mr. MAYHEW. Under our territorial system of laws where is there an income tax provided for?

Mr. HEYBURN. When you tax the net proceeds of a mine, you tax it under "net proceeds" of the mine. You deposit the net proceeds of the mine, which must be cash, in the bank, and then it is taxed under the name of cash. I use the word income, because the proceeds of any investment is income; I care not whether it be a mine, a farm or a store.

Mr. MAYHEW. I want to ask another question. Suppose that the manager of a corporation, when the assessor comes around, and he gives in the net proceeds of that mine, and the proceeds may be deposited anywhere in the world, can it by any means be taxed as cash? If it can, I do not understand the law of equal taxation at all. I think it can not be done.

Mr. HEYBURN. I have before me the statutes of this territory, and I have investigated the law and the statutes of other states on the subject. We have to make a sworn return if required, of our money and our property, and all the money and property that is under our control, whether it is here or elsewhere.[1] Now, unless a man makes a false oath, he cannot avoid returning that money which he has received from that mine, in the shape of net proceeds, as cash on hand. That is taxed. Now, then, the income from the mine. We do not propose for the purpose of striking at some imaginary foreign corporation to do injustice to our single individuals who own mines and resident mineholders. There are a great many of our mines not owned by foreign corporations; a great many of them are owned by our own citizens, and we are not going to stab our own citizens simply because we want to get at some foreign corporation. So that I say this amendment is the most vicious system of double taxation. I don't want a miner to be exempted from any duty or burden to the state that any other man bears. I am not here asking for any special privileges for mining men, because if they need them they are not entitled to them any more than any other class. I do not believe the state wants to be sacrificed in order to foster any interests, whether mining or agriculture. I do not believe in this paternal government business, that we have got to pick this or that little industry and foster it and work it along until it becomes a profitable business. Men won't engage in a business that does not offer sufficient inducement of profitable returns to justify them in

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1—Sec. 1429, Rev. Stat. 1887.

investing their capital. I do not think it makes any difference whether one out of a thousand of every mine pays; we do that upon our own responsibility, on our own judgment. I want mines to stand exactly on the same basis that every other species of property stands on. I want it to be taxed once in some shape, and I don't want it to be taxed again in the hands of the same man who paid the first tax. I think the amendment offered by Mr. Glidden covers the proposition and cures the defect.

Mr. MAYHEW. I believe I have not spoken yet on this proposition. I cannot understand the position taken by my friend Mr. Heyburn. If I thought his proposition was correct, I certainly would favor this amendment. If you strike out this section as proposed here, that the net proceeds of mines shall be taxed, then neither the net proceeds or the gross proceeds of the mines can be taxed. You admit that as a proposition?

Mr. HEYBURN. How is that?

Mr. MAYHEW. Neither the net nor the gross proceeds can be taxed if the amendment offered by Mr. Glidden is adopted.

Mr. HEYBURN. Yes, you tax the result of it in the shape of money.

Mr. MAYHEW. What is the net result? Does the gentleman propose to say that because they may have the money on deposit in their banks or in their safes or elsewhere, that that is taxed independent of the net proceeds? Does the gentleman pretend to argue, or that Mr. Cooley on taxation lays down that as a proposition, that there is a direct tax or an income tax which can be enforced in this territory? I ask the gentleman to read any part of Cooley on taxation, and I say that he is far from concluding, as Mr. Cooley does conclude, upon that question. My proposition, or my idea upon that proposition is this: if the net proceeds of the mine are taxed, the assessor cannot turn around and say or ask, "How much from this mine have you got in deposit in any bank in cash?" The manager, whoever he may be, when he comes to give in his tax

upon the net proceeds, says that the proceeds of this mine are so many dollars; then when he pays taxes on that, they cannot turn around and say that we will tax you on the amount of cash you have on hand. That is the proposition of the gentlemen as I understand it.

Mr. HEYBURN. And that is what it is.

Mr. MAYHEW. Very well sir, no law in the world and no court and no constitution, as I understand, according to the provisions of this constitution, warrants any position of that kind. If the net proceeds of a mine shall be taxed then I say when it is once taxed you cannot go beyond that and inquire as to the amount of cash the mine owner has on hand. For instance, allow me to illustrate, Mr. President. Suppose this proposition: here is a mining corporation carrying on business three months or a year, and the net proceeds of the mine is $10,000. That is the net proceeds after paying all the expenses of the mine, and everything that was exempt from taxation. We have $10,000 on hand; there are the net proceeds. According to this article we are to tax this $10,000; that is the net proceeds of the mine. Does the gentleman pretend to argue that you can turn around and say because you have that $10,000 on hand that you can retax it?

Mr. HEYBURN. Yes.

Mr. MAYHEW. Well, sir, such a proposition as that I would not be in favor of; but if the gentleman can convince me by any logical reason or otherwise that such would be the principle by enacting this clause, sir, I will say that I would certainly be opposed to it; that would be double taxation, and I am opposed to anything like double taxation. But I insist that when the net proceeds of a mine are once taxed you cannot go around and tax it again as cash on hand. If such is the case, then I will stand in with my friend from Shoshone county; but I cannot see it in that light.

Mr. HEYBURN. I will read you the authority, if I am permitted, on that subject. Mr. President, I do not intend to take up time in reading this whole dissertation—

Mr. MAYHEW. Well, I hope the gentleman has the time, for I desire information from those legal lights such as Cooley on Taxation, and on Constitutional Rights, although I have seen this convention vote it down.

Mr. HEYBURN. After discussing at great length and most thoroughly the instances in which double taxation must necessarily occur, or even treble taxation (that is to say, where a property is mortgaged, and the mortgage is taxed and the farm is taxed for its full value; or where a man is taxed for the obligations that are due him as assets, and the other man is taxed on property he owes for—those instances are all right, because it is a tax against different individuals, it is not taxed twice in the same hands), Mr. Cooley says:[1] "There is a sense, however, in which duplicate taxation may be understood, and which we think is the proper sense, which would render it wholly inadmissible under any constitution requiring equality and uniformity in taxation;" and we have declared that all taxation shall be uniform.

Mr. MAYHEW. I agree with that proposition.

Mr. HEYBURN. (Reading) "By double taxation in that sense is understood the requirement that one person, or any one subject of taxation, shall directly contribute twice to the same burden, while other subjects of taxation belonging to the same class are required to contribute but once. We do not see, for instance, how a tax on a merchant's stock, distinctively by value, could be supported, when by the same authority, and for the same purpose, the same stock was taxed by value, as a part of his whole property." There is an instance right squarely in point.

Mr. MAYHEW. We do not propose to do that under this section.

Mr. HEYBURN. I am arguing about the effect of it. That is the principle. I read further: "This is a very different thing from one tax upon property and

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1—Cooley on Taxation, 3rd Ed., p. 394.

another upon the business, although the latter may indirectly reach the property." Now, passing to the section where it is considered more specifically as to the construction the courts put upon it:[1] "It has very properly and justly been held that a construction of tax laws was not to be adopted that would subject the same property to be twice charged for the same tax, unless it was required by the express words of the statute, or by necessary implication. It is a fundamental maxim in taxation that the same property shall not be subject to a double tax payable by the same party."

Mr. MAYHEW. That is the position I assume, too.

Mr. HEYBURN. (Reading) "either directly or indirectly; and where it is once decided that any class or kind of property is liable to be taxed under one provision of the statute, it has been held to follow as a legal conclusion that the legislature could not have intended that the same property should be subject to another tax, though there may be general words in the law, which would seem to imply that it might be taxed the second time."

Now the court will construe this statute or this constitution by that rule, because that is the universally accepted rule of construction in these matters. And if the question were raised in court on appeal from the taxation of money in a bank on the ground that they had once paid a tax on that money in the shape of an income tax, or rather a tax upon the net proceeds of the mine which that money represented, then the court, in construing this constitution, would have to hold, according to that rule of construction, that the second tax could not be collected. And yet, we have in our constitution a provision prepared by the committee on Revenue and Finance, that these moneys shall be taxed. I do not want to see the necessity of any construction of this section of the constitution; we might as well be explicit and plain about it. I believe in taxing this money if you have not taxed it in any shape; tax the money the

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1—Cooley on Taxation, 3rd Ed., p. 398.

man receives as the proceeds of his mine, but I do not believe in taxing his money and the net proceeds too, and that is the result of this measure as it stands without amendment.

Mr. MAYHEW. Mr. Chairman, I don't desire to speak more than once or twice on this question, but I understand the proposition as made by the gentleman. Suppose that the net proceeds of the mine should be $10,000—I will illustrate it again—and before the assessor comes around this $10,000 should be distributed among the stockholders of that corporation. Then, if you please, there is not a single dollar on hand. Then how are you going to tax the cash on hand, or the cash at all? Where is the double taxation? But if the fundamental law of this territory says that the net proceeds, if it was $10,000, shall be taxed for $10,000, and not as cash on hand, that is one thing; but if you distribute in the way of dividends to the many stockholders this $10,000, it is no tax at all against that corporation, from the fact that they will have nothing on hand at all. But if you get down to the net proceeds of that mine, that $10,000, then you tax it. Now, I do not care, for instance, whether that is $10,000 or $1,000, or the $100 I may get in the way of a fee; it is mine, and I pay taxes on that. The person who has paid me that fee is relieved of that much. On the other hand, I have $10,000 in my hands to be distributed around outside, to reach the parties who may be out of this territory, who pay no taxes at all, because the money is sent out of the limits of this territory. But the proceeds of that mine, that $10,000, is taxed, and not by way of income. Certainly I should be opposed to any proposition, which is contrary to the principles as laid down by Cooley on Taxation. I say if the taxes must be double under the construction of this law—the gentleman says there is no such thing as construction upon the constitution; I say there is; there is a construction to be placed upon any law, whether fundamental or statutory; there is a construction to be placed upon it by the courts, and no court in the world would say or hold the proposition

to be true, that if you pay taxes upon the net proceeds, that you have also got to pay taxes upon the cash you have on hand. It is the net proceeds we wish to reach, and nothing more. I am as much opposed to double taxation as the gentleman or anyone else. I think it would be foolish, it would be wrong, and would be working a hardship upon any corporation or set of individuals that might attempt to develop a mine or any other industry in this territory. I cannot agree with my friend, although I regret to differ from him, on this proposition, knowing full well that he has for a long time thoroughly investigated these questions. Yet I say as to the proposition that he now makes, I think he is absolutely wrong upon it.

Mr. AINSLIE. I don't believe I could frame a section that would exactly suit everybody. The only objection I have heard from the gentleman from Shoshone, who preceded Judge Mayhew, is that it would be liable to open the door to double taxation. And in order to avoid that I will offer a little proviso at the end of the section: "Provided, further, that duplicate taxation of the same property for the same year is hereby prohibited."

Mr. MAYHEW. I will support that.

Mr. MORGAN. To Section 5 of the original bill?

Mr. MAYHEW. No, to the substitute reported by the committee.

SECRETARY reads: Amend Section 5 by continuing the same as follows: "Provided, further, that duplicate taxation of property for the same purpose during the same year is hereby prohibited."

Mr. MAYHEW. I think that covers the question. I support the amendment.

Mr. HASBROUCK. I shall oppose the substitute for Section 5, also the amendment.

The CHAIR. I will state to the gentlemen that there is a printed substitute offered by Mr. Ainslie, a substitute offered by Mr. Parker, and a substitute offered by Mr. Claggett.

Mr. HASBROUCK. I will support the amendment

to the substitute to Section 5 offered by the gentleman from Ada (MR. GRAY), that is, to strike out all after the word "personal" in the fourth line, and to leave this whole matter of exemption of taxation to the legislature. I believe they can better attend to this matter than this convention can. I have listened to his discussion, and I believe the convention at the present moment is farther from a conclusion than when it commenced, and I prefer to leave the whole matter to the legislature. I believe they are better judges of this matter. I believe that as matters of taxation change, they will be better able to meet those matters. Therefore, I shall so vote. One gentleman says the taxation of net proceeds is inequitable. I agree with him. In principle it certainly is, because if you tax the net proceeds of one property or one enterprise, if you wish to establish equity in your taxation you must do so in all others. My friend Mayhew says the mines, or any improvements put upon the same, shall not be taxed until it can be shown that there is a profit derived from that investment. If that be true, carried to its logical conclusion, what is the result? Every other enterprise in the territory should have the same privilege; and I ask this convention then, where would you ever get any taxation? You have to collect taxes to get revenues to meet expenses; but where in the world would you ever get them? I admit, furthermore, that taxes are arbitrary; that it is impossible to make them uniform, it has never been done, and never will be done. The only thing we can do is to come as near to it as we possibly can. I undertake to say further, there are many men in this territory who are today paying taxes on what they actually owe, not on what they own. Merchants who own stocks, and owe for more than they are worth, pay taxes on that stock, and there is no exemption from it. As another kind, look at the taxes on mortgages. Every mortgage of a resident is taxed, while the non-resident mortgage is not. Therefore, people who wish to loan money in this territory simply cannot do it, and our lands in every county of the territory are being plastered over with non-resident

mortgages, whose holders pay no taxes, who do not live with us. who are not taxed. Now, that is an absolute tax in this city, it makes about four per cent, which the non-resident does not have to pay, and I think in almost every county of this territory it will be from two and a half to three per cent. Residents cannot compete, and the fact is they will not loan their money in that way. But I do not know any way to remedy it. There is a great hue and cry in this convention to see that mortgages shall be exempt from taxation. That is the working of it, and therefore I am in favor of leaving the whole matter to the legislature from time to time, as these matters shall arise.

Mr. MAYHEW. I desire to ask the gentleman a question. Supposing a person living out of this territory is loaning money upon farms, and he takes a mortgage upon a farm. Can we tax that mortgage?

Mr. HASBROUCK. No, sir, you cannot tax the mortgage. And that is the reason I say it is working a hardship upon parties who are residents, who wish to loan money.

Mr. CLAGGETT. Mr. President——

Mr. MAYHEW. What is Mr. Glidden's amendment?

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

The CHAIR. The question is first upon the substitute offered by Mr. Parker. The clerk will read it.

Secretary reads Mr. Parker's substitute. Put to vote and lost.

The CHAIR. The question is now upon the adoption of the substitute proposed by Mr. Claggett. The secretary will read it.

Mr. VINEYARD. My amendment has not been acted upon.

The CHAIR. No, but the rule requires substitutes to be acted upon first.

Mr. CLAGGETT. Mine is not a substitute, Mr. President, but is to amend the one proviso in the substitute.

The CHAIR. Then the question is upon the amendment offered by Mr. Glidden. Having disposed of all substitutes, it reverts back to the amendments. The first is proposed by Mr. Glidden.

SECRETARY reads Mr. Glidden's amendment.

"Question, question." Put to vote and lost.

The CHAIR. The next question is upon the amendment offered by Mr. Vineyard.

SECRETARY reads: Amend the substitute to Section 5 by striking out all after the word "taxation" in the sixth line to and including the word "law" in the seventh line.

Mr. VINEYARD. Mr. President, this brings it down now to about what we contend for. It has not been held as the sense of this convention that the net proceeds of mining property shall be taxed. It is also stated, and it is the sense of this convention, that the improvements of all mines shall be taxed. This amendment exempts from taxation simply the mining claim, whether there is a patent to it or not. If the net proceeds of the mine, the very substance of the mine itself, are to be taxed, we in behalf of the mining industry desire that the mining claim, the ground from which the ores or net proceeds are taken, shall be exempt. It is further provided in this substitute that ditches, canals, flumes, owned by individuals or corporations, for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed, so long as they shall be owned or used exclusively for such purposes. Here is a plain proposition before this convention, to allow all irrigating ditches, all canals of every description whatsoever, that are used for the purposes of irrigation, and which contribute directly to the wealth of the state so far as agriculture is concerned, shall be absolutely exempted from taxation in the hands of the owners of these ditches. In other words, that they shall not be separately taxed. Here is an open, direct bid to juggle in a double sense, for the purpose of exempting a class of property that probably is as valuable as any other class

of property in this territory, so far as deriving revenues from it is concerned. Why should that be? Why should you make discrimination in behalf of these ditches owned by corporations and syndicates who operate them for the purpose of securing the profits that they may derive from the farming interests which they cover, and tax the mining industry from top to bottom all over; not only the soil itself, but the very substance of the inheritance itself, to-wit, the ore that comes from it? Is that fair, is it just, is it equitable? Would that be a taxation that would be uniform and equal, and just to all these various industries of this state? I stated this morning, Mr. President, that there would be thousands and thousands of dollars put into these mining claims when they came to be mines, when they yielded a revenue to the owners, in the shape of improvements and other resources, from which the state would derive a vast revenue. The small holdings that would be dependent upon these mines would be taxed; its machinery would be taxed; everything connected with the mine would be taxed except the mining ground itself, and if you do propose to close up that avenue and say it may be taxed from top to bottom, you might as well close the avenue forever against this industry; tear down your advertisement to the world that you invite mining men and mine operators into this territory, and tell them that they need not apply to this territory for any sort of protection, but that you are discriminating against them in favor of the agriculturist because he uses ditches, etc. I say that would not be right, would not be fair, would not be equitable; it would not be upon the basis that taxation should be uniform and equal. And therefore I am opposed to this whole business in that shape.

Mr. MAYHEW. I would like to ask the gentleman one question. He proposes by his amendment that the mine shall be forever free from taxation.

Mr. VINEYARD. The mining ground, the claim itself.

Mr. MAYHEW. That is your proposition.

Mr. VINEYARD. That is it.

Mr. MAYHEW. Now, Mr. President, I say I cannot support that amendment for this reason. I believe the miner who obtains a patent from the government of the United States for his ground should be subject to taxation upon the same footing, and upon the same ground, for the same reasons.

Mr. VINEYARD. I thought the gentleman wanted to ask me a question.

Mr. MAYHEW. Certainly, I do. I wish to get it so you can answer it. Upon the same ground, I say, as a person who owns a piece of agricultural ground. If a man owns agricultural land he pays taxes. If a miner owns a piece of mineral land, why shouldn't he pay taxes on it? How many mines are entered by a few dollars' worth of work, which they never attempt to work at all? They hold the real estate, and why shouldn't they pay in the same proportion as any other person?

Mr. VINEYARD. I will answer that. A mining claim would cease to be a mining claim. It would be open to patent like any other portion of the public domain if the owner ceased to keep it up by his annual labor.

Mr. MAYHEW. Let me ask the gentleman right there——

Mr. VINEYARD. If the mine——

The CHAIR. Does the gentleman yield?

Mr. MAYHEW. The gentleman is not stating the proposition. When a man enters land as a mining claim the representation ceases then as soon as he gets a patent for it. There is no use of arguing that proposition.

Mr. VINEYARD. Then if the mine is of sufficient importance to justify the party in spending $500 worth of work upon it, and obtaining a patent for it. Besides, it is not likely that that ground is valuable for anything but mining purposes. If the owner of that mining claim ceases to work it, it becomes unprofitable. We know the character of the soil that comprises the

mining claims in this country when we refer to a quartz mine. It is a claim that is perfectly worthless for any other purpose than the ore it is able to yield. It is of no manner of account for agricultural purposes; it would not raise black-eye peas; it is worth nothing as an agricultural investment; and if it ceases to be productive as a mine it is of no value anyhow. The taxes upon that mining claim would not amount to five cents so far as its value is concerned, because the assessor would return it as having no value at all. That is my answer to the gentleman's question.

Mr. AINSLIE. As said by the gentleman from Shoshone, if the amendment proposed by the gentleman from Alturas is adopted, it would make mining claims not taxable perpetually. Now, I am opposed to that. If a man loans $10,000 out at interest, he is taxed upon the amount he loans out, and next year he is taxed upon the amount of interest, because he has got to give it in as cash on hand. His net proceeds on that investment is taxed, and so is any other business. If a merchant has $3,000 worth of goods on hand, that is his capital, just the same as the man with his $25,000 mining claim. The next year if the merchant has made any profit, he is either taxed on the additional amount of stock he has on hand, or on his bank account. Take any business in the territory, and the net proceeds of a man's business is taxed the next year, and I don't see where a money exemption would be any exception to the rule. We have given them an exemption ten years, and still, like Oliver Twist, they are crying for more. The gentleman says that mining claims are often undeveloped after having had $500 worth of work done on them, that they will not strike a lead, and therefore are worthless. I will call attention of the gentlemen to the fact that these desert lands are not worth anything without water, and still men will take them up and get their patents from the government, and they are assessable for taxes; and yet they are just as worthless as a mining claim, and are not productive until you get water on them; but still they are assessed.

Now, as to what those claims are assessed at by the different assessors, that is a matter for them. The assessor is not going to assess a claim at $100,000 without the man has paid $100,000 for it, at the end of ten years. He will assess it at any reasonable price put upon it, and if the man is getting anything out of his claim as net proceeds, he ought to be taxed thereon the same as the net proceeds of any other buiness venture. But I think when we exempt them ten years it is perfectly proper.

Mr. CLAGGETT. Mr. President, there is one thing that ought to be borne in mind by the members of the convention. That is the fact that you can draw no parallel between a mine and any other species of property in this state. In order that I may make myself perfectly clear, I will take a few illustrations, which have been made here in the way of drawing parallels. Take the case put last by Mr. Ainslie, of the merchant. The merchant will buy his stock of goods in the spring of the year and sell off a large quantity of them before ever the assessor comes around. When the assessor comes he does not pay taxes on all the goods he has disposed of during the year, but only those he has on hand. You take the farmer, and of course he has his crops. But when he comes to pay his tax upon what he has left of his farm produce at the time the tax assessor comes along, he simply pays tax on what he has that day. His farm is worth more than it was the year before; there has been no exhaustion of the substance of the estate. But when you come to an open mine you have what? You have a mine whose value consists entirely—because there is no power of recreation or reproduction in the mine, as there is on a farm or any other property—the mine consists entirely of the value of the ore that is within its limits.

Mr. VINEYARD. Within its walls.

Mr. CLAGGETT. Within its walls. You go then upon the theory of my friend from Boise, and tax the mine, or provide that the legislature may tax it, to the full extent of the value, which it has because of the

ore in it; then you take the ore out of it, and destroy the value of the property, and then you propose to tax the ore besides.

Mr. HEYBURN. Double taxation.

Mr. CLAGGETT. Double taxation? Well, I should say it was! Then, on top of all that, tax the surface improvements in addition thereto, and you have treble taxation. Then go and tax all the improvements which result directly from the labor of the material men, and the laboring men, and which are paid for and which are taxed in the way of houses and farms and everything of that kind, and you have quadruple taxation. Therefore, I say this amendment which I have proposed, which will come up to be voted on in its turn, will go as far as any consideration of equity requires anyone to go, or will permit anyone to go. I shall vote for the amendment offered by Mr. Vineyard, not because it disposes of the subject, because it leaves several other things to be considered hereafter, but it seeks to avoid this gross injustice to which I have referred, namely, taxing a piece of property, which is valuable for only what is in it, and then taxing what is in it besides, after it is taken out. You might as well say you tax the value of a safe that had $100,000 cash in it at the value of $100,000, and then take the $100,000 out of the safe and tax it over again. That is your proposition.

Mr. MAYHEW. If I understand the gentleman's proposition it is this: That the tax collector comes around and taxes the value of your ore, and then if you sell your ore he assesses the value of the net proceeds of the ore. I do not understand that to be the proposition. To listen to the proposition as the gentleman argued it, it might strike the gentlemen of the convention that it was double taxation, but I do not understand it that way. If you once pay taxes upon the ore, you cannot be assessed upon the value for which that ore was sold. I would be opposed to anything of that kind, for that would be double taxation; but I do not understand this provision to go to that extent.

Mr. CLAGGETT. I am going according to the argu-

ments of the gentlemen here, and we are discussing one thing on a certain basis. I am going according to the matter which we are called upon to vote on, namely, this substitute to Section 5, which provides that mines and mining claims bearing gold or silver or other precious metals shall be exempt from taxation for a period of ten years from the date of the adoption of this constitution, and thereafter may be taxed as provided by law. The gentleman from Alturas moves to strike out that portion of it which provides for the taxation of the mines, if I understand it correctly. But in the meantime, neither before the expiration of the ten years nor afterwards, are the net proceeds to be exempted. In other words, the net proceeds are to be taxed for all time, and then in addition to that, if the legislature shall see fit to do so after the expiration of ten years, you can tax the mines besides. That is the plain meaning of this section, and I don't care whether it was taken from the Colorado constitution or not. It means that, and you will have to go clean outside the language of the section to attach any other meaning to it.

Mr. BEATTY. Mr. President, I have not troubled the convention upon this question, and I do not propose now to trouble it long. But let us see where we are drifting. This is a peculiarly drawn section. It is composed of exceptions and provisos. And a man must read it twenty times to see what it means; but so far we have agreed that the net proceeds of mines shall be taxed. We have agreed that the machinery and improvments on mines shall be taxed.

Mr. MAYHEW. I have not agreed to it.

Mr. BEATTY. That is just what the section so far provides. Now, in that connection I want to call the attention of farmers to what is proposed by this section. We propose by this section also to exempt the ditches of farmers. Now, gentlemen——

Mr. MORGAN. I would like to ask the gentleman a question.

The CHAIR. Does the gentleman yield?

Mr. BEATTY. I will yield.

Mr. MORGAN. I would like to know how many mining ditches belong to farmers that have been taxed in this territory.

Mr. BEATTY. I did not say mining ditches; I said agricultural ditches.

Mr. MORGAN. Well, agricultural ditches have never been taxed. The farm is taxed, but not the ditch. Where the ditch is owned by a corporation it is taxed.

Mr. BEATTY. Then the farmers have been more fortunate than the miners. I know the miners have been taxed for ditches. Now, you exempt ditches on farms that stand in the same relation to the farm that——

Mr. AINSLIE. Where persons own the land as well as the ditch they shall be taxed together; cannot be taxed separately.

Mr. BEATTY. There are so many provisions in this that I confess it is hard to get it all; "*Provided, further,*. The household goods, tools, implements of every person being the head of a family, to the value of $200 shall be exempt from taxation, and ditches, canals and flumes owned and leased by individuals and corporations for irrigating land owned by such individuals or corporations or the individual members thereof shall not be separately taxed so long as they shall be owned and used exclusively for such purpose, and lots with the buildings thereon, if said buildings are used solely for religious worship or for charitable purposes." That simply excludes separate taxation. It does not read as I thought it did. It excludes separate valuation.

Mr. AINSLIE. Yes, the ditch is taxed with the land, not separately.

Mr. BEATTY. Very well; I will go back to the taxation of mines. I see the section so far as we have adopted it provides, first, for the taxing of the improvements upon mines. Next, for taxing the net proceeds. Now, Mr. Vineyard asks to have this clause stricken out, "for a period of ten years from the date of the

adoption of this constitution, and thereafter may be taxed as provided by law." By striking that out it leaves simply the surface ground of the mine exempt from taxation; that is all it leaves exempt from taxation. You have agreed to tax the improvements and the net proceeds. That is further than ever the territory has gone by its legislature yet, but that we have agreed to so far. Now, all we ask, all Mr. Vineyard asks by this amendment of his, is simply that you shall not tax the surface ground. That proposition has not been argued before by anybody that I know of, to tax the surface ground. My objection to that is this: there is no just way of arriving at what the surface ground shall be taxed at. What is it worth? Are you going to estimate the ore that is under the surface, in taxing it? If so, then as has been said by my friend from Shoshone—

Mr. SHOUP. What did you pay for it?

Mr. BEATTY. It is no matter what I pay for it. Suppose I paid $100,000 for it; do I pay that for the surface ground, or the ore that is within the mine? I pay for the ore within the mine. Now, when that ore is taken out you propose to tax the proceeds.

Mr. SHOUP. I mean, what do you pay the government for the land?

Mr. BEATTY. Five dollars an acre, but you don't make any provision that it shall not be taxed higher than five dollars an acre, and the assessor may tax it $1,000 an acre or $20 an acre; he may tax it for all the ore value within the mine, and then, as I say, when I take that ore out I must pay on the net proceeds of the ore. Now, there is a very serious objection to taxing the net proceeds of mines. We have to have our mines developed by eastern capital entirely. If you put that kind of a tax on the mines, you give the eastern capitalist to understand that the surface ground of their mines is exactly in the power of the assessors of the state. How many eastern men are coming out here to invest their money in property that will be so uncertain as that? I claim that you may tax a man's mine out of existence with that power placed in the hands of the

assessor. You place no limit upon it; he can tax it any rate he pleases. But the point is this: if you tax the surface ground simply at what it is worth, it would be taxed very little; but you don't say so; you do not say it shall be taxed in that way. You leave it open; the assessor may tax it at any rate he pleases, and then comes in, as has been remarked by other gentlemen, a double taxation; when the proceeds come out you tax those also. I think it is very objectionable to undertake to tax the surface ground of claims, first for the uncertainty, and second, for the great objection that it will prevent eastern capitalists from investing where their title is left so uncertain as it would be under this provision for taxation. It seems to me that when you come to tax the surface improvements, and tax the net proceeds you have gone as far as anybody ought to go.

Mr. Vineyard's amendment will simply leave it so that in the future the surface ground shall not be taxed; you can still tax the net proceeds and the improvements.

Mr. MORGAN. Let me ask you a question. If you could only tax the improvements and the net proceeds, then to make taxation equal on all the people we should tax the improvements on farms and the net proceeds from year to year; that is, the grain and cattle, and keep the farm forever untaxed?

Mr. BEATTY. Very well, to make that equal you should tax the improvements on the farms and tax the net proceeds of the farms, and tax the net proceeds of merchants and of all other pursuits.

Mr. MORGAN. And leave the farms exempt.

Mr. BEATTY. Not by any means. The surface ground of a mining claim is of no earthly value, save for the easement; while your farm is the substance of the whole thing. There is a vast difference between a farm and the mere surface ground of a mining claim. If you were to tax the surface ground of a mining claim at its real value, and leave out of consideration the value of the ore within the mine, you might be getting at the justice of the thing; but the difficulty is that you put no limit upon the assessor, and the assessor might tax

the surface ground of the mine, not alone for the value of the surface ground, but for all there is in it; and there is nothing in the world, under this provision, to prevent him doing it.

Mr. HEYBURN. Mr. President, I am with the gentleman in theory, but he has lost sight of the fact that this empowers him not to assess the surface ground, but the mine. A mine consists of the ore that is in the ground. The ground that does not contain ore is no part of the mine at all, except simply for the convenience of working it. It is only in recent years that the law has recognized any title to anything except the ore itself. Under our present mining law congress has given us a right to locate so much surface ground for the uses and necessary purposes of working the mine; simply for the convenience of it. It is no valuable portion of the mine, and it is not that that is proposed to be assessed.

Mr. BEATTY. I claim that under this law they will assess not simply the surface ground, but include all that is beneath the surface.

Mr. HEYBURN. This law does not say anything about surface ground; it says "assess the mine," which is the ore in the ground; that is the mine, and nothing else. The result of it, Mr. President, will be this, that nobody will patent their mining claims, and the government of the United States will not get the $5 per acre that it now gets for its land, for there is no law compelling a man to patent his claim, and so long as he does not enter it in the land office he does not have to pay for it to the government, and the result will be there will not be a claim patented in this state, except by some very thoughtless person. There is nothing in the world to prevent an assessor, under the provisions of this substitute for Section 5, from assessing a mine at the value that he may estimate the ore to possess.

Mr. MYER. I would like to ask the gentleman a question, whether or not the assessor can do that work before the legislature provides he can do it by law?

Mr. HEYBURN. Certainly, he cannot do it until he is authorized by law to do it; but we are here legis-

lating for the future, because of course we must look beyond the date of the adoption of this constitution to see its effect upon the subjects of which it treats. This section provides: "that mines and mining claims" may be assessed after ten years, that is the effect of the provision; that they *may be* assessed. Now, you have already said that this ore shall be assessed in the shape of the net proceeds from the mine. That is another case of double taxation, as suggested to you by Mr. Claggett. You are going to tax this ore before it is taken out, and then tax it after it is taken out. Now, I suggest this as an illustration: If you tax the money of the banker which he has in his bank, and then put a per capita tax on him equivalent to the three taxes which you propose to put on mining properties, proceeds and improvements, you would have his bank just about broke.

Mr. MAYHEW. I have an amendment to offer.

SECRETARY reads: Amend in line 6 after the word "thereof," to include "mills and all reduction works thereon."

Mr. HEYBURN. I send up an amendment, Mr. President.

SECRETARY reads: Amendment to the substitute for Section 5: Strike out in line 6 the words "for a period of ten years."

The CHAIR. The question is upon the amendment offered by Mr. Vineyard.

Mr. SHOUP. Mr. President, I am very sorry to see some distinguished gentlemen in this convention going back on their records they have made in the convention. They have worked ever since this convention has been organized to do something for the development of the resources of this state. I have heard that word at least a thousand times I think, since I have been in this convention. Now, what do they propose to do? Why is there a law requiring an assessment of $100 a year to be worked on all mining claims? The object of that law is to compel those men who take up those claims to do some work on them, to develop them; but, if they are patented, that is not required. Now, I am in favor of

assessing them if they are patented; not putting a fabulous valuation on them, but make it reasonable; say five dollars or ten dollars an acre, or five hundred dollars a claim, something like that, and compel every one of those men to pay something every year on those mines. As it now stands, speculators and drones get hold of these mining claims and hold them year after year. They do nothing on them whatever, but they wait until somebody in the district, or near them, works and develops a mine and opens it, and then they step in and want the benefit of an undeserved and unearned increment. That is just where it leads to; it is right in opposition to the development of the resources of the state, which the gentlemen have contended for on this floor ever since this convention has been in session.

Mr. ALLEN. There are two propositions, Mr. President, which to my mind are before this convention. For the purpose of comparison I will illustrate by referring to the equalized assessment rolls of 1888, as shown in the official auditor's report. He says the total assessment value of the territory should equal $40,000,000 annually. Just above that we find this merely in regard to mining property: "The assessment abstracts from different portions of the territory, which possess the bulk of mining property, contain but little indication as to its real value. It is a matter of common knowledge that large quantities entirely escape the tax they ought to pay"; and then he gives the total amount of the assessed valuation of the territory for 1887: the territorial tax amounts to $58,070. I merely call attention to this fact, the proportion which the mining interests of this state, pay to the expenses of running the territorial government. It has been said that the mining interest is almost the entire interest of this territory; that if you take that out there would be nothing left worth accepting as a gift. I wish to call attention to the facts; I do not care to prejudice anyone against the mining interests; but I think while a subject is under discussion facts should be presented. The livestock val-

uation of the territory alone is over $6,000,000; land and improvements $6,500,00; railroad property alone, $5,250,000. Now, for the purpose of comparison, entered mining claims, $25,000; improvements on mining claims $102,000; smelters $52,000; stampers $74,000; concentrators $61,800; concentrates $245,200, or a total of $560,000, out of a total of $21,000,000, whereas, it should be at least $40,000,000. Now, this is for the purpose of giving the companies who develop the mining property—

Mr. VINEYARD. (Interrupting) May I ask the gentleman a question? What was the valuation of smelters?

Mr. ALLEN. The total assessed valuation of smelters $52,500.

Mr. VINEYARD. Why, the Philadelphia smelter at Ketchum alone cost $3,000,000.

Mr. ALLEN. Very true. (Laughter.) I am giving the gentlemen what is given here in this report. It is simply for the purpose of calling attention to the fact that the mining property does not pay its due proportion of the taxes of the territorial government. Four items, which I can refer to, pay a total of $20,000,000 of the total valuation of the territory; livestock, lands and improvements, railroad property and merchandise; leaving for miscellaneous and mines to pay on $1,000,000, of which mines alone, patented claims, any, everything, comprise $560,000. I think that proportion is too small. I shall vote for the motion made by Mr. Gray to strike out all after the word "personal" in the substitute for Section 5, and submit this to the legislature to adjust.

Mr. MAYHEW. In what line?

Mr. ALLEN. Line 4.

Mr. PARKER. I have here a letter from a very distinguished citizen of Blackfoot, the honorable Norman B. Willey, who has twice presided over the deliberations of the legislative council of this territory, a man who stands in our county head and shoulders above everybody else, and Mr. Willey requests information on this very question which we are now discussing relative to

the taxation of mines. Mr. Willey writes me with regard to the taxation of mines:

"The rule that prevails in Nevada of taxing the net product seems to me to be the correct one. The mining industry should certainly do something toward sustaining the public burdens. In California they used to assess mining claims, even when patented. They assessed unpatented mining claims the same as other land, at so much an acre, which was unjust, because the land might not be worth twenty dollars an acre for farming purposes, or might be worth $20,000 an acre for mining purposes. There is, of course, no other way to reach unpatented mining claims except through the net products."

Now, Mr. President, I think this committee who had charge of this subject, do not really know what they want themselves. (Laughter.) First of all, they brought us in a substitute for their original report, and now they are offering an amendment to their substitute, which goes on and provides for the taxation of the net product, and then provides a way by which that net product can escape taxation. Now, Mr. President, I am a mining man myself; I come from a mining county, and I have lost a good deal of money in mines; in fact, I am a poor man today from having owned mining lands. But I will go as far as any man in this convention to encourage foreign capital to come in and develop our quartz and placer mining claims; and I think the best way to do it is to put in our constitution a straightforward clause providing that mining claims shall be exempt from taxation, and that the surface improvements alone shall be taxed. Tax the surface improvements and the net products of the mines. Tax church institutions, and charitable institutions the same as any other private property, and that is all we need to put into this constitution, and I shall vote against everything else that comes up.

The CHAIR. The first question is on the amendment offered by Mr. Vineyard, to amend the substitute to Section 5 by striking out after the word "taxation" in line 6, to and including the word "law" in line 7.

The vote was taken, and the chair being in doubt

required a rising vote, which resulted: Yeas 13; Nays 33; and the amendment was lost.

The CHAIR. The question is now upon the amendment offered by the gentleman from Logan (MR. ARMSTRONG), to amend Section 5 by inserting after the word "mines" in line 4, the words "not patented." (Vote and lost.)

The CHAIR. The question now recurs upon the amendment offered by Mr. Shoup.

Mr. SHOUP. I would like to make a suggestion in regard to that amendment. There is an amendment pending to strike out all after the word "personal." If that is done, of course there will be no necessity of voting on this amendment. I therefore ask to have it passed until the vote is taken on the amendment of the gentleman from Ada (MR. GRAY.)

The CHAIR. Is there any objection?

Mr. CLAGGETT. I object.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Custer. The secretary will please read.

SECRETARY reads: "Insert after the word 'that' in line 8 the following: 'All farm produce, while in the hands of the producer.'" (Vote and lost.)

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Ada (MR. GRAY.)

Mr. MORGAN. I offer a substitute for the amendment offered by the gentleman from Ada.

SECRETARY reads: Strike out all after the word "personal" in line 4 and insert as follows: "Private property of the United States and of this state, and church property not exceding in value $4,000, and cemeteries not used or kept for profit, shall be exempt from taxation." (Seconded.)

The CHAIR. The question is on the adoption of the substitute offered by the gentleman from Bingham for the amendment offered by the gentleman from Ada. (Vote.) The chair is in doubt. (Rising vote.) The result is: Yeas 23; Nays 23. The chair votes Nay, and

the amendment is lost. The question now recurs upon the amendment offered by Mr. Gray, to strike out all of Section 5 from and after the word "personal" in line 4.

Mr. BEATTY. I offer as a substitute for the amendment pending to strike out the whole section-substitute. (Seconded.)

Mr. BEATTY. Mr. President, I move to strike out the substitute. Mr. Gray's motion is to strike out from the word "personal" in line 4, leaving only the first three lines and a half of the substitute.

The CHAIR. The substitute has not been adopted, and therefore the motion to strike out would not be in order. The question before the house is to adopt the substitute, and to that various amendments have been proposed.

Mr. BEATTY. The amendment of Mr. Gray is to strike out all after the word "personal" in line 4. My objection to that is that it leaves it in such a way that it virtually amounts to no law at all. My proposition was to strike out—

Mr. HEYBURN. It is not in, and it cannot be stricken out.

The CHAIR. That question is not before the house. The main question will be put after we dispose of the amendments. The question is now upon the amendment offered by Mr. Gray.

Mr. GRAY. I do this believing it would be best for us, especially under the circumstances, and the manner in which we have been handling this bill, nearly all of this day. As I stated before, I have confidence in the legislature, and I believe they will be as competent to handle this question as this body is. The fluctuations of property, the different conditions of property at times need different treatment, and assessments may be different. The rights of the legislature should be somewhat sustained, and we should not make any iron rule here, which might be injurious alike to the mining interests, and to other interests. I for myself would not object to allowing the land, the mine, to be untaxed; but I do

believe that the net proceeds, and the improvements upon the land should be assessed. That is my idea. But I believe I will leave that, with your consent, to the legislature, and let them provide such laws for the assessment of property as may seem proper; and I believe it would be to our best interests. As I have claimed almost from the beginning of this convention, I think we are going too far, we are going too much into detail; we are making too specific, too ironclad rules, when we are trying experiments here, and so I say, let the legislature try these experiments, and if they do not work, then they can cure them themselves in a reasonable time.

Mr. BEATTY. I agree with Judge Gray that it would better be left to the legislature. But my question is this, whether if you strike out as you propose, it will be left to the legislature; whether by the last provision of that clause they will not be compelled to assess all property of every kind, church property and everything else.

Mr. GRAY. "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

Mr. BEATTY. Can they exempt anything under that provision?

Mr. GRAY. I think they can when we do not prohibit them from exempting. There is no prohibition here. If there was a prohibition in this section, I would agree with the gentleman from Alturas.

Mr. MORGAN. I ask leave of the gentleman to offer this amendment to carry out the suggestion, and have it read for information.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4 and insert: "Provided, That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just."

Mr. GRAY. I will accept the amendment. But there is one matter I want to speak about in relation to this, what is spoken of here as the taxation of ditches, canals, flumes, etc. As a matter of course, the convention well knows I have not agreed with it but very little in relation to the distribution of water; but I will now say that I know of a system of irrigation that has not been spoken of here at all. It is across the river. Every man who buys a right to that ditch is a stockholder in it. The lands are not owned in common, but the ditch is owned by the stockholders of the ditch. Now, as it is in this provision, it would seem that that ditch could not be assessed, except as it is assessed in connection with their lands, and their lands are in severalty, but the ditch is owned as a water right jointly. Now, I can see no reason on earth, any more than in the statute at the present time, for assessing the improvements on the lands than there is for assessing the lands themselves. You might as well assess the ditches at their worth and assess the lands at their worth. I can see no reason for such a provision in the bill. And I want to speak of another class of mining grounds. There are placer mining grounds in this territory which yield enormously. No provision seems to be made for them at all. I want the net proceeds of those mines to be taxed, and I want the mines to be taxed. I can cite one in Lemhi county, probably my friend at my left can vouch for it, Goose Creek mine. It has been yielding year after year when worked. There is an immense amount of land there; the water controls the land; that land can be cultivated, too. That very same land (as has been often said here that when the substance was gone it was good for nothing), why, this is tillable land, as thousands of acres that I have seen in California, which I supposed was not good for anything, but which is now producing good crops, and are vineyards, I might say. There have been years that this claim has been yielding $20,000 to $25,000. Now, shall that be left untaxed?

Mr. SHOUP. It has been yielding a good deal more than that.

Mr. GRAY. Well, the gentleman from Custer knows all about it. Now, there is a great deal of such land in Idaho; the land all along the Snake river, waste land of that kind, yet much of that land is very productive for mining. There seems to be no regard paid to that land, but everything is placed upon quartz mines. My idea is, as I have said, to leave this to the legislature. Let them have some liberty in this matter, and not let us take it all to ourselves and claim that we possess all the knowledge, or all there will be in the territory hereafter, and that they must be prescribed within this iron rule, which leaves no latitude at all.

Mr. MORGAN. I wish to say one word about this matter. We have spent nearly this whole day wrangling over this subject of taxation. We have a very good law upon the statute book now, which exempts certain classes of property, among others, mining claims, I believe. This amendment I have submitted leaves this matter entirely to the legislature. In order that we may get through sometime I hope we will be satisfied to leave it to the legislature where I think it belongs.

Mr. CLAGGETT. I would like to hear it read again.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4, and insert: "Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just."

Mr. CLAGGETT. The objection I have to that motion of the gentleman from Ada, as an amendment to the motion of the gentleman from Bingham, is, that it does not accomplish the purpose which it is aimed to accomplish. It does not leave this question to the legislature at all. As bearing upon that question I will read it: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal." If the matter stopped there it would not be a question, but by a provision of the organic law

no property could be exempted from taxation. It is proposed to add to it an amendment that the legislature may hereafter provide such exemptions, but none as yet have been provided. The Schedule committee will report a section which was read this morning, and which undoubtedly will be adopted, continuing the laws of the territory not repugnant to the constitution; but the law of the Territory would be repugnant to the constitution if you leave it in this shape, for the reason that the law of the Territory would be repealed if you adopt it in the way it is now, and there could be no exemption whatever until the legislature of the state saw fit to initiate a new system of taxation. That proposition cannot safely be gainsaid. But if we can come to a wise conclusion with regard to this matter of taxation, it ought to be put in the constitution; but if we cannot, then it would better be left broadly to the legislature by striking the entire section out, and leaving the whole thing to them. It seems to me that the general expression of opinion here has been in favor of the taxation of the net proceeds of mines, and the surface improvements; but I don't believe it is the desire on the part of the majority of this convention to go beyond that in the matter of taxation. If it is, then I would not only rather leave the whole subject to the action of the legislature, but I was almost ready to say I would rather leave it to the determination of Jack Cade, or any other gang of men that might be gathered up, for they would undoubtedly have some idea of justice with regard to the imposition of a tax; but if we are ready to go ahead and confine this taxation to net proceeds and surface improvements, then it ought to be put in the constitution. And for this reason: Whenever it comes to the question of making an investment of a few dollars in the way of settling upon a piece of land where a man does his own work, and where all he wants, for the first years, particularly if he has no family to provide for, is his grub, and a little matter of help in the way of a team, that is one thing. No matter where you go, you will find plenty of men who have the ability to put in

their labor and that small amount of property in the matter of improvement. But when it comes down to the question of spending hundreds of thousands or millions of dollars in the purchase and improvement and development of mining property, then you must have, in order to secure the investment of that amount of capital, a fixed and certain fiscal policy with regard to its taxation, or you will drive it out of the country. As it is today, your territorial laws have made at least a temporary provision; but if you simply leave the whole matter to be the football of the legislative session, there is never anybody who will ever know two years in advance as to what the laws with regard to mining property are going to be, and it will be a terrible discouragement to the investment of capital. As I said before, I object to this amendment in the shape it is, because it does not leave the matter to the legislature, but does repeal all existing exemptions, unless in the Schedule you specify, "Provided, that the taxation of mines shall be left where it is," or the exemptions of property shall be left where they are until changed by the action of the state legislature.

Mr. MORGAN. That is the report of the committee, is it not?

Mr. CLAGGETT. No sir, the report of the committee is to the effect that all existing laws not repugnant to the constitution are continued in force, and if you have a constitution, which requires all property to be taxed without exemption, until exemptions are imposed by the state legislature, anyone can see that provision of the constitution is repugnant to the system of the territorial statutes. I call the attention of the gentleman, who made the motion to that effect.

The question upon the amendment offered by Mr. Morgan was put by the chair.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4 and insert: "Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just." The vote was taken, and the

chair being in doubt, a rising vote was required, which resulted: Yeas 33; Nays 14; and the amendment was adopted.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Shoshone (MR. CLAGGETT.)

Mr. MORGAN. If it is in order, I would move that the substitute as amended be adopted. (Seconded.)

The CHAIR. The secretary will read the amendment proposed by Mr. Claggett.

Mr. HEYBURN. I understand the motion is that the substitute as amended be adopted.

The CHAIR. That is pending, and to that there are three or four amendments. No, the motion made by the gentleman is that the snbstitute as amended be adopted; but there were three or four amendments ahead of his motion. They should be disposed of.

Mr. MAYHEW. What is the question now before this convention?

The CHAIR. It is the amendment proposed by Mr. Claggett, which the clerk is proceeding to read.

Mr. MAYHEW. Do I understand the substitute for Section 5 has been stricken out to the word—

Mr. HEYBURN. All after the word "personal."

Mr. MORGAN. I rise to a point of order. All the section has already been stricken out after the word "personal," and the substitute of the gentleman from Shoshone proposes to strike out all after the word "provided," and it has been already stricken out.

The CHAIR. The point is well taken.

Mr. CLAGGETT. I do not so understand it. I understand it to be the case that the motion was made by the gentleman from Ada to strike out all after the word "personal." To that the gentleman from Bingham offered an amendment, and we voted upon the amendment.

The CHAIR. The gentleman from Ada accepted the amendment and it became a part of his, but as there was a misunderstanding, the chair will put the question again. The question is now upon the amendment of the

gentleman from Ada who has accepted the amendment of the gentleman from Bingham, which makes it one amendment. The clerk will read it as an entirety.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4 and insert: "Provided the legislature may allow such exemptions from time to time as shall seem necessary and just."

The CHAIR. The proposition now before the convention is to strike out all after the word "personal" in line 4 and insert: "Provided that the legislature may provide such exemptions as may seem just." As many as are in favor of that proposition—

Mr. BATTEN. Is not that to be voted for in connection with the amendment offered?

The CHAIR. It is all one amendment, the gentleman from Ada having accepted it. It is an entirety now.

Mr. BEATTY. In other words by voting for this amendment now—

The CHAIR. You strike out all after the word "personal," and insert the proviso as follows: "Provided, the legislature may allow such exemptions from time to time as shall seem necessary and just."

Mr. BEATTY. We will adopt by this motion the first three and a half lines of the substitute for Section 5, and the additional provision asked by the gentleman from Bingham.

Mr. CLAGGETT. If that is the case I offer an additional amendment to the amendment to cover the point which I raised.

SECRETARY reads: Add at the end, "And all existing exemptions provided by the laws of the territory shall continue until changed by the legislature of the state."

Mr. MORGAN. I have no objections to that, but the schedule will continue that in force until after the meeting of the legislature.

Mr. CLAGGETT. I think we had better put it right in here. I know any general proposition in the schedule continuing all laws not repugnant to this con-

stitution will not continue these existing exemptions, when the constitution says that until the state makes exemptions all property shall be taxed.

Mr. MORGAN. The constitution does not say that; but I do not object to the amendment; I will accept it.

Mr. HOWE. I would like to submit an amendment.

Mr. MAYHEW. I raise the point of order. There has been an amendment made, and an amendment to the amendment, and now, you cannot make the third amendment.

The CHAIR. The first one proposed was accepted by the gentleman from Ada, and became thus a part of his proposition as an original question. Then the gentleman from Shoshone proposed an amendment to it, which is the first amendment; and now, there can be another amendment proposed to that.

Mr. MAYHEW. When the amendment prevails that all after the word "personal" shall be stricken out with the exception of the addition that has been offered by my friend Gray, and the amendment by Mr. Morgan has been adopted, then that adopts the section as amended, and you cannot offer any amendment to it.

The CHAIR. But the chair will rule that the vote was under a misapprehension, and intended to submit that question again.

Mr. MAYHEW. Then I understand the chair was mistaken.

The CHAIR. No sir, the chair was not mistaken, but the members were mistaken, and voted under a misapprehension, and I propose to submit it again. The secretary will now read the amendment of Mr. Howe.

SECRETARY reads: Strike out in the third line after the word "laws," the following, "which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal." (Seconded.)

The CHAIR. That is an amendment to the section, and will take its place with the other amendments in its order.

The CHAIR. The clerk will now read the amendment of Mr. Claggett.

Mr. HEYBURN. That has been accepted by Mr. Morgan.

The CHAIR. Does Mr. Gray accept the amendment of Mr. Claggett?

Mr. GRAY. I do.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4, and insert, "provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory shall continue until changed by the legislature of the state."

The CHAIR. Now, the vote is upon this entire proposition to strike out all after that line, and make those two provisos. (Rising vote, Yeas 41, Nays 10.) The amendment is adopted. The question now is upon the amendment proposed by Mr. Claggett.

Mr. CLAGGETT. I understand that amendment was disposed of.

The CHAIR. I think it is.

Mr. CLAGGETT. I withdraw the amendment.

The CHAIR. The question is now upon the amendment proposed by Mr. Ainslie.

Mr. AINSLIE. I haven't any amendment there now.

Mr. MAYHEW. I offered an amendment.

The CHAIR. It will be next in order.

Mr. BATTEN. How can that be amended, which is *functus officio?*

The CHAIR. The amendment of Mr. Ainslie was to add to that section.

SECRETARY reads: Amend Section 5 by continuing the same as follows: "Provided further that duplicate taxation of property for the same purpose during the same year is hereby prohibited." (Seconded. Carried.)

The CHAIR. The question is now upon the amendment proposed by Mr. Mayhew.

Mr. MAYHEW. Well, I don't know now, Mr. Pres-

ident. I am like the boy that lost his dinner bucket. If you strike out all that section that I desire to amend, I don't see where my amendment comes in. (Laughter.) I thought it was going to be a very good one, but the gentlemen have taken it by the horns and struck it all out, and if you have no objection, I will withdraw it.

The CHAIR. The question is now upon the amendment of the gentleman from Shoshone (MR. HEYBURN).

Mr. HEYBURN. The part I proposed to amend was stricken out.

The CHAIR. The question is then upon the amendment proposed by Mr. Howe.

Mr. HOWE. Mr. President, the object of the—

Mr. MAYHEW. Let us hear it read first.

SECRETARY reads: Strike out in the third line after the word "laws" the words "which shall prescribe such regulations as shall secure a just valuation for taxation of all property real and personal."

Mr. HOWE. The disposition of the convention seemed to be to leave the matter with the legislature; and that was the object of that amendment. But the object has been gained by the amendment proposed by the gentleman from Shoshone, and I will withdraw this with the leave of the convention.

The CHAIR. The gentleman from Nez Perce withdraws the amendment. The question now recurs upon the adoption of the substitute for Section 5 as amended.

Mr. MAYHEW. I desire the reading of it as amended.

SECRETARY reads: "Section 5. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real or personal; Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory shall continue until changed by the legislature of the state; Provided further, that

duplicate taxation of property for the same purpose during the same year, is hereby prohibited."

The CHAIR. The question is now upon the adoption of the substitute as amended for the original Section 5 in the report of the committee on Revenue and Finance.

Vote and carried, and Section 5 as amended was adopted.

SECTION STRICKEN OUT.

Mr. HASBROUCK. I move to strike out Section 6 in the original report of the committee. (Carried).

The CHAIR. The question now recurs upon the adoption of the entire article as amended.

SECTION 15.

Mr. HASBROUCK. Before we pass from this article, I would like to call the attention of the convention again to Section 18 (15). It will be remembered that section caused a good deal of discussion and was adopted by a close vote, and I wish to ask the consent of the convention to give my reasons for reconsidering the vote by which it was adopted, and offer a substitute.

The CHAIR. Does the gentleman move to reconsider that section?

Mr. HASBROUCK. I do. (Seconded.)

Mr. HASBROUCK. In the first place this section contemplates that there will be some outstanding warrants, but it does not really say whether they will be the original and old indebtedness after the constitution is adopted, or whether they will be such indebtedness as will occur from year to year from the fact of there not being sufficient revenue collected to meet the current expenses. I agree with the section insofar as conducting the business of the counties upon a cash basis, and my substitute that will be offered will meet that question.

Mr. MAYHEW. I would like to ask, before I leave the hall, if the question is debatable.

The CHAIR. Yes, the gentleman made a motion to reconsider, which is being considered, and as I understand it, that is debatable.

Mr. CLAGGETT. Mr. President, I would like to suggest to the gentleman from Washington, if he will send up his substitute and have it read, and then address his remarks to the differences between the two, we can pass more intelligently on the question of reconsideration.

SECRETARY reads: "Section 18 (15). The several counties of this state shall conduct their business on a cash basis. If, at the close of the fiscal year it is found enough revenue has not been collected to meet the current expense, a special tax, in addition to other taxes shall be levied the succeeding year to meet the deficit of the preceding year."

"Section 19. The outstanding indebtedness of the several counties shall be paid from a special fund created for that purpose."

Mr. HASBROUCK. As the convention will observe, I have divided the question, and I propose that the current expenses of the county are conducted upon a cash basis. That is the first proposition; and I make the proviso in that section which will meet that. And in the second it provides in a separate section that will meet the outstanding indebtedness at the time this constitution is adopted, and where working under the state government. I do that for the purpose of not having them so they will be considered together, but might stand alone and separate by themselves, and there can be no misconstruction of them. I am satisfied that this section as it now stands is liable to more than one construction, and the debate upon yesterday showed that that was the fact. I wish to say in regard to the last two lines of the section that was adopted, it says "all moneys in the county treasury at the end of each fiscal year not needed for current expenses shall be transferred to said redemption fund. The redemption fund provided for before that is presumably to pay outstanding indebtedness at the time the constitution goes forth. But what is the practical working of it? On the first day of January the county has a certain amount of money in its expense fund, so-called. Then it devolves upon the county commissioners to estimate how much

of that fund that may remain there will be needed for the current expenses from the first day of January until more taxes are collected, in order to meet the current expenses. Now, as every one knows, it is an impossibility to do that with any degree of correctness. Many emergencies may arise. I have known where a term of court, the first term of court in March or April, where a lot of criminal prosecutions were had, would perhaps cost the county three or four thousand dollars, which no one had supposed would occur at all; and it is probable the commissioners would not provide for that. Therefore, if you are going to pay your expenses in cash you must have money to do it. If it has been turned over to this redemption fund, there is no money to pay, and no authority to issue warrants to pay those who are entitled to their pay. Another objection to this is, that it provides that all moneys in a county treasury at the end of the fiscal year not needed for current expenses shall be transferred to this redemption fund, no matter what fund, whether hospital, road or any other fund. I think that is a serious objection. I am in favor of the principle of a cash basis, and I hope it can be so worded that there can be no misconstruction of it. It will be observed by this second section I have offered that I have provided that this indebtedness shall be amply provided for. You will observe that for the purpose of this redemption fund it says in the old section adopted yesterday that only ten mills on the dollar shall be levied in any one year. That, according to some gentlemen, would not be sufficient to meet that indebtedness, therefore I have left that matter as to the amount and as to the manner of creating this redemption fund wholly with the legislature.

The CHAIR. The question is to reconsider the vote. Are you ready for the question?

Mr. CLAGGETT. Mr. President, I hope this motion to reconsider will not prevail. Section 18 (15) as it now stands was reported by a special committee, and I will say that the committee was made up of the gentlemen, who upon the floor, had antagonized the first

proposition submitted to the convention, and gave various reasons and theories regarding the matter, aided by the committee on Finance, the chairman of which was consulting with the special committee. The proposition is to change Section 18 (15), so as to make it read as follows: "The several counties of this state shall conduct their business on a cash basis." It is perfectly plain on the face of things that if you put that in the organic law you practically cut out the legislature with regard to the matter. Section 18 (15) as it now stands reads: "The legislature shall provide by law, such a system of county finance, as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that when any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners in addition to other taxes provided by law, shall levy a special tax, not to exceed ten mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax, all warrants issued before such levy, shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said rdemption fund." But here you leave in the organic law that, independent of any legislature or anything of that kind, they shall conduct their business on a cash basis without legislation, and which it will be utterly impossible to do. Then the second clause, if, at the close of the fiscal year it is found enough revenue has not been collected to meet the current expense, a special tax, in addition to other taxes, shall be levied the succeeding year to meet the deficit of the preceding year. There may be in any one given year an enormous increase of obligations. The court house buildings may burn down; there may be extraordinary expenses; and yet in the following year, under all circumstances, they must levy a tax to cover any possible deficit that may exist. It is not the case as it is with the treasurer of the United

States, where the imposition of a trifling tax in addition to those already imposed will make an enormous sinking fund. It is a case where we are dealing with counties, all severely burdened; and to put this in the constitution is to defeat Section 18 (15) and substitute nothing in place of it except greater confusion and doubt than exist at the present time. Section 19 proposes, "the outstanding indebtedness of the several counties shall be paid from a special fund created for the purpose." That is provided for already in Section 18 (15). It needs no further provision with regard to it, except that in Section 18 (15) a limit is placed upon the power of the county commissioners, of ten mills on the dollar in any one year for the creation of a special fund; whereas, here there is no limit on it, and they could go ahead and levy any tax they saw fit, and pay off every dollar of outstanding indebtedness right at once, even though the county might be in debt $50,000, $60,000 or $100,000. It seems to me the proposition as contained in Section 18 (15) all the way through is a great deal better considered, and better calculated to accomplish the end we have in view, than the one which is offered by the gentleman from Washington.

Mr. HASBROUCK. I call the gentleman's attention to the last Section 19 (16) as it is now. "The legislature shall pass all laws necessary to carry out the provisions of this article." For that reason I left that matter out of the substitute I offered; it is not necessary to be repeated again.

Mr. AINSLIE. Mr. President, it seems to me if you take Section 18 (15) as adopted yesterday by the convention, and compare it in connection with Section 3 of Article VII. (VIII.) reported by the committee on Public Indebtedness and Subsidies, there appears to be no necessity for this amendment offered by the gentleman from Washington. Section 3 already adopted and gone to the Revision committee, I believe, says: (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 of the qualified electors thereof, voting at an election to be held for that purpose, nor 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 for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void." Now, I do not see how the several counties in this state—the gentleman's amendment says "if at the close of the fiscal year it is found enough revenue has not been collected to meet the current expense, a special tax in addition to other taxes shall be levied the succeeding year to meet the deficit of the preceding year." Now, they are prohibited from incurring any liability or debt in excess of the revenue to be derived during the fiscal year. I do not see that there is any danger at all, because under Section 18 (15) as drawn and adopted yesterday, they shall provide by law such system of county finances as to put it on a cash basis. The county commissioners when they come to levy the county tax for that year, have all the county taxes before them; they make an estimate of what will be required for the different offices, for salaries and the contingent expense of the county, and they invariably put in a few hundred dollars more than necessary to make up for delinquent taxes at the end of the year. If they do not, it is their own fault. If you allow them any latitude to create indebtedness, as that would by implication, by levying a special tax to be collected next year for the amount they incur indebtedness over and above the amount provided for, I think it is opening the door to a great deal of abuse.

Mr. HASBROUCK. I do not agree with the gentleman. I am not afraid to trust these matters to the county commissioners. I admit a great many of them do not know very much, but this fact exists certainly,

that they often have the interests of their county at stake more than anybody else; and I am not afraid of their running the county in debt unless they are absolutely obliged to do so, and if they do, I don't want that debt to run any further than the second year after it is incurred.

The question was put by the chair and a division demanded. Rising vote, Yeas 5; Nays 18.

The CHAIR. The question now recurs upon the adoption of the article as a whole. It is moved and seconded that the article be adopted as amended. (Carried.)

The CHAIR. The question now is that it be referred to the committee on Engrossment and Revision.

Mr. MAYHEW. I move it be reported tomorrow morning at nine o'clock. (Carried.)

ARTICLE XVIII.—COUNTY ORGANIZATION.

The CHAIR. The next thing under consideration is the report of the committee on Names, Boundaries and Organization.

President Claggett in the chair.

Mr. REID. I will ask unanimous consent that the bill be considered reported back without amendment, and we proceed with it in convention as if adopted in the house.

Motion seconded. No objection and it was so ordered.

SECTION 1.

Section 1 read, and it is moved and seconded that it be adopted. Carried.

SECTION 2.

Section 2 read, and it is moved and seconded that it be adopted.

Mr. PARKER. I have an amendment.

SECRETARY reads: "Substitute for Section 2. No county seat shall be removed until a majority of the qualified electors of the county voting on the question, shall have voted in favor of its removal." (Seconded.)

Mr. GRAY. Mr. President, by the act of the legislature last fall there was a provision made for a vote at the next general election for the county seats of two newly formed counties.[1] I am afraid this might affect it in some manner.

Mr. MORGAN. I offer an amendment.

SECRETARY reads: Strike out "four" and insert "six" in line 5.

Mr. REID. If the gentleman remembers, the Schedule committee provides for that.

Mr. GRAY. I think it does myself, although they seem to be partially in conflict.

Mr. REID. If you struck out the two sections together, I think there is no doubt but what the existing law would prevail. I hope the amendment proposed will not prevail. I mean the substitute offered by the gentleman from Idaho. This section was adopted by the committee after mature deliberation, and it the same law in existence in most of the states of the west. It provides that no county seat shall be removed unless a majority of the qualified voters of the county first petition for it, and then after the petition has been presented and adopted, it requires two-thirds of the qualified voters to move it. We thought best to limit it in this way, because, as gentlemen are aware, there are a great many county seat fights and counties are torn by dissensions on that subject. And its location being a matter of paramount importance to the people, we think to remove a county seat ought to require at least two-thirds of the voters of the county, and that the subject should not be agitated unless a majority of the qualified voters of the county wish it, and submit that this agitation in no instance should be oftener than once in four years. This provision is identical with that in the California constitution.[2] If the convention see fit to change it, or think it ought to be relegated to the legislature, the committee will acquiesce.

1—Sec. 6 of Act of Feb. 7, 1889, "Creating and Organizing the Counties of Elmore and Logan." [Sess. Laws 1889, p. 37].

2—Art. 11, Sec. 2, Cal. Const. 1879.

Mr. HEYBURN. I ask for information, if we have not already considered this section once in committee of the Whole, or in connection with some other article; this provision that it shall not be considered—

Mr. MORGAN. That was in the legislative department.

Mr. REID. The gentleman who is now presiding proposed that it should be removed on the vote of two-thirds, provided there was no general law.

Mr. HEYBURN. Where were we considering it?

Mr. REID. In the article on Legislative Department.

Mr. HEYBURN. Do we provide for it in that article?

Mr. MAYHEW. Yes, once in six years.

Mr. REID. Yes, but that provides that the legislature may do that if there is no uniform law, and we are enacting means whereby the legislature may provide a uniform law. The amendment proposed by the gentleman from Shoshone only provided that that should be done only in case the legislature did not provide a uniform law.

Mr. HEYBURN. It seems to me that provision in the legislative bill has rendered this one unnecessary. If we have authorized the legislature to do it in this way, I do not see the necessity for providing for it in this article.

Mr. MAYHEW. I would ask if we cannot call for the reading of that section?

The CHAIR. There was an amendment adopted to the last section of the legislative bill, wherein there was a prohibition against passing special laws changing county seats, and the amendment as finally adopted provided that in the absence of a general law upon the subject the legislature might pass a special law; but that the power should cease as long as the general law was in existence on the subject, but that no law of any kind should be passed, which would authorize the removal oftener than once in six years.

Mr. REID. And I call the attention of the chair to the fact that it was not to be upon the petition of any

citizen. It provided the legislature might pass an act submitting this to the people, and it should be adopted only on a certain vote, but required no petition whatever, and the consequence would be you would have a lobby at every legislature from any particular county that wanted a county seat removal. If you adopt this, you leave the matter right at home, and petitions will have to be circulated, and attention will be called to it, and they will have to have a majority of the citizens to submit, and then two-thirds majority to adopt it.

Mr. MORGAN. I have offered an amendment there to strike out the word "four" and insert "six" in line 5, so that if this section is adopted it will correspond with the section already adopted in the legislative bill.

Mr. REID. I will state to the gentleman the reason the committee put in "four." We hope this will be a rapidly growing state, and in four years it may be necessary for good reasons to divide a county or remove a county seat.

Mr. MORGAN. Won't it conflict with the one adopted?

Mr. REID. Not if the legislature adopts a uniform system of legislation.

Mr. MAYHEW. I ask for the reading of the other section.

SECRETARY reads: "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * Changing county seats; unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed; provided, that the power to pass a special law shall cease as long as the legislature shall provide for such change by general law; provided further, that no special law shall be passed for any one county oftener than once in six years."

The CHAIR. The first question arises on the amendment offered by the gentleman from Bingham, to strike out "four" and insert "six" in line 5.

Mr. SHOUP. I send up an amendment.

SECRETARY reads: Add to the section, "no person shall vote at any county seat election, who has not resided in the county six months, and in the precinct ninety days."

Mr. SHOUP. I move its adoption.

Mr. REID. It says "qualified electors," and under the suffrage bill he will have to reside in the county six months and twelve months in the state; but I will accept the amendment.

The CHAIR. The question recurs on the amendment offered by Mr. Morgan to strike out "four" and insert "six." (Vote and carried.)

Mr. HEYBURN. I move the adoption of the section as amended.

The SECRETARY. There are two other amendments here yet. (Reads) Add to Section 2 the following: "except as provided by existing laws."

Mr. REID. I think this is included in the report of the committee on Schedule, but I have no objections to it. As I stated to the gentleman, I think the committee has provided for that.

Mr. MAYHEW. There is no objection to it if the matter is not provided for.

Mr. GRAY. I am inclined to think, as the gentleman from Nez Perce says, that the Schedule committee does provide for all these laws. It does, without this provision, so long as they are not in violation of this constitution. There has got to be an election some time as provided by statute now, for two counties voting for their county seats; it was so provided in the bill forming the counties. Now, the only trouble that I see that might occur in this, is that it might be claimed that a vote upon that would be in violation of the constitution, except it be as provided in this bill.

Mr. MORGAN. Is not your schedule a part of this constitution?

Mr. GRAY. It is; but there is one provision in the schedule, which says that all these existing laws shall remain in force except they be in violation of this constitution.

Mr. MORGAN. I should be in favor of changing that proposition in the schedule, to read that all existing laws should remain in force until the close of the first session of the legislature, or sixty days after the close thereof, and that would fix it. We cannot go on changing one of these sections all the way through simply because the schedule is not sufficient. I believe in correcting the schedule.

Mr. REID. I will accept the gentleman's amendment, to save time. I don't think it is necessary.

The CHAIR. The amendment having been accepted by the chairman of the committee, the question recurs upon the substitute offered by the gentleman from Idaho.

SECRETARY reads: "No county seat shall be removed until a majority of the qualified electors of the county voting on the question shall have voted in favor of its removal." (Vote and lost.)

The question upon the adoption of the section as amended was put by the chair. vote and carried.

SECTION 3.

Section 3 read, and it is moved and seconded that it be adopted.

Mr. BEATTY. I move to strike it out. (Seconded.)

Mr. BEATTY. Mr. President, and gentleman of the convention, this section is to me, and to the people I represent, of more interest than any other question in this constitution. If this were an old state, possibly a provision of that kind might be proper, but this is a new territory, and I hope it will soon be a new state. Our county lines must necessarily be changed from time to time to meet the wants of the people, to meet the changes of the centers of population and interest. This provision, if it becomes a part of the constitution, practically prevents any changes in county lines in this state from this time on. Let us look at it. "No county shall be divided unless a majority of the qualified electors of the county vote on the proposition," etc. "No county shall be divided." What is included within that? It does not say whether it shall be divided in the middle,

at one end or how. It will preclude the cutting off any portion of one county and attaching it to another. In my opinion it would be construed as an absolute prohibition against the segregation of any portion of a county. It is not a provision against dividing one county into two; that is not it; but simply that a county shall not be divided. Now, I think any lawyer construing that will be compelled to say that; that at least will allow of the construction that no county shall be cut off, no part of the county shall be segregated; what is the result? Why, before that can be done, or before any portion of a county can be cut off you must first get a majority of the voters of that county to consent to that proposition. Now, I ask you in all honesty, where can you in this territory get a majority of the voters of any county to consent that they shall lose one foot of their sacred soil? Wherever that question has come up in the legislature from time to time in the past, we know how ardent all representatives of the counties have been to hold on to all their soil. They don't expect to be asked the question whether they are doing injustice to the people that live off in the distant corner of the county. The only question is whether they shall lose any part of their territory, and invariably they are opposed to losing any portion of it. I claim you cannot get a county in this territory, by a majority of the voters of that county, to consent to losing any portion of its territory. Now, I tell you, Mr. President, where this shoe fits very closely, for I have nothing to conceal. The last legislature of Idaho territory, to its shame be it said, made a division of Alturas county, which is the most outrageous in my opinion of any law that ever was enacted. They have left what was once a princely domain, a county of too large dimensions I admit, but a county of about $4,000,000 worth of property, reduced to a little pitiable $750,000 worth of property, as the assessor informed me a few days ago when I was at home. That is what is left of Alturas county; and included in that is three or four hundred thousand dollars worth of burned property recently destroyed by

the fire at Hailey. They have left, in other words, of Alturas county two little towns, the town of Hailey and the town of Ketchum to pay taxes; but not only that; they have left upon that county a burden of debt that even the large counties of this territory cannot well sustain. They have left us a large extent of territory, I admit, but nearly all hills and mountains; they have left us no property with which to bear the burden upon our shoulders.

Mr. MAYHEW. Are there no mines there?

Mr. BEATTY. The mines are there, but I am sorry to say—

Mr. MAYHEW. I will ask you if your own representatives of that county were not in favor of it?

Mr. BEATTY. No sir, only a part of them; those who lived in—

Mr. MAYHEW. Allow me to correct the gentleman. I happened to be a member of that legislature, and I don't think it is right to reflect upon that legislature, unless he reflects upon his own members. The council consisted of two members from Alturas county; and the house of four members; and one member of the council was in favor of the division of that county and two members of the house; and the legislature took their view of the matter and adopted their theory. If there is any reflection upon that legislature—although I am not advocating the supremacy of the last legislature—I want the gentleman, if he reflects upon anybody, to reflect upon himself, and not the balance of the legislature; because I take it for granted, when the gentleman reflects upon the members of the legislature last year he makes that reflection upon his own members, and not upon the members generally.

Mr. BEATTY. Mr. President, I was not a member of the last legislature, and of course I cannot reflect upon myself, and I was not an advocate of all that was done. I was an advocate of the cutting off of Elmore county, I admit; and I say further that the members of the legislature from Alturas county did not all sustain that; but only those members that lived in the parts

cut off. Those members, I understand, did generally join in the discourteous bill which cut up Alturas county in the shape it did. Now, Mr. President and gentlemen, regardless of whether that legislature was right or wrong, and without reflecting directly upon the legislature—

Mr. MAYHEW. But you have already done it; no use now to try to smooth it over.

Mr. BEATTY. But I do undertake to say that the act was a matter of injustice, and that this convention should not now justify it by putting a provision in this constitution that will saddle for all time to come that injustice upon us. There can be no doubt in my mind of the result of it. You enact that, and it simply leaves us to remain in the condition in which we now are; it leaves us to remain without property to meet the burden upon our shoulders, for it must be conceded that no other county will ever consent to lose a foot of soil to aid the people of Alturas county as they are now situated. In other words, we would be compelled to remain just within the borders we are now, and within those borders there is not enough property, taxed at its full value, to ever sustain any respectable county. We would not have enough to pay the ordinary running expenses of the county, much less enough to meet the immense burden that is upon our shoulders. Now, Mr. President, that does not apply alone to Alturas county, but I admit that is where the shoe fits. I say in all frankness, we do expect and hope that some future legislation will remedy this evil, will grant us some relief, at least, and put us upon some respectable basis by which we can exist as a county, instead of going out of existence or going into bankruptcy. And I am not talking for mere talk. I say, that unless relief of that kind is granted, the territory of Idaho has one county that will be virtually bankrupt, and we cannot help ourselves. We have this year levied the same assessment that we levied before, three per cent, and we will not be nearly able to meet the indebtedness upon our shoulders. You will hear before the next year comes in that Alturas county

is not meeting its debts, and its warrants now, instead of being ninety-five cents as they were when this bill was passed, are almost worthless; you cannot now get fifty cents on the dollar for our warrants, although one paper has a notice published by a party that he will give ninety-five cents, but that is only for effect; it is not true. Now, I will ask you whether you will pass an act and put in this constitution a provision that will forever tie us down in the situation we now are, and prevent the legislature in the future from granting us the relief which I think we are entitled to.

Mr. CAVANAH. Does the gentleman suppose warrants will be paid when the county pays such ridiculous salaries to its officers? You pay more to your officers than all of Elmore county's salaries—nearly a thousand dollars more.

Mr. BEATTY. The gentleman is mistaken about that. I do not know just what salaries are allowed the officers for this year, but those salaries were allowed upon the basis of Alturas county as she existed, and those officers were elected when it was a solid body. As a matter of fact, Alturas county will bring her salaries down as low as others, but at the time those allowances were made the county commissioners had no other guide or rule to go by but to take the assessment which had been returned, and allow those officers the salaries they were entitled to at the time they were elected. That is the reason those salaries were allowed, as they are now, although I do not know the amount that is allowed the different officers. So far as I am personally concerned, I will go as far as the gentleman or any other one in putting the officers' salaries down to a reasonable amount, and at no time do I advocate high salaries. Now, Mr. President, this section does not apply alone to Alturas county. It applies to all the counties of this territory. I ask you, under this section, how any county in this territory can be divided; how can the immense county of Bingham be divided; or any other county be divided? How can you cut off a strip from one side of one county and attach it to another for the benefit of the

people? It simply ties the lines of the counties to where they are now, and I don't believe the line of any county in this territory will ever be changed with such a law as that in the constitution.

Mr. GRAY. I want to talk a minute, not upon this personal matter. I am in hopes we will while here, and I believe we are trying to, legislate for the common good. I hope the legislature will not be troubled, as the legislature was last year, with matters of this kind; for if it is, little or no good is done by a legislature when they come with the purpose of dividing counties or holding counties together or subjecting a large section of territory to the rule of people by which they say they are improperly treated. It is even taxation without representation to a great extent; but I say this, keep that from the legislature; if you do not, the legislature amounts to nothing. You commence from the first day you come into the legislature; it is trade here and trade there; stand by me and I will stand by you. Let such be the case, and your legislatures, when they have got through, have amounted to nothing at all. And I hope it never will be at any one again, as I can prove by my friend from Shoshone there, that things do not appear as they should in the legislative body.

Mr. MAYHEW. I seconded the motion of my friend from Alturas to strike out the section, but I shall vote against it. That may strike the gentleman as rather strange, that I would second the motion and then change my mind. I am convinced by the very argument that he has made that this section as it is proposed by the committee should remain in the organic act. While I do not desire to discuss the merits of this proposition, I desire to have something to say when language comes from the gentleman from Alturas reflecting upon men that were members of that legislature, I think equally honorable to any members of this convention or any other body in the world. How does this matter stand? I ask the gentleman himself, if it was not by his own delegation, if it was not by the representatives from Alturas county that the bill was first introduced in the

legislature for the division of that county? It never came from an outside member, but it was introduced in both houses, two bills, to divide that county; and if I recollect right, the gentleman was here on the outside of that legislature, figuring and working as a lobbyist either to prevent or foster the division of that county. I know this, Mr. President, and when the gentleman says it was the infamous action of the members of the last legislature, I suppose he includes himself among the balance. I do not desire to change his opinion; I do not desire to say a word to change his view of any member of the last legislature. The gentleman can entertain what opinion he pleases of the last legislature and I presume to say that the last legislature can entertain their opinion of the gentleman, being as this is a free country, upon that subject. The facts, Mr. President, are these: that when at the last session of the legislature these bills were introduced, they were introduced by the members from that county, and that county alone; and I know that the members went to that county's own members and asked them and appealed to them all not to get up a discussion and create controversy and discord, so as to disturb the harmony of the legislature, and they were told, *and told*—by whom? By the members of the legislature from Alturas county, to attend to their own business, and they could attend to theirs. That was the conduct of the members from Alturas county, and after the dissension and discord in the last legislature was caused by the members from Alturas county, now, when the bill is passed, they attempt to reflect upon the members of the legislature. *You* (MR. BEATTY) were the first man who threw the fire-brand into the legislature. *You* (MR. BEATTY) were the first man who introduced this discord and this dissension—

Mr. McCONNELL. I raise the point of order and refer to rule 11.

The CHAIR. The chair is of the opinion the point of order is well taken.

Mr. MAYHEW. That is right, call me to order. I

supposed you would do it, and I supposed this chairman, president of this convention, would sustain it, but Mr. President, you have permitted this gentleman to go on and reflect upon that legislature, and when I undertake to vindicate it I am called to order. I submit to your order, I submit to the chairman, the president of this convention; but I say that the declarations made by the gentleman in his reflections are not true.

The CHAIR. The chair understood that the gentleman from Alturas did not reflect upon the member at all, but was referring to the effect of the bill.

Mr. BEATTY. That was all.

Mr. MAYHEW. "The infamous legislature."

Mr. BEATTY. I desire to rise to a question of personal privilege. It is possible that in the heat of debate—and admitting that, I have not a tongue as nimble as my friend from Shoshone—I may have said those words, which possibly could have been construed as the gentleman has construed them. I did not mean to reflect upon the legislature. I meant simply to say this, that the act of the legislature had resulted in such great damage to us that it was beyond any act of any legislature we had here before. That is an inference, possibly, to be drawn from what I said; but my words were intended, however poorly I may have expressed them, to be directed to the effect in itself; and that is what I rise to explain. I would have liked to interrupt the gentleman before.

Mr. MAYHEW. It always strikes me that a man in discussing a question should be guarded in his language and in his reflections. If the gentleman didn't mean it, then what I have said doesn't count. (Laughter.) By unanimous consent, gentlemen, that doesn't count. Now, like my friend the other day proposing to expunge something, by unanimous consent what I have said must be expunged. (Laughter.) But, so far as I am individually concerned I don't propose to retract a word.

Mr. WHITTON. The gentleman from Alturas claims that they are overburdened with debt. Now, under this

law dividing the county of Alturas,[1] it provides that both Logan and Elmore shall take their part of the indebtedness. He did not mention that fact. And it provides further, that the counties of Logan, Elmore, Bingham and Alturas should each appoint an expert commissioner, and three of those counties appointed three experts as commissioners. Alturas refused, or did not appoint; and consequently that debt has not been adjusted, but it is only the fault of Alturas county that it has not been adjusted.

Mr. BEATTY. I would like to ask the gentleman to state the facts.

Mr. WHITTON. I state those are the facts, sir.

Mr. BEATTY. I will ask the gentleman if he is not aware that this question is now pending in the supreme court of the United States, and if that is not the reason why no adjustment has been made of the debt, and that there cannot be until that question is settled by the supreme court?

Mr. WHITTON. That may be. But going on and adjusting the debt could have been done just as well, if I properly understand it, and let the case be pending in the supreme court. Furthermore, now, I was a commissioner from Alturas county, and know something about it. I was not elected on the regular ticket, because they would not allow the commissioner to be elected; they had to be independent.

Mr. MAYHEW. Yes, I believe I had a talk with the gentleman on the railroad.

Mr. WHITTON. Yes, and I was one of the commissioners that set those salaries. This bill for division passed the house on the 7th of February, and on the 12th of February we fixed the salaries. And I tried to have the county rated, to get the amount of the assessment roll then levied in the county and rate the salaries accordingly. Would not do that. No. And we set the salaries on the 12th. On the 13th the minutes were

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[1]—An act "Creating and Organizing the Counties of Elmore and Logan." [1889 Sess. Laws, p. 37].

read and approved. On the 14th I made a motion to reconsider the salaries and reduce them to the minimum. That motion was voted down. That day I went to California. After I was gone that day, the salaries were not high enough to suit them; they went and erased the record and raised the sheriff's salary $500, raised the district attorney's salary $500, and the probate judge's salary $200. The book is there to show for itself. I made those charges before, and am responsible for them. Now, then, they got the salary of the sheriff at $5,000, which is $1,350 to a cent more than we pay the officers of Logan county altogether, including the commissioners. And the salary of the district attorney, including the deputy is $350 more than we paid all our officers together, including the commissioners. Then they come in and play the baby act. It reminds me of the man who killed his father and mother and then claimed he ought to have sympathy because he was an orphan.

Mr. VINEYARD. I will demonstrate, if I can express what is in my mind, the injustice which this Section 3 contains. "No county shall be divided unless a majority of the qualified electors of the county voting on the proposition at a general election shall vote in favor of such division." Let me illustrate how that works. Suppose there are two counties; take the counties as they exist over there today, Alturas and Logan. That immense stretch to the west of Hailey known as Camas prairie, is a farming community, generally understood to be in sympathy with old Alturas county, and desires to be a portion of the territory within the limits of that county. By the act of the legislature last winter that portion of Alturas county, without any voice or vote in it, was placed within and now constitutes a part of Logan county. There was an act of the legislature without the approbation of those people whatever upon the subject. Now, if that section is adopted it will forever preclude those people who desire to be and remain a part of Alturas from ever coming back into that county; because the question would be submitted

to the people of Logan county at a general election, and the balance of the inhabitants, which lie south of that line would override the people of Camas prairie, and they would be handicapped and tied down where they are for all time.

Mr. MAYHEW. On that very proposition the amendment was prepared; to meet the very views that the gentleman has expressed here, and the delegation and members of the legislature absolutely rejected it. And now, I propose to use names, so far as that is concerned; and that is Mr. Perkins. He rejected my own amendment to meet the view of the gentleman.

Mr. VINEYARD. I do not propose to be bound down here in the discussion of a section that affects the entire population of this portion of the territory over there by charges and reflections upon any members of the legislature from that county. There were none of them in sympathy with me. I voted them all imbeciles, and by the imbecility of that delegation that was over there, this injustice was done by the Territory at its last session of the legislature.

The CHAIR. The gentleman will please confine himself to the matter under discussion. The chair holds that although any part of the bill may be referred to, if it is to illustrate the matter before the house, to go into details in these controversies is out of order.

Mr. VINEYARD. I am merely answering the question of the gentleman from Shoshone county, and I shall refrain from any comment upon the action of the legislature upon that subject. What we want now is for the door to be left open whereby we can have justice done at some time in the future by the legislature; whereby a minority, or the people that are to be affected by the change, shall be heard and not be voted down by a majority against them, if they should happen to be in a county where these changes exist. That is all we ask. We ask nothing except even, open-handed justice at the hands of this convention upon that subject. My friend Gray all at once has grown distrustful of the legislature. He has been wanting to throw every-

thing open for the legislature to consider here, until it comes down to this question. Then "let us keep this thing out of the legislature." Let us tie these boundaries of these various counties so tight that it will be impossible for any future legislature ever to tamper with them, whether the people want it so or not. That is the object which is to be effected by the change. That is where the injustice is; that is how we will be affected if this section remains as it is here. A majority of Logan county lying south of this agricultural country known as Camas prairie, which desires to be in Alturas county, would stifle their voice and prohibit them from ever being attached to Alturas county. That is the proposition before this convention, and which you are to grapple with if you propose to hold up the ends of fairness and fair play. If you propose to gag us, if you propose to say these lines shall be iron-bound, and no relief against them, I presume it is in the power of this convention to say so, if it is ratified by the people.

Now, so far as the salaries of those officers are concerned, I do not know anything about that, how they were raised or upon what basis, nor do I care. That is not germane to the proposition in hand. The only thing that addresses itself to this convention is, will it not work a wrong and hardship and outrage upon inhabitants of sections of those counties that desire to have those lines changed so that they may convenience themselves for their own individual prosperity? There is no question about it. Should it be left in the hands of a majority of the remaining portion of the county to say that it shall never have that changed when they are the only ones to be benefited or receive the benefits? There is the point in this question. I say it is an outrage for the convention or any body of men to undertake to foist upon us a proposition so iniquitous as this.

Mr. GRAY. I have not lost confidence in the legislature. What I said was this. It obstructed legislation. And I will ask those that know anything about the legislature last winter, if it was not the very fact of these bills that were brought before it. I am not here

to state personally what I know about this case. It may be said that I have investigated it to quite an extent, and know a great deal about it, and I know a great deal about how the bills were put through, and what was the cause of it, and I shall have to say something or other in favor of the gentleman from Shoshone. If they had been willing to let Elmore county go, then they would probably have had no trouble with Logan.

Mr. MAYHEW. That is what they would have, but they would not have it; their own members too.

Mr. GRAY. But the only question is, the gentleman says: Don't gag us; let the minority rule. We want it so that the majority of the people can have nothing to say. It is the minority we are after." They want minority rule, assisted by their neighbors on the outside. Is that the correct principle? Do not the majority of the people have something to say about the question, or is the minority to represent us? I have not, as I say again, lost faith in the legislature; I do not say the legislature cannot be trusted. Perhaps they went further than they would have done last winter had it not been for the people themselves of that county; and I do not say these gentlemen were to blame for that, but they forced this measure as it is, and it is there now, and they are organized counties. But the idea is, we must not pass any law that will not allow a minority of them to lead, if we can really legislate up to that pitch.

Mr. REID. I would like to be indulged one moment. I want to hasten the consideration of the bill. The gentleman in his excitement speaks of a desire to perpetrate an outrage upon the people of Alturas. I will say to the gentleman when we drew that section, no thought of Alturas ever entered our heads, and it was only after the section was agreed upon that we understood it would affect that county. No, it was to avoid the very thing the gentleman spoke of that we put this section in. Sections 2, 3 and 4 must be taken together. Section 2 provides how you may remove a county seat. We all agreed on that, and have gone so far as to provide that if the legislature does not give us a uniform

law we will go back to that special law that was put in the legislative bill. Now, we come to Section 3. "No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division." Now, what does that mean? It means, if Alturas county wants to get a slice off that Camas prairie country from Logan, and put it on to Alturas, that Logan county shall have something to say about it. It means, if my friend in Latah county wants to take that country up there from Nez Perce and leave her emasculated, that Nez Perce shall have something to say about it. I think the people ought to settle it themselves: How will it be? The first legislature that meets, there will be a lobby from Alturas and one from Logan; and as the gentleman says, it will block up business by combinations being formed; it will obstruct legislation, and then what? The people of Logan will be put to an expense of coming up to lobby against it. Now, why don't you leave that among the people themselves, and settle it at the ballot box? In this we provide for the removal of county seats and cutting off counties, and the next section provides for the forming of a new county. If the legislature in its wisdom sees fit to take part of two counties and form that into a new county, it can do it by the next section without submitting it to the vote of the people. The only prohibition put on that is that they shall never form any county of less than four hundred square miles. I hope the report will be left as it is. While it would work a harm to our friends in Alturas, yet suppose they come up and cut off this part of Logan. Is it not leaving Logan in the same condition they are?

Mr. BEATTY. No sir, by no means.

Mr. REID. Well, when you see it from the other side you will think differently. You will think all over the territory in the same way. Whenever a man sees a nice, rich strip of land adjacent to that county he will say, "Let us go down to the legislature and get up a lobby and pass that through, and then our mem-

bers will go after something else." In other words, every legislature will be the scene of contention over the cutting up of counties. Why not leave it to the people themselves? I hope the convention will adopt the section.

Mr. SHOUP. I am in favor of striking this section out. Not on account of this old quarrel between Alturas, Logan and Elmore counties, but for other reasons. Where I live in the Pahsimeroi valley, the county line runs right through the center of the valley. The ranches are divided. My own ranch is half in one county and half in the other, and the result is it cannot have any school districts, any roads running across the valley, or anything of the kind. Now, I want that valley to be either in Custer county or in Lemhi county. If it is put to the vote of Custer county it will be against it, and if Lemhi votes on it it goes against Custer. And if this bill passes we shall stay as we are forever.

Mr. MAYHEW. How can this convention change the county line? We are only recognizing it, and it can be done only by a majority of the people.

Mr. SHOUP. If this bill passes it will be left in such a condition that the people will never vote to change the county lines, and they will always have to stay just as they are.

Mr. Morgan in the chair.

Mr. MAYHEW. But to change it and have it cut your ranch, it might cut somebody else's ranch also.

Mr. SHOUP. Not at all, if you take the mountain, the valley and the stream, will all be in one county or the other. It won't cut any ranch, if you go up on top of the mountain.

Mr. BEATTY. I will not deal in anything that is personal. I regret that I uttered a word to throw the house into a temper that has led to anything of the kind. But I hope this convention will not act upon the representations that have been made as to what the members of the legislature from Alturas county may have done; that is not the question here.

Mr. MAYHEW. We do not propose to do it, but you raised that question yourself.

Mr. BEATTY. No, Judge, I said nothing about them at all. I know that some members of Alturas county did not do what their people expected them to do, and what was just. Neither do I want to be reflected upon as a lobbyist. It is true, I was here, my friend Mayhew, but did very little, and I was an advocate of Elmore county, cutting Elmore county off, and tried for one to avoid this trouble, and finally got disgusted and went home. That is the truth about it.

Mr. MAYHEW. Well, I will take back then about your being a lobbyist.

Mr. BEATTY. I was not a lobbyist, but looking after the interests of my county some little, and tried to avoid the difficulty we got into. I hope the convention will not hold the whole of the people of that county responsible for what some of the members of the legislature for that county may have done. That is not the question here, and it is not simply the question whether Alturas county is the only one damaged. I do say it is greatly damaged. Neither will I stop here to answer my friend Whitton. That is rather of a personal nature. There are facts, if I had the time to go into it and explain them to you, whereby I could put it to you in a very different light from what you have it. It is true things have been done wrongly, but the question now is, are you going to leave us in a position where we are, for all time to come, or as long as we hope to live, virtually bankrupt, or are you going to submit the matter to the legislature and leave them to settle the matter as may be equitable? My friend Reid says it will make a row in the legislature. We cannot help that if it does; it is the business of the legislature to rectify wrongs; that wrong has been done, and it is the right and duty of the legislature to correct that wrong, even if it does make a row. There is no danger of any great row. It is true that last winter we had one over this question. Probably there will be very little difficulty over this or any other question in the

future, but the point I make is this, this is a new territory; we cannot leave county lines as they are now; they must be changed in the future to meet the wants of the people. If you make this provision of the constitution, there is no way by which you can ever get the county lines changed, except where a majority of the people seek to do it, and I claim that the majority of the people of a county will not consent to lose any of their territory. That is the whole thing in a nutshell. It applies not only to Alturas county, but to all the counties; but we of Alturas county are specially interested in that county, and hope this convention will not leave it so that we may not get relief in the future if the legislature is willing to grant that relief. Mr. Chairman, the proposition was made by somebody, not from the members of Alturas county, so much as from some others, to have this convention attempt to change the lines. We, as the representative of that county, said, "No, this is not the place for it; leave that to the legislature"; but we do hope this section will be stricken out, and I was in hopes that it would not be reported. In fact, I had a partial promise of some of the members that this would not be thrown in here, because it would be a firebrand and would do us great injury, and I hope now that this convention will not undertake to hold the people of Alturas county responsible for what some of its members in the legislature may have wrongly done, but look at this matter in the light of justice and give us such opportunity in the future to correct the evil that has been done as justice alone demands.

Mr. CLAGGETT. It seems to me we have struck something of a snag; not on the Alturas proposition especially, but on the broad question that is contained in this section of this article. If any injustice has been done to Alturas county, and if any particular section of that county has been cut off and added to Logan county, where the people in it did not desire it to be done, it does not seem to them that this convention by putting a provision in the organic law, should perpetuate that injustice forever. Neither, on the other hand, do I

think this convention should legislate in its organic law specially in regard to any county. So far as all of these matters are concerned relating to Alturas county, they may be brought up as illustrations, of a danger of a certain power being left to the legislature on one hand, or the propriety of denying it on the other hand; but they do not constitute any particular argument, so far as that is concerned. But here is where the question comes up, and here is where it is vital in its nature. Really, the only argument which has been suggested here upon this floor in favor of retaining this provision in this article, is to keep it out of the legislature. Now, does it keep it out of the legislature? I say it will not keep it out one particle. I say if you retain this provision, this section in this article, the legislature will be subject to the same considerations that it was before, and in addition to that you will deprive the legislature, where a majority of the people are not concerned especially with regard to it, of an opportunity of rectifying a great many wrongs which may arise in the future of this state. In the first place, before ever this question goes down to a majority vote or the submission of it to the majority of the popular vote of the county, they have got to go to the legislature to get the law through dividing it. Is not that true? If a majority of the people of the county, like they are in this case, this portion of them that live in Elmore and Logan counties, combine and constitute a majority, you would have this double proposition on hand, with the same trouble exactly with the legislature, and then they would submit it, and by the majority carry it. In other words, it takes nothing out of the legislature and cures no evil, while it does prevent as stated by the gentleman from Custer, the legislature from time to time adjusting the county boundaries in such a way as will be just and equitable to all the inhabitants of the county. And for that reason I shall vote, for one, to strike it out. If it would settle this business I might say then, for the purpose of future peace and security, let us do injustice to one particular county; but it will settle nothing, for

there has certainly got to be some kind of an enabling act passed by the legislature for the taking of the vote upon the question of division. That throws the whole proposition into the legislature again; the same controversy will be had to get the law for submission that is now had for securing the division. The only thing that it would cut off will be this: just such a case as stated by way of illustration, where a small number of people for convenience sake or otherwise may desire to be detached from one county and added to another. But in all cases where a division is supported by a majority of the people you will have the same controversy in the legislature that you have now; therefore it cures nothing.

Mr. REID. I beg pardon for rising again. I did not intend to say anything on this question at all, but to let the convention do as it chooses, if the gentleman had not charged that it was an outrage—but I do not propose to let the thing go under the sophistry of the gentleman from Shoshone. The proposition he makes now is something like that offered about the taxes. The argument he made the other day in the amendment he offered to the legislative bill answers the very argument he has put here this evening. He offered an amendment that if the legislature did not pass a uniform law, then you might go and remove county seats. Well, this section says no county shall be divided unless the qualified electors vote. They will not have to go to the legislature every time to get a division. The legislature can pass a uniform law, that whenever the people petition and submit this question to them they can go on and do it. Just like that petition to have the county seat removed, or a petition on any other subject, little local option laws. Whenever a certain number of people petition, then the people themselves submit the election; then a uniform law will be passed, because they have been prohibited from passing special laws. Now, they will meet and act on the subject of counties; that whenever a majority of the people petition the board of commissioners they shall submit the question of removal, and whenever two-thirds want it, it can be removed.

Mr. BEATTY. Suppose a small fraction of the people in some distant border of the county desire to be attached to some other county.

Mr. REID. Then the county they are to be cut off from must vote that they will go.

Mr. BEATTY. How will they get it submitted to the people?

Mr. REID. The legislature will supply all those requirements. We put in two lines here, as Mr. Gray said repeatedly, all the way through; all statute law is to be left to the legislature. We go on and initiate the broad principle that no county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off voting on the proposition at a general election shall vote in favor of such division. Now, the legislature provides what the machinery shall be to ascertain that voice, but it must be done by uniform law that will exist all over the territory. So, we won't have it come to the legislature at all. There will be a general statute enacted to carry out this principle. As the gentleman says, "if you want to cut off a corner of a county, the whole county has got to say that it must go," but that is not so when you go to making new counties. The legislature can make a new county itself, but when you want to divide counties—I know all over this territory one county may be selected out of two counties, another may be sliced out of another county, and we will want to straighten the lines of this county or that, and all that sort of thing. But I go upon this broad principle, if a county has existed for some time, a county has been established, the people go and locate with reference to the location of the county seat, its convenience and everything of that sort, invest money and make improvements and make business plans and start enterprises based upon the future, if those are to be disturbed every time the legislature meets, all very well; but if you want to have it so that the entire people who pay taxes and erect jails and locate county seats and establish permanent local county seats and try to build them

up shall have a voice in it, then you must adopt this section.

Mr. CLAGGETT. Just one thing I want to say. If we should assume for the purpose of argument that it would be possible for any legislature that will ever be convened in this state to pass an operative general law upon this subject, I should certainly be still more strongly oposed to this proposition. In the first place, I deny that you will ever get a general law unless that general law is adopted by the same powers and influences that will prevent, as has been stated here, any change ever being made in the boundaries of a county. That is the only kind of a general law you will ever be able to secure, and in the meantime there arise these special cases, which do call for relief, and where year after year and decade after decade injustice will be done to extreme points of settlement far away from your county seat, and you will never have any power to change it.

Mr. REID. If the legislators will come in and swear to support the constitution and see these provisions made and the work left them to do to provide the machinery to carry it into effect, and then they will not do it, there is no use of putting it in a constitution at all. That is the effect of the gentleman's argument.

Mr. CLAGGETT. Not at all.

SECTION 2.

Mr. PARKER. In order to bring the matter to a head I will offer a substitute for Section 3 (2). I want to know why it should be made so difficult for the majority of the people in any county of this territory to remove the county seat, when a majority can divide the county. I say that it should be made just as easy for a majority of the people to remove the county seat as to divide the county. Under the report of this committee they have made it necessary that a majority of the qualified electors of the county shall petition somebody—it does not say who or what; it may be the county commissioners or it may be the legislature—and

after an election is held this Section 3 goes on to describe that and says; "No county shall be divided unless a majority of the electors of the territory proposed to be cut off voting on the proposition at a general election shall vote in favor of such division." Now, I say this convention has no right to prescribe what shall constitute a majority in any county in this territory. A majority is a majority, and you have no more right to prescribe two-thirds majority shall remove a county seat than you have to say that two-thirds shall elect a county treasurer or a county auditor or any other officer. I say a majority is a majority if it only constitutes one. And I want to know how it comes that the removal of a county seat shall be hedged around with all these restrictions. It is possible, Mr. President, the committee who got up this report were turning grindstones and grinding axes for somebody who had property in some county seat. I know nothing about that, but if this thing goes into the constitution with those two contradictory sections, the one following the other, you make 2,000 votes against the constitution right here and now. In my own county we have three rival towns, and each of those towns wants to get the county seat, and if the voters in those towns read those two contradictory sections, each of those towns will vote down your constitution on that question alone. Why, Mr. President, one-half of our towns in our territory are ambitious to have the county seat. I say it is a very laudable ambition, and they have a right to work for it, and the majority of these people, if they can carry the election, ought to be entitled to the court house. Those people are full of western snap and vinegar, and if they have snap enough to come forward and get the county seat away they ought to be encouraged in it, and so I say these two sections are contradictory, and I should like to have my substitute adopted so as to have uniformity. (Seconded.)

SECTION 3.

SECRETARY reads: Section 3. No county shall

be divided unless on petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county voting on the proposition at a general election, shall vote in favor of such division. A proposition to divide the county shall not be submitted in the same county more than once in four years.

The CHAIR. It is moved and seconded that the substitute of the gentleman from Idaho for Section 3 be adopted.

Mr. REID. The gentleman has flung at the committee about the section. There were two gentlemen on the committee from some county over which there was a contest about a county seat, a very bitter one. Those two gentlemen got together and settled this between themselves, and we thought it would be a good gage as to future controversies. They were conservative enough, and yet they knew that the town of Grangeville might want to get the county seat from Mt. Idaho.

"Question, question." The question was put by the chair. Substitute lost.

The CHAIR. The question is now upon the motion of the gentleman from Alturas to strike out Section 3. (Vote.)

The chair being in doubt a rising vote was required.

Mr. CLAGGETT. I call for the yeas and nays.

Mr. BATTEN. I am from Alturas county and while my honest convictions are in favor of this section, still if it will in any way alleviate the terrible suffering Alturas is laboring under I will cast my vote Yea.

Roll call.

Yeas: Allen, Batten, Beatty, Bevan, Clark, Crutcher, Glidden, Heyburn, Lewis, McConnell, Myer, Moss, Pefley, Pierce, Pinkham, Savidge, Shoup, Stull, Underwood, Vineyard, Wilson, Mr. President—22.

Nays: Ainslie, Armstrong, Beane, Campbell, Cavanah, Chaney, Coston, Gray, Hampton, Hasbrouck, Hays, Hogan, Howe, Jewell, King, Kinport, Mayhew, Melder, Parker, Pyeatt, Reid, Robbins, Sinnott, Whitton—24.

And the motion was lost.

Mr. REID. I move the adoption of the section.

Mr. BEATTY. I have an amendment.

SECRETARY reads: Add at the end of the section the following: "Provided this section shall not take effect until five years after the adoption of the constitution." (Seconded.)

President Claggett in the chair.

The CHAIR. The question is upon the amendment offered.

A rising vote was taken which resulted: Yeas 10; Nays 23; and the amendment was lost.

The CHAIR. The question is now on the motion to adopt the section. (Carried.)

SECTION 4.

Section 4 read, and it is moved and seconded that it be adopted. Carried.

SECTION 5.

Section 5 read, and is is moved and seconded that it be adopted. Carried.

SECTION 6.

Section 6 was read.

Mr. REID. I think it necessary to explain that a little. It is punctuated a little badly there; I won't put it on the printer this time. We provide there for the election of county officers, combining the offices of district clerk and county auditor and recorder. That was done at the suggestion of the Judiciary committee after a full debate, and after consideration by our committee. We did it, however, on the recommendation of the Judiciary committee. We also combine the office of county treasurer and public administrator the same as they are now. We combine the office of probate judge with that of superintendent of public instruction. The county assessor is tax collector now. We provide that no other offices shall be established. We limit the county offices to those specified in the section, and restrict the legislature from creating others; but in the same sentence we clothe

the legislature with the power by general and uniform laws to provide for township, precinct and municipal officers. We have a precinct organization in our territory at present. If the legislature chooses to keep that up, or if they choose to leave that and go to the township organization hereafter, they are left to provide for that for those offices, and fix their duties and pay. We also provide that the legislature can provide for the collection of fees, and that the officers collecting the same shall account therefor. The reason of this is, when you come to the next section you will find that officers are paid by fees, and the maximum and minimum limit is fixed. That is the reason it is put in. With that explanation I move that this section be adopted. (Seconded.)

Mr. WILSON. I have an amendment.

SECRETARY reads: Strike out all between the word "surveyor" in line 6, Section 6, and the word "fees" in line 9, and insert the words "and such other county, township and municipal officers as the public convenience may require, and shall prescribe their duties and fix their terms of office."

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 6 by striking out in the third line the words "who is ex-officio." (Seconded.)

Mr. SINNOTT. I have an amendment.

SECRETARY reads: Strike out the words "Clerk of the district court, who is ex-officio" after the word "sheriff" in the third line.

Mr. SINNOTT. I offer that amendment for the reason this is already provided for in the election of the clerk of the district court. In Section 17 (16) of the Judiciary report of the committee it states: "A clerk of the district court for each county shall be elected by the qualified electors thereof at the time and in the manner prescribed by law, and shall hold his office for the term of four years." Now, by these words "clerk of the district court" inserted in the third line of this section in the article in question on county organ-

ization, it brings this article in direct antagonism regarding the tenure of office to what is provided for by Section 17 (16) of the Judiciary report.

Mr. REID. I am glad the gentleman called attention to that. I shall ask unanimous consent to change that Judiciary article from four to two. The reason we put in clerk of the court here is to get in that ex-officio auditor. The object as I take it of the amendment of the gentleman from Shoshone is that the clerk in his county, and it may be in some other counties, cannot perform all the duties that are required. To meet that exigency I propose to add after the section, "the county commissioners are authorized to employ such clerical aid as their offices may require." If you offer that kind of an amendment, we will accept it, but I hope the two offices will not be severed, for this reason: In most of the offices the clerk of the court is paid by fees, and we propose by the next section to pay them entirely by fees. The clerk of the court can perform the duties of clerk and they do very little business in some of the districts, and also can perform the duties of auditor and recorder, and both offices will pay him the amount we provide in the next section. It will save by combining the two offices, the amount of $15,000 to the territory. I mean to the counties. It will save $15,000 in the entire territory to the counties, because that is their salaries now. We pay the auditors about $15,000 in the way of salaries. We propose to virtually abolish that office and combine it with another. By keeping that office up you will take from the taxpayers or from the people who have business with the office that amount. I appreciate the circumstances in Shoshone county, where they have a large amount of business, and the clerk has to employ three or four assistants, and it may be so in this county. In Alturas and other large counties where one man cannot attend to it, I propose to relieve them by putting a clause in, if the gentleman will draw it, that the county commissioners are authorized to employ such clerical assistance for the auditor as may be necessary. That leaves it with them. If the gentleman

will draw such an amendment as that we will accept it, but I hope that just to relieve his county we shall not strike it out from the other counties. There are at least nine-tenths of the other counties, or at least eight-tenths of them, where this officer can perform the duties of both offices.

Mr. HEYBURN. The difficulty is this. One of the duties imposed upon the auditor is that he is clerk of the board of county commissioners, and he must be in attendance, and in our county they are in session ten days or two weeks at certain periods of the year, of necessity, in adjusting taxation and matters pertaining thereto. The auditor, ex-officio, is clerk of that board, and the court is in session, as it was last fall, right at that time, and how is it possible for a man to perform the duties of these two offices? I understand all the fees will be paid into the county treasury; the fees collected by the recorder's office in our county are somewhere in the neighborhood of $18,000 a year. Of course that goes into the county treasury. Now, the recorder is the responsible officer through whose hands all abstracts of title and certificates pertaining to records must pass, and he should be always where one can get at him, especially in a county like ours where he is required constantly. He should always be there, and if he is compelled to be in attendance on the court, his attendance must be constant because the clerk should not be absent when the court is in session. How is it going to be possible, not sitting in the same room, for him to perform the duties of those two offices? Of course, deputies may do some of the things, but a man under heavy bonds with his responsibility is not always willing that matters of that kind shall pass through the hands of deputies. Our recorder pays $3,600 a year for clerical hire; that is what he paid last year. And then in Section 7 you provide that this bonded officer shall not receive to exceed $3,000. Why, he pays $600 a year more than that for his clerks alone. It is unfortunate that the affairs of some one county are of such a peculiar character as to disturb this whole arrangement; but I

think it would be absolutely impossible to carry out any such arrangement as this in that county.

I do not know about the affairs of other counties, but I presume the gentlemen here do. Our auditor, who is clerk of the board of county commissioners, cannot be clerk of the district court and perform his duties; he cannot send a deputy into the board of commissioner's room to do his work. He is responsible for it. Then he must draw all of those warrants for the payment of all persons, and right at the time that his whole attention is demanded in the courtroom by the judge, and the court; and if you take him out of there, or allow him to be interrupted, you interrupt the whole proceedings of the court, and thereby you incur the expense incident to delay in those matters. I would like to see at least a license given to the legislature, that in counties where it is necessary, or to the commissioners in the counties where it is necessary, that they should have the privilege of electing a sufficient number of officers to perform the public duties. If you do not do it you cripple their government. It is true in some of the smaller counties where there is not much business this system would work very well; but it absolutely will not work in the county situated like ours. There are some counties where the court does not sit at the county seat; there have been such times in our county, but there you take the recorder and the auditor away from the county seat and tell him to attend court somewhere else.

Mr. MAYHEW. That was under territorial organization.

Mr. HEYBURN. Well, the district court might be held somewhere else. But I think every member from our county will see that this arrangement could not be carried out up there, and the salary will not pay his clerks, and we are able to pay more than that because the income of the office is enough to pay a very handsome salary to those officers, and pay their clerk hire. The income from the recorder, county auditor and clerk of the district court in our county will run up close to $25,000 a year.

Mr. MAYHEW. Do I understand you to say that the county clerk and auditor was $18,000?

Mr. HEYBURN. The income of that office last year in fees was a little more than $18,000.

Mr. MAYHEW. Now, with the addition of the fees you pay the clerk of the court it will raise it certainly to $22,000 or $23,000 a year.

Mr. HEYBURN. Probably it would and there is no reason why we should be cut down to less than a competent government, because the state is not benefited at all by it.

Mr. REID. On the gentleman's statement I offer the following amendment:

Mr. BEATTY. This is an important matter and one-half of the convention is absent, and as the hour of adjourning has arrived, I move that we adjourn until 9 o'clock tomorrow morning.

Mr. HEYBURN. I would like to have this amendment read.

SECRETARY reads: Add to the section: "The county commissioners may employ such clerical assistance for the clerk of the district court and auditor and recorder as may be necessary for the prompt transaction of the public business."

Mr. REID. Now, that amendment will just meet the case. In any county where the auditor and recorder and clerk of the court cannot transact the business, it is left discretionary with the commissioners to employ such clerical assistance as he needs.

Mr. MAYHEW. How about fees and salaries?

Mr. REID. The employment carries with it the price. The statement of the gentleman proves what I say. You are empowered up there to pay your auditor and recorder $25,000; the clerk I think he says gets $25,000.

Mr. HEYBURN. Oh no, the fees of all the officers probably amounts to $20,000.

Mr. REID. What does your clerk make?

Mr. HEYBURN. $3,500.

Mr. REID. The clerk in most of the states gets

more than that. Anyway, we have the receipts of the auditor's office alone at $18,000. Now, the clerk's $3,500, that makes $21,500. The two offices make $21,500; that is the income. Now, you can get men to perform that duty for the maximum we have fixed. Suppose you pay a man $3,000; that leaves $18,500, and then you pay the clerk of the court and the auditor $3,000; that leaves $15,500. Then you hire a young man to clerk for him at $100 a month.

Mr. HEYBURN. You can't get them.

Mr. REID. You can get fifty of them. Then if you pay him $8,000 to hire clerical assistance, you pay into your county treasury $12,000. Now, that is what we want to do. In some counties it won't come up to that. That is just the workings of the system.

Mr. HEYBURN. There is no provision for making a deputy. Let me ask the gentleman a question. He asks for unanimous consent to change that Judiciary bill to two years instead of four. The object discussed in the Judiciary committee was to make it the same term; you would not have the clerks changed in the middle of the term, of course.

Mr. REID. Well, we will change this. We do not claim this is infallible. I am glad the gentleman proposed it. We want to keep the principle; we want to combine the offices. The principle all through is to get the cheapest county government we can and be efficient, for the reasons stated the other day. We want to save enough on the present system of county government to make the state government cost us less than the present territorial government. I mean, to make the state government with its increased cost cost us less than we are paying now. As the gentleman says, it is getting late and I will give way to his motion to adjourn, and in the meantime I will try to draft the substitute.

Mr. WILSON. I think the difficulty can be obviated in this new section which I attempted to amend by my amendment.

Mr. REID. I now renew the motion that the convention adjourn until tomorrow morning at nine o'clock.

Mr. HEYBURN. I move to amend by making it eight o'clock. (Seconded. Carried.)

Whereupon the convention adjourned until eight o'clock A. M. August 3rd, 1889.

TWENTY-SIXTH DAY.

SATURDAY, *August 3, 1889.*

Convention called to order by the President.

President Claggett in the chair.

Prayer by Chaplain Smith.

Journal read and approved.[1]

The CHAIR. The special order at this hour is the final reading and passage of the article relating to Revenue and Finance.

Mr. HASBROUCK. The committee on Engrossment asked for further time to report this afternoon. The engrossing clerk has not had time to engross this article.

The CHAIR. If there are no objections it will be so recorded.

Presentation of petitions and memorials. None.

REPORTS OF STANDING COMMITTEES.

Mr. SWEET. Mr. President, I call for the report of the minority of the committee on Schedule.

The CHAIR. The minority report of the Schedule committee has been called for by the gentleman from Latah. Has it been presented?

The SECRETARY. It has been presented.

The CHAIR. That is a part of the unfinished business of yesterday. The secretary will read it.

The report was read by the secretary.

The CHAIR. The report will lie on the table and be printed.

Reports of standing committees. None.

Reports of select committees. None.

Final readings. None.

The CHAIR. Gentlemen of the convention, this fin-

1—The notes do not show that the roll was called.

ishes the regular order of the business of the day. What is your pleasure?

COMPENSATION OF STENOGRAPHERS.

Mr. McCONNELL. Mr. President, as chairman of the committee on Finance, I desire to say that we have assurances from one of the banks that they will take the vouchers, including the per diem and mileage of the members, at a discount as proposed the other day, and I wish to say that we have two stenographers who have been assured $10 per diem for their services. And I am in honor bound to see that one at least of these gentlemen gets that amount of money, because it was my telegram that brought him here; and my understanding is that the report of the committee on per diem and mileage has not been printed. I think it made allowance of $10 per diem for the stenographers. By bringing this matter up and increasing that allowance, so that with the discount off, they will be allowed $10 per day, it would relieve any embarrassment which this convention might be placed in. The convention will be in honor bound to pay these gentlemen, who came here for the purpose of performing certain services, the amount they agreed to pay them, and if their warrants after being discounted do not reach that amount, this convention or some of the individual members of it will be in honor bound to make up the deficiency. I would, therefore, move you that a committee, to which was referred this matter, take it under further consideration, and report to us this afternoon on any increase that may be necessary to relieve the convention of the embarrassing circumstances in which it is placed. (Seconded.)

The CHAIR. It is moved and seconded that the pay of the stenographers as fixed by this convention shall be sufficiently high, so that after deducting the necessary discounts it will amount to $10 per day each, and that that proposition be referred to the committee on Ways and Means, with the request that they will make their report accordingly this afternoon. (Carried.)

Mr. HASBROUCK. As chairman of the committee on Ways and Means, I move that the special committee on Finance meet with the committee on Ways and Means to adjust this matter.

Mr. McCONNELL. It will not be necessary to place that in a motion, I guess, because we will meet with them at any time; say right here after we adjourn.

Mr. HASBROUCK. Very well.

LEAVE OF ABSENCE.

The CHAIR. On yesterday, Dr. Maxey, one of the members from Ada county, sent to the desk a note requesting to be excused until Tuesday, on account of sickness which compelled him to return home. Is there any objection to his leave of absence being granted until Tuesday? There is no objection and it will be so ordered.

MEMORIAL TO THE PEOPLE.

Mr. REID. Mr. President, there was a motion passed while you were out of the chair yesterday, to appoint a committee of ten, including yourself, to memorialize the people on the subject of the constitution. It was passed while you were out of the hall, and I was going to suggest that that committee be appointed as soon as possible after the Chair is ready.

The CHAIR. I was informed of it last night. I will appoint the committee on coming in the convention this afternoon.

Mr. REID. If the regular business is through, I call for the unfinished business of yesterday.

The CHAIR. The unfinished business of yesterday is the report of the committee on Counties and County Government.

ARTICLE XVIII, SECTION 6.

Mr. REID. We were on Section 6, and I now send forward the following substitute for Section 6.

Mr. HAYS. Mr. President, I move that the vote by which Section 3 of the article under consideration was adopted, be reconsidered.

Mr. REID. I make the point of order that the gentleman is out of order at this time. We are proceeding to consider a substitute to the section and a lot of amendments. When we complete the article, it will be in order to go back and reconsider any section desired.

Mr. McCONNELL. I think it would be in order after the section is passed.

Mr. REID. After the article is completed. We have passed two sections.

The CHAIR. I will call the attention of the convention to rule 39.

Mr. REID. Yes, I have just read it. A motion to reconsider must be made by a member voting on the losing side, etc. It requires it to be taken up section by section.

The CHAIR. The chair is of the opinion that the motion is not in order at this time. I will recognize the gentleman just as soon as the pending section is disposed of.

SECRETARY reads Mr. Reid's substitute for Section 6: "Section 6. The legislature, by general and uniform laws, shall provide for the election biennally in each of the several counties of the state, of county commissioners, a sheriff, county treasurer, who is ex-officio public administrator, probate judge, who is ex-officio county superintendent of public instruction, county assessor, who is ex-officio tax collector, a coroner and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers, for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The county commis-

sioners may employ such deputies and clerical assistants for the clerk of the district court, auditor and recorder and sheriff as may be necessary."

Mr. REID. I have incorporated into that every amendment except one, proposed. One amendment was proposed by yourself as to the eligibility of county officers. I would prefer to have the convention vote on that and I will ask to have it read.

SECRETARY reads: "No sheriff or county assessor shall be eligible to hold the term of office immediately succeeding the term for which he was elected."

Mr. REID. The only change I made in the section was in line 30, where I struck out "Clerk of the court who is ex-officio, county auditor," because it had been provided that the clerk should be elected four years in the Judiciary article, and in line 6, I inserted, "The clerk of the court shall be ex-officio auditor and recorder." Then I came down to the end of the section and added that the county commissioners may employ counsel. That does away with the necessity for employing county attorneys. It was interposed as an objection by some gentleman that in the counties frequently they need counsel when the district attorney would be away. This clothes them with the authority—I think they have it by law, but some gentlemen seemed to think they did not and that it had better be expressed in the letter of the law; it just authorizes them whenever it may be necessary, to employ counsel. That is a matter between them. Then it provides that they may employ such clerical assistance and deputies for the auditor, sheriff, recorder and clerk of the court as needful, which was put in to meet the case stated by the gentleman from Shoshone. There the sheriff has to have five deputies. In the next section, we provide for his salary. They have an immense amount of business up there, as was stated yesterday, the office of the auditor and recorder yielding $18,000 in fees. So we provide that where there is a large county and a great deal of litigation the commissioners may, whenever in their discretion they think it is necessary for the efficient transaction of the

public business, employ this clerical assistance and pay them what they see fit. The legislature will provide the machinery. Now, there was another amendment proposed, to strike out "No other county offices," by Mr. Wilson. I am sorry he is out, because he says that authorizing the county commissioners to employ counsel when they deem it necessary meets his wishes. I would object to striking that out for this reason. Then they could restore county attorneys or any of the offices we have abolished or combined, if you leave it to the legislature to create new offices. We have struck out this, after consultation with the Judiciary committee, providing for combining the office of clerk,,auditor and recorder. In large counties, one man cannot attend to it, but the commissioners can employ assistants. In the smaller counties, the two offices will realize enough fees to pay one officer, and save the salary to the taxpayers. That is the reason we combine them. We then combine the offices of probate judge and superintendent of public instruction. As has been stated and as eevry lawyer knows, the probate judge ought to be a man of intelligence, good sense, of high character and integrity to handle the estates of orphans and deceased persons. The same order of intelligence and executive ability that would qualify him to fulfill the duties of the office of probate judge will make him an efficient superintendent of the schools of the county, and he can go around and superintend them. There is but one objection I have heard urged, and it is that we ought to have a professor, a man peculiarly schooled who can go around and hold teachers' institutes. I have found in my exprience—I had ten years' experience as county treasurer and recorder and clerk of schools, and I found that a man who possesses that peculiar talent to lecture on teaching rarely has that better talent of executive ability. But it will make the people select a better probate judge, a more intelligent man, which the attorneys and litigants will not object to; so we think by combining the offices and making the fees of his office pay him, we would get an efficient county government, and that this was the

best combination we could make. Now, as to the proposition to make them ineligible, I could not accept that amendment; I do not feel like cutting a man off from a second term. I think we could leave that to a vote of the convention.

The CHAIR. It only provides for two officers, sheriff and assessor.

Mr. REID. Ought it not apply to the treasurer as well?

Mr. MAYHEW. I don't think it ought to apply to the treasurer. It ought to apply to the sheriff's office and the assessor's office. That has been the law in Montana ever since the territory was first organized, and the magnificent local administration of the affairs of that territory generally has been due more to that limit put on it than anything else.

Mr. REID. I will ask that the amendment be read.

SECRETARY reads: "No sheriff or county assessor shall be eligible to re-election until the expiration of one full term after the close of the term for which he was elected."

The CHAIR. The question first is upon the adoption of the substitute reported by the committee. Are you ready for the question?

Mr. HEYBURN. Let us have it read. I would just inquire of the gentlemen of the committee whether or not the language of that would not allow the commissioners, in case they chose to be too stubborn, to appoint a deputy for sheriff against his protest; whether it does not vest the entire selection in the commissioners. I should have some doubt about the wisdom of that. The sheriff ought to be allowed to select his deputies, I think. I am afraid the language of that would place the power entirely in the hands of the commissioners to make an appointment against his protest, which I think is not right. The amendment meets with my approval except that.

Mr. REID. The gentleman is right about that. We say the county commissioners may employ such deputies and clerical assistants for the clerk of the district court,

auditor, recorder and sheriff as may be necessary. It lodges with them the power to employ the deputies. I take it though it is a discretion lodged with them. I don't think they would in any county appoint a man the sheriff would seriously object to; but as he says, if they chose to take the bit in their mouth I think they could do it.

Mr. MORGAN. The sheriff is responsible on his bond for the work of all his deputies, and certainly the commissioners ought not to have the power to appoint a man not selected by him, because he is responsible. Just so with the clerk of the district court. There should be a provision that they might employ upon the person being named by the officer.

Mr. MAYHEW. I move to strike out the word "sheriff." (Seconded.)

Mr. MAYHEW. Is this the substitute we are considering?

Mr. HEYBURN. Yes. That amendment won't do.

Mr. MAYHEW. So far as this amendment in the substitute is concerned, I don't approve of it at all. I don't think it is right or prudent or proper to vest in the county commissioners the power to conduct an office which is certainly more important than that of the county commissioners. The clerk and auditor and clerk of the court has a responsible office, and as has been said by Mr. Morgan, he gives his bond and is responsible for his own action and that of his deputies, whoever they may be, working under him. As he gives this bond and is solely responsible for it, I don't think the county commissioners or any other body of men or officers of the county would have authority to interfere with his office. That is to say, they should not have the power to appoint assistant clerks without his consent. It may be argued that it cannot be done without his consent. Let me illustrate.

Mr. MORGAN. If the gentleman will permit me a moment—

Mr. MAYHEW. Well, I propose to get through with my remarks on this point. There is no use attempting

to disguise the fact that in the different counties of our territory there may be a conflict between the recorder and the county commissioners in a political sense; for instance, if there should be a republican county clerk and recorder elected, and a majority of the county commissioners should be democratic, I don't believe that democratic board should so interfere with the republican recorder as to appoint as his assistants and deputies persons contrary to his wishes. But as the gentleman has said, they become bull-headed and strong-headed about this thing and that, and the first thing they would do would be to appoint some person contrary to the wishes of the clerk and the recorder. So it is with the sheriff. My idea about these offices is that they are all political offices, and when a man is elected to that position, let his politics be what they may, whether democratic or republican, it is his prerogative to say who his deputies shall be. If the county commissioners have a contrary view of politics, then there comes a clash, and if they are bull-headed and strong-headed, it will have a tendency to create that turmoil and dissatisfaction and dissension in the counties that will be almost impossible to reconcile. I therefore oppose that portion of the substitute that gives to the county commissioners the power to appoint anybody or employ anybody to assist those officers when they have been once elected by the votes and wishes of the people of the different counties. It certainly does not destroy or hold in balance or in check anything which might be extreme political views in those offices, but it is interfering with a prerogative and a right of the officers that have been elected by the votes and wishes of the people. Although my friend has a view of curtailing the expenses of the county and saving costs, and I am in favor of economizing as much as possible, yet I say this would make such a clash and discontent and dissatisfaction between the officers and county commissioners that it would be unsafe for us as a body to approve it. I think this whole matter should be left to the legislature, although I am rather getting off on this question of giving so much to the legislature;

but I think we are attempting in this particular to legislate in this article. I think it would be safer to go on and elect those officers as they should be, without giving power to the county commissioners to interfere with them.

Mr. McCONNELL. I desire to offer a substitute or amendment.

SECRETARY reads: "Provided that said employment shall be with the consent of the elected incumbents of said offices."

Strike out the word "employ" and substitute and insert "authorize the employment of." Morgan.

Mr. McCONNELL. I second the amendment offered by Mr. Morgan.

Mr. MAYHEW. Will that amendment leave it with the incumbent of the office to say who it will be?

Mr. MORGAN. Yes.

Mr. MAYHEW. If it meets that view I approve the amendment.

Moved and seconded that the substitute be amended by striking out the word "employ" and inserting the words "authorize the employment of."

Mr. REID. I move this substitute:

SECRETARY reads: Strike out all after the regular printed section, and add this: "The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their offices require; said deputies to receive such compensation as may be fixed by the county commissioners."

Mr. MAYHEW. That is in that very amendment; you are leaving it to the county commissioners to conduct all those offices.

Mr. REID. No sir, that authorizes them to appoint. It authorizes those officers to appoint such as they require, and then the commissioners fix the pay, but they cannot appoint. That covers the whole case and obviates the difficulties, and allows them to employ counsel also.

Just strike all out after the printed section that has been proposed, and insert that I say now.

Mr. MORGAN. I second the substitute.

Mr. BEATTY. Before that motion is put I desire to make a suggestion. The great objection I have, for one, to the new district attorney system, was leaving the counties without county atorneys. Now, this section as amended will leave it to the county commissioners to employ counsel whenever they please. In my opinion that will result in more expense than our present system. I think this section ought to be amended so as to leave the legislature to enact some general law upon this subject, and not leave it to the county commissioners to select whom they please and pay what they please. There is actualy no limit here to the powers of the county commissioners. They can employ as many counsel as they please, and pay them what they please. We presume they will do their duty, but they do not always do it, and we are leaving too much to them. I would rather this section would be so amended as to leave it in the power of the legislature to enact a general law for the employment of county attorneys and throw some provision around it.

I offer the following amendment: Insert after the word "established" in line 6, the following words: "Except the office of county attorney," and make it read in this way: "No other county office shall be established except the office of county attorney, but the legislature, etc." That will leave it in the power of the legislature, if they deem it necessary, to establish a law for the election of county attorneys, and provide some law by which the county commissioners cannot vote any salary or compensation they please. I believe if you leave it in this way, that in the counties where we employ county attorneys—and they will have to be employed; they haven't a resident district attorney and cannot get along without some local advice—it will result in more expense to the county than the old system, if you include in it the expense of the district attorney's salary. And I hope that some latitude will be left to the legislature

to create this office. As for the rest of the section, I have no objection; but I think there ought to be some latitude left to the legislature to establish such offices as may be necessary to protect the people.

Mr. REID. I hope the amendment will not prevail. The district attorneys cost this territory now $36,600. We have five district attorneys already provided for and have fixed their salaries at $2,500. That makes $7,500, which is a saving on that item of $29,000 to the people. Gentlemen know as much about the system of county attorneys as I do. I know in one county we have a good district attorney, a faithful man and a good lawyer. He makes $1,700 per year, and he gets $1,450 from the county treasurer. I know the work he has to do, and I am satisfied they can get as good a lawyer as there is in the north to do the same work as he does for $500.

Mr. MORGAN. And he gets mileage besides.

Mr. REID. Yes.

Mr. BEATTY. All that I desire is that this shall not be left absolutely to the county commissioners as this leaves it. They might employ a man at any price. I think if the legislature is ready to establish the office and throw around it the restrictions so that the county commissioners cannot go beyond a certain amount, and leave it so that it cannot be avoided—

Mr. REID. The legislature has fixed it and what have we got? An expense of $40,000 for district attorneys. I will illustrate it by a little personal experience. I was county attorney in a county where there was $3,000,000 of property, ten years, and employed under a provision of that sort, not as county attorney but counsel. They paid me for the ten years $100 per year, and one year when I prosecuted a capital case, they paid me $450 for that. It was the easiest made money I ever made. They gave me that as a salary. Perhaps four or five times a year the chairman of the board would come in and ask my construction of a law; it would take 15 minutes perhaps to find it for him. Whenever there was anything special, we made a special

contract. Now, if the commissioners have business judgment (and we presume we will elect the best business men we have, who are responsible taxpayers), they will exercise that business judgment in the employment of an attorney. We let them levy the taxes, and you have got to lodge discretion somewhere. If the county has an important suit or has important legal business, the commissioners ought to be allowed to go into the market and get the best legal talent; and if they do not have the business they do not have to have the counsel.

Mr. BEATTY. Suppose an important murder case has to be prosecuted before the committing magistrate?

Mr. REID. There is the district attorney who is already paid by the state to do that.

Mr. BEATTY. But he is off in some other county.

Mr. REID. Well, it is a preliminary examination, and they simply want somebody to look after the state's interest.

Mr. BEATTY. How much will it probably cost to get a good attorney to take a case of that kind?

Mr. REID. It might cost $150 or $200 or even $300. But, gentlemen, say, what are you going to do about equity cases and criminal cases? I have not known yet in these counties of much important litigation of that kind; they don't have any. When I was counsel for the county I never looked after things of that sort; there was always somebody to prosecute. The friends of the murdered man or the coroner would do that. He always impanels the jury, and you will always find the magistrate's office looking after the state's witnesses, and the defendant was always bound over. I have seen this very system, and if it be necessary, the chairman of the board is always on hand, and upon application to him, when he sees public justice is about to fail, he can employ a man. But how often do we have these murders? Shall we go on and pay $40,000 per year for the few murders committed? We have clothed the commissioners with power to get counsel, but it is just a saving of $40,000 by adopting this district attorney system. Let me illustrate it. This is an important matter. In

the north there are two counties, Shoshone and Kootenai. The district attorney will reside in one of the counties. Suppose there is a murder committed. They telegraph him or telephone him; he will be right on the scene. Suppose they come to our county. There is Nez Perce, Latah and Idaho together. The district attorney will live in one of those counties. They are connected, except Idaho, by telephone and telegraph, but this is only one day's ride; they can have the district attorney even if the court is in session; in an emergency like that the judge would excuse him a day for it. And these districts down here will be so small that he will always be within reach. So that in a necessity of that sort you can always get at him. And you pay these district atorneys these large salaries, and, as the gentleman said, they usually fall upon the young men, and they have got to meet the best attorneys at the bar. You have a district attorney with a salary and an office of importance and honor, and all that, and you will always get a good attorney, because in the older states, I know the attorneys considered that the best office except the judge. A sort of stepping stone to go to congress, and other places of emolument, and the very best young men used to take the place. Well, it did not devolve usually on the young men, a young man had to be a very good lawyer to get that place, the people would not elect them, and the honor was considered something. You will always find you will get just as good talent and standing before the bar as you will to sit upon the bench and administer the law. Very frequently the district attorneys were much better lawyers than the judges, who tried the cases, and he would always have to measure lances with the best men at the bar. You have provided for this, you have five. The first thing you know you will have a district attorney in every county as well as a district attorney travelling with the judge around the district. I hope the amendment will not prevail.

Mr. BEATTY. Mr. President, I have but a word to reply. My object is not to increase but to diminish

the expense. The gentleman says that by this system of district attorneys we save so many thousand dollars. It is true in one sense you save, but you will have a provision by which in the end it will cost the people more. It is not marked out in the system of salaries, but it will eventually cost the people more. Now, let us see the working of it. The section provides that the county commissioners shall employ an attorney whenever needed. I suggested the instance of a murder case. If there is not a regular county attorney to look after that, what attorney is going to take hold of a single case for less than $100 or $200? Suppose you have three or four cases of that kind in a year in your county, where do you land? In having a regular county attorney he will work for less for the whole year than you can from time to time employ an attorney to take the single cases. And absolutely, you will require an attorney; you cannot get along without one, because the district attorney may be in a distant part of the district. Now, then, the county commissioners are going to employ some attorney to attend to some important case, pay him $100 or $200; next week another case comes along, and the county commissioners have got to employ an attorney again, and where will you land in the end? I say your expenses will be far more in the end that if you had a regular county attorney employed. I do not propose by this amendment to absolutely fix the fees of the county attorney. I simply put it in the constitution so that the legislature may, if they deem best, after awhile, make a law authorizing the selection or appointment of a county attorney. As it is, if you adopt this section as it is, the legislature is forever debarred from providing any law by which a county attorney can be elected or ever provided. You leave it then to the county commissioners to employ whom they please at any salary or at any fee, and I submit to any lawyer or to any practical man, if in the end the county wlil not have to pay out more by this fee system than it would by having an office established and a party elected and paid some small salary, which the legislature can fix.

Mr. PYEATT. Don't the county commissioners have that right now and exercise it?

Mr. BEATTY. Yes, they do, and that illustrates just the working of the law. When they do employ an additional attorney, often it costs $400 or $500 for a single case.

Mr. PYEATT. Would you be willing then in this case, provided we had county attorneys, to fix it so that the county commissioners should not pay a high salary?

Mr. BEATTY. Yes.

Mr. MORGAN. I think the gentleman is mistaken with reference to the expense of this matter. The result is just as Mr. Beatty stated in his question to the gentleman. In our district I know of my own knowledge, at the last term of court in the four counties of the district they had the county attorney elected under the present system, and paid him a salary. In our own county he gets $2,500 a year and quite a large salary in Bear Lake county, and I think $1,200 a year in Custer county, and I believe $1,200 a year in Lemhi county, and in each one of those counties at its term of court the county commissioners employed additional attorneys to do their business, on account of the incompetency of the attorney who was elected by the county. As the system is now, they employ additional attorneys, and if you permit the legislature to do this thing again, the gentleman will come here and help draw a measure for county attorneys in each county. I don't wish to say anything against the attorneys elected, but it is a very common thing to elect men incompetent to fill the positions they occupy, and in my county, to my certain knowledge, they haven't an attorney who would take it who is fit for the position —two or three counties I know of. So that if you allow the commissioners to employ attorneys, they can employ them by the year, or for particular terms of court. And it will not be one-fourth of the expense it is under the present system, and I think these attorneys ought to be elected for the district, and then we can get a good attorney, who will accept it, because it will be a good office, and for any counties that are far away from the

residence of the district attorney, if they desire to employ counsel, they can do so, and the commissioners are generally shrewd, careful business men. They are elected to look after this business, and they will go to an attorney and make friends with him, and if he is not satisfied with those terms they will go to another, whether in their county or out of it.

Mr. BEATTY. You say there are some counties in which there are no responsible or proper representatives?

Mr. MORGAN. Well, I say then they can get them in another county. There will always be attorneys in attendance on court who can do the business, and they can make their own terms and selection, the same as a man does when he hires an attorney. If they have an important case requiring more ability than ordinary cases, they can select him acordingly. I would be in favor of the system as has been stated by the gentleman from Nez Perce. It will save $30,000 a year to the territory if we adopt it. I have no question about it at all. And there is another matter that was not stated by the gentleman. These district attorneys get a very large amount of money in some counties on account of mileage. They are allowed mileage under the present law from the county seat, where the examination is held before a magistrate, for going there.

Mr. HAYS. For felonies?

Mr. MORGAN. Yes.

The CHAIR. The question is upon the amendment offered by the gentleman from Alturas, the amendment being to insert in line 6, after the word "established," the following: "except the office of county attorney."

Mr. MAYHEW. I understand there is to be no county attorney under our system? (Vote and lost.)

The CHAIR. The question is now upon the substitute offered by the gentleman from Nez Perce, the chairman of the committee. ("Question, question." Carried.)

The CHAIR. The secretary will now read the amendment sent up yesterday relating to sheriff and county assessor.

SECRETARY reads: No sheriff or county assessor

shall be eligible to re-election until the expiration of one full term after the close of the term for which he was elected.

Mr. REID. I second the motion.

Mr. MAYHEW. I hope that will not prevail. I think it will interfere with the office in our county. We have an old soldier in our county who is assessor, and has been for ninety odd years, and I hope they will continue him in there for life.

Mr. SHOUP. I think this amendment will keep the sheriff and assessor out of office for two terms the way it reads. The election will occur before the expiration of one full term.

The CHAIR. The chair is of the opinion that the objection is not well taken.

The question was put by the chair, and a division demanded. Rising vote: Yeas 36, Nays 11; and the amendment was adopted.

Mr. REID. I now move the adoption of the section as amended.

The CHAIR. The secretary will read the section as amended.

SECRETARY reads: Section 6. The legislature by general and uniform laws, shall provide for the election biennially in each of the several counties of the state, of county commissioners, a sheriff, county treasurer, who is ex-officio public administrator; probate judge, who is ex-officio county superintendent of public instruction; county assessor, who is ex-officio tax-collector; a coroner and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be paid to them, or officially come into their possession. The county commissioners may em-

ploy counsel when necessary. The sheriff, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies as the business of their offices may require, said deputies to receive such compensation as may be fixed by the county commissioners. No sheriff or county attorney shall be qualified to hold the term of office immediately succeeding the term for which he was elected.

Mr. HAMPTON. I desire to offer an amendment.

Mr. REID. I would like to insert in that section after "deputies" the words "and clerical assistance." I ask unanimous consent to insert those words.

The CHAIR. If there is no objection the insertion will be made.

Mr. PEFLEY. Mr. President, I desire to offer an amendment.

SECRETARY reads: I move to strike out in the sixth line the words "no other county offices shall be established but," and insert after the word "such" in line seven the words "other county." Hampton.

Mr. REID. It will then read: "The legislature by general and uniform laws shall provide for the election * * * of such other county, township and municipal officers." it just restores those things.

Mr. HAMPTON. I desire to state my reasons, Mr. Chairman. It seems to me it would be very shortsighted policy to—

Mr. HOWE. I call the gentleman to order. There is no second.

The CHAIR. I believe there was no second to the amendment.

Mr. MORGAN. I second it.

Mr. HAMPTON. This is to put it beyond the power of the legislature to establish any office it may see proper in the future. And I say it looks to me to be a very shortsighted policy. There may be developments of the resources and business in the counties and territory or in this new state that will require some new offices. I refer to the matter of irrigation, which is

fast becoming one of the most important subjects in the territory. The law as in force in Colorado and California provides for a water commissioner to regulate the matter of irrigation. And all men who know anything about irrigation by this time I think will recognize that an efficient system of irrigation requires that it be under the management and control and supervision of some officer. Under this section it seems to me that the legislature will be prohibited from adopting any system of irrigation, which would be according to the systems I mention in California. If the legislature is allowed in the future to establish new offices, this matter will be fully provided for. As it is, I do not see how it could be provided for. We might have counties that required a water commissioner; we might want a water commissioner for each county, and under this section it is not provided for, and it seems to me it would be a most important matter, and one which ought to be left to the legislature in the future if it should seem necessary.

"Question, question."

Mr. REID. Just one word in reply to the gentleman. The legislature is empowered, as I take it, under the articles already established, to provide for an irrigation board. That will be a state board, with ramifications in different counties, and will not be a man elected by the people as commissioner of irrigation, but the legislature can provide for that by the system of irrigation established under the general law. If we restore this, you will find, gentlemen, that every office they may establish, the legislature will take it as an indication that you want it established, and will come up and establish every office they can possibly add. And I have found that the curse of this territory is too much county government, too many county officers and salaries and things of that kind; and that is what we are trying to strike out. We have framed a system of county government, which shall be uniform. If we find in the future we have let the bars down or put them up too tight, we have provided a very simple way to amend the con-

stitution and submit an amendment to the people; that is, two-thirds of the legislature can provide for the amendment and submit it to the people at the next general election. It will only take about twelve months to amend that constitution in that respect. I think we were a little too loose in framing that amendment, but a majority of the committee thought differently. Now, if you provide that they may establish any county office, what will be the result? Just the evil the gentleman speaks of. Some gentleman will think it is a good thing for him to be commissioner of irrigation, and another man will want to be commissioner of roads, and the first thing you know you will have fifteen or twenty county officials, and the taxpayers will have to foot the bill. In Nez Perce county we have 725 voters, and we have $1,100,000 worth of property. There isn't a pauper on the county, there is nobody in jail, we are practically out of debt, and yet at this very moment I can produce the official figures to show you that we are paying $9,500 to the county officials, and I can today hire the same men to do the work for $2,500 or $3,000, not to exceed $5,000. That is the abuse we are striking at and hemming up. If we find we have made a mistake we can amend it very easily.

Mr. HAMPTON. I am opposed to the principle of the bill. You assume that the legislature has not sufficient judgment to deal with the matters the state is concerned in, and that you must prohibit them from legislating in regard to those matters, which they deem necessary. I am in favor of restricting expenses, I am in favor of economy; but I am not in favor of prohibiting the legislature from establishing such offices as the future may develop to be necessary to the wants of the people. I think the principle is wrong.

The question upon the adoption of the amendment was put by the chair. Vote and lost.

SECRETARY reads: Amendment offered by Mr. Pefley: Strike out all after the word "judge" in the fourth line to the word "new" in the fifth line.

The CHAIR. The effect of the amendment is to

take away from the probate judge the ex-officio character of superintendent of public instruction. Is there any second to the amendment? The chair hears no second. The question is upon the adoption of the section as amended.

Mr. HARRIS. Mr. President, I have an amendment.

SECRETARY reads: Move to strike out the words "who is ex-officio" in line 4.

The CHAIR. Is there any second to the amendment of the gentleman from Washington?

Mr. HARRIS. I will explain that it is to divide the office, and not have the probate judge ex-officio superintendent of public instruction.

The CHAIR. This is the same amendment which was offered by the gentleman from Ada. There is no second to the amendment offered by the gentleman from Washington.

Mr. PEFLEY. I second it.

"Question, question."

Mr. HARRIS. My amendment goes to this effect, that the probate judge shall not be ex-officio superintendent of schools, but that there shall be a separate officer. I do this in the interest of the schools. We are now laying the foundation of a state that we expect to be great in the future, but if we do not encourage the schools it will not be very great. I believe in a superintendent of public instruction in each and every county. I believe in the county board of education. I believe in having high qualifications for those persons who shall superintend all the educational affairs of the county. I want to see a thorough system of education in all the counties of the territory. I want to see teachers who are competent to guide and direct the footsteps of the children who attend the public schools, and when we are putting into this fundamental law of the land a provision that makes another officer superintendent of schools he has got to neglect the duties of one office or the other, and the chances are it will be to the neglect of the schools. I raise my voice now in defense of the school interests of the county, and assert that it is false

economy to take away from the children the taxes that have been paid for their education. There is no economy in it at all; it is a loss in the long run. I want to see the superintendent an independent superintendent of public instruction in every county, and I want to see him tolerably well paid, and then we will get good services.

Mr. PEFLEY. Mr. President, I am diametrically opposed to tailing the school superintendent on to the probate judge. I think that is one of the most important offices in any county, and there is more devolves on him in the future welfare of the rising generation than any other officer in the county. He should be a man chosen especially for his fitness in that position. He has more to do with the instruction in the elements of English education than any other man in the county. We have had some experience in that line in this county. We had that same combination once before, and it proved to be one of the most vicious and inexpedient combinations of dual offices ever in this county, from the fact that a man may be well qualified for probate judge and not have a single qualification for school superintendent. That has been our experience here, and if you fix it in this constitution so that we are tied up for all time to come, no matter how much injury it may work to us, we cannot alter it. It must stand. I am like my frend from Ada (MR. GRAY); I believe in leaving it to the legislature. I am satisfied from our own experience that it is all wrong to tail that on to another official. In fact, I am opposed to thus depriving the counties of their government and putting it on to the state. I believe the county should have an efficient county government as well as the state. It appears we have a ponderous state government already, and officials with great salaries, whereas our population could not make a decent county in any one of the large states, but yet they have all the great salaries attached and as many officials as they have there. I claim we want something in the counties, and for this particular office, at least, I contend it shall not be tailed on to another office.

Mr. REID. I will state to the gentleman that the objections urged by both the gentlemen were considered, and this question gave to the committee a great deal of trouble. We consulted with the judiciary committee, and those objections they have stated came up. We found this: I will read the salaries of the superintendents in eleven counties to see how they have been paid. Ada $400; Alturas, $800; Bingham $500; Custer $300; Kootenai $400; Logan $100; Nez Perce $500; Oneida $200; Owyhee $400; Washington $300. Now, in order to get first class talent you must pay more; you cannot get them for that salary. Any man knows that. It requires a man to be superintendent of public instruction of a good order of talent, and an educated man. He can make that much money at most any business. Now, we take the probate judges, and I will read you the salaries paid them in eleven counties: Ada $600; Alturas $1,000; Bear Lake $200; Bingham $900; Custer $600; Kootenai $600; Logan $200; Nez Perce $700; Oneida $500; Owyhee $500; Washington $475. You want to get a good man for probate judge, and for them that is the salary in addition to fees; I don't know whether the superintendent of public instruction can get fees or not; if he does, they don't amount to much. By combining the two offices we can get first class men. Pay him the fees, and pay the minimum—and you can get good men for the salary. The probate judge is not busy all the time. His court is always open, and ought to be; but in these new counties there is not a great deal of business in the estates of deceased persons; there are not many estates to wind up, and he has a great deal of leisure. For visiting the schools, going around and looking after them, he can be allowed fees and commissions, whatever they fix on, the maximum and minimum being fixed in the next section; and by uniting the two offices we think we can get good men to fill both; one who has intelligence and integrity and executive ability enough to be probate judge, and it takes the same order of talent to be a superintendent of public instruction.

Mr. HARRIS. In reply to the gentleman from Nez Perce, we can find a person who has another occupation besides being simply school superintendent for that office. We can take the principal from the best school in the county, and he will have time during vacations to go around among the other schools.

Mr. REID. I will ask the gentleman right there, if we take the school teacher at the very time his school is in session, all the other schools are in session.

Mr. HARRIS. He can have it adjourned to meet that contingency, but he could not name a professor in his place. There is no need of having a big salary attached to it. There is some derision at the idea of raising a voice in favor of the schools, but I will always uphold the interests of education. It is not money thrown away if it does cost a little more to have an efficient school system, and I don't know how it can be done unless we have a superintendent at the head who has his heart in the matter and will work and will have good laws to back him, and then we will go forward. We are away in the background with our schools. I know plenty of counties where they have little boys and girls teaching schools. They could not begin to get certificates if they had to come down to the rigid examinations required by the California law. I would like to start off well while we are laying the foundation for our state. That is what I want to see, and I raise my voice in favor of having a separate officer to take charge of our schools.

Mr. MORGAN. I call the previous question on this amendment. (Seconded.)

The CHAIR. The previous question is demanded upon the amendment offered by Mr. Harris. The question is, shall the motion of the gentleman demanding the previous question be sustained? (Carried.)

The CHAIR. The previous question is ordered. The question now recurs upon the motion of the gentleman from Washington to strike out certain words.

Mr. HASBROUCK. I would like to hear it read again.

SECRETARY reads: Move to strike out the words "who is ex-officio" in line 4.

Mr. HASBROUCK. It will be observed that that line—

The CHAIR. The chair informs the gentleman that we are operating under the previous question. The question is upon the adoption of the amendment offered by the gentleman from Washington. (Vote and lost.)

Mr. REID. I move the adoption of the section as amended.

Mr. MAYHEW. I call for the reading of the section as amended.

The secretary reread the section as finally amended.

Vote and carried. And Section 6 was adopted.

SECTION 7.

Section 7 was read.

Mr. REID. I will ask to divide that question, first on the sheriff, and move an amendment so that it will read, "sheriff, not more than $4,000 and not less than $1,000," and insert "one thousand" in the place of "fifteen hundred" in line 3. The minimum fees I have ascertained are higher than they are paying in some of the counties now, and that is the reason I do it. I submitted it to the committee, and they agreed with me to lower the minimum fee, and I move that "fifteen hundred" be stricken out in line 3, and the words "one thousand" inserted.

Mr. Morgan in the chair.

The question was stated by the chair.

Mr. HAMPTON. Since we have made the amendment we did in the other section this morning, I am opposed to this. I understand now the county commissioners may provide these officers, where there is a large amount of business, deputies, and pay them; and it seems to me in that view of the case, the maximum is too large and the minimum too small.

Mr. REID. If the gentleman will move to cut down the maximum. I will accept the amendment.

"Question, question." Vote and carried.

Mr. REID. I move now that line 5 be amended by striking out "fifteen hundred" and putting "five," so it shall read, "clerk of the district court, who is ex-officio auditor and recorder, not more than three thousand dollars and not less than five hundred dollars." (Seconded.)

Mr. MAYHEW. I desire to offer an amendment.

Mr. PARKER. I have an amendment.

SECRETARY reads: Substitute for Section 7. The legislature shall by law classify the several counties according to population, and shall grade the compensation of the officers within the respective classes according to population. Such law shall establish scales of fees to be charged and collected by such county and precinct officer as may be designated therein for services to be performed by them respectively; and where salaries are provided, the same shall be payable only out of the fees actually collected in cases where fees are prescribed. All fees, perquisites and emoluments above the amount of such salary shall be paid into the county treasury. (Seconded.)

Mr. REID. Before that is put, I would call attention to the fact that this substitute is virtually the same custom we have now. I hope it will not be adopted.

Mr. PARKER. I have introduced that substitute of mine, not with any expctation of getting it passed, but simply to invite the attention of the convention to the fact that the salaries as reported in the report of the committee are entirely too high for my county. It is reported in this article that the salary of the sheriff shall not be more than $4,000 nor less than $1,500. Now, today our sheriff has $1,000, which is more than he is entitled to, because he has nothing whatever to do; we have not had a man in our jail for three years.

Mr. REID. Let me interrupt you. We have just cut down the sheriff's salary to $1,000.

Mr. PARKER. Well, I am speaking to my amendment. Now, our climate is so infernally healthy that nobody ever dies there, and we have no need for a probate judge at all. And yet the salary of the probate

judge and ex-officio county superintendent of public instruction is "not more than $2,000 and not less than $1,000" which is $500 a year more than we are paying in our county today, and that is $500 too much, for he has nothing to do. The salary of county assessor is fixed at the minimum in my county, so also is that of auditor. We have no use for a county surveyor nor for a county coroner. Nobody ever suicides in our county, Mr. President; we are content with life as we are. Under the present law the county surveyor gets fees for what little work he does.

The question was put by the chair. Vote and lost.

Mr. REID. I now ask for a vote on the amendment I sent up.

SECRETARY reads: In line 5 strike out "fifteen" and insert "five."

Mr. REID. That will say then, "auditor and recorder not more than $3,000 and not less than $500."

Mr. MAYHEW. I have an amendment to the same effect.

Mr. McCONNELL. I have an amendment also.

Mr. CAVANAH. I have sent up an amendment too.

The CHAIR. I hope each gentleman will address the chair, and I will then endeavor to recognize every gentleman so that the secretary may keep the amendments in regular order.

SECRETARY reads the amendments in the following order: Amend Section 7 by inserting after "dollars" in line 13, the words "forty cents one way." Cavanah.

Amend Section 7, line 2, by striking out the words "four thousand" and inserting the words "two thousand." McConnell.

In line 5 strike out "fifteen" and insert "five." Reid.

Mr. MAYHEW. Well, my amendment was sent up some time ago, and Mr. Reid immediately offered an amendment afterwards.

The CHAIR. The gentleman's amendment will be read and voted upon.

SECRETARY reads: Amend Section 7, line 2, by

striking out the words "four thousand" and insert the words "two thousand." McConnell.

Amend Section 7 by inserting the words "and constables" after the word "fees" in line 13. Pinkham.

Amend by striking out the word "three" in line 4 and inserting the word "four." Mayhew. (That is all.)

Mr. SHOUP. I second the last amendment.

Mr. MAYHEW. I desire to say this: I see by this section that the fees provided by the section, "sheriff not more than $4,000 and not less than $1,500. Clerk of the district court who is ex-officio auditor and recorder, not more than $3,000 and not less than $1,500." It cannot be disputed, Mr. President, by anyone, I presume to say in this convention, according to my opinion, that the office of clerk of the district court, and ex-officio auditor and recorder is one of the most important offices there is in the gift of the people in any county. I regard the office as being thought of more importance than that of sheriff, and the labor which the office of the recorder and clerk of the court has to perform is more arduous and of greater responsibility than that of sheriff. And for this reason. The clerk and recorder has that character of duties to perform which involve the great interests of the people of the county. Now, mark you, he is not only clerk of the district court, whose duties there to a great extent require his attention, and when it comes to being auditor and recorder his duties in that office are absolutely greater than those of sheriff, but he is required to be there constantly at his office, either himself or his deputies, for which he has to be responsible. So far as the transfer of property is concerned, the recording of deeds, mortgages, liens, and many other official duties, which he has to perform, he has the welfare of the county in his hands, and greater responsibilities than those of the sheriff. The sheriff's is a ministerial office simply, and is at the command of the courts of the different counties, district, probate and justice of the peace, and he can only arrest those parties for which a warrant is placed in his hands to serve, or serve summons and subpœnas that may be directed from

the different courts of the county. That is the duty of the sheriff, and I cannot think that the sheriff's office has so much importance as to give him $1,000 a year more than that of recorder. So far as I am concerned individually, I am opposed to this system altogether; but as it seems to be the disposition of this convention to adopt this system as reported by the committee that have in charge this article of the constitution, I don't propose to interpose my objections to the report farther than in relation to the salary of the offices. I say if members of the convention will reflect a single moment they will see at once that the recorder and auditor of the county is such a responsible officer, and one who has enough command of the interests of the people of his county in their business transactions so far as recording instruments and taking care of their real property and personal property, that it makes it equal to that of sheriff. And I am therefore opposed to making that office less in grade than that of sheriff. These offices in the general view of the people are regarded according to their fees or salary, but if you will reflect a single moment you will see that the responsibilities of the clerk and recorder are greater than those of the sheriff; and for that reason it is an office on an equal footing with that of sheriff, and should be made equal in the way of salary. I hope my amendment will prevail. I think absolutely without any exaggeration or any argument on my part, farther than I have stated already, the office of recorder should have $4,000. You say the sheriff shall have $4,000 and why not the recorder, when his duties are equal in responsibility to those of the sheriff. That is my idea in offering this amendment; it is not for the purpose of delay or anything of the kind. Furthermore, I desire to say, if my time has not expired, that while we are taking into consideration these offices, I believe the best system is to grade these offices according to their duties and responsibilities; and when you place upon their hands such responsibilities you should pay them equal to the labor they perform. I see nothing in this section that struck

me as placing these offices upon an equal footing, and I think there should be, from the fact of their equal responsibility.

Mr. McCONNELL. The duties we require of the auditor and clerk of the court will be merely clerical duties. Now, the question for this convention to consider is, why should an officer who goes to his office at half past seven or eight or nine o'clock in the morning and performs clerical work during the day, receive double the salary of another gentleman who goes to the office and assumes equal duties and responsibilities. I will venture to say there is not a clerk in a mercantile establishment in this territory that receives the salary this article provides for the auditor. The section already adopted provides that they shall have deputies, and those deputies shall be paid by the counties. These gentlemen of course assume charge of the office; the auditor goes there at a certain hour in the morning and performs a certain number of hours work. What work he cannot perform during those hours will be performed by deputies employed and paid by the county. I will venture to say I have as good clerks as there are in any auditor's office or any district court in this county, and the highest salary I pay any one of them is $150 a month, and I venture to say they perform more hours' labor, and their responsibilities are just as great. And when we go home to the people they will inquire about these things, and inquire why we provided such salaries may be charged. We see already the work of the Washington territory convention being scrutinized. I hold in my hand an article written by the reporter from Walla Walla, which shows the views among the farmers. (Reading from the *Oregonian*).

"Walla Walla, July 31. A canvass by your correspondent among the farmers during the past few days failed to find a single one favorable to the new constitution thus far made. A majority of the business men talked with also object. As matters now stand, the constitution promises to be voted down when submitted. The objection seems to be not only on account of the evident increased taxation, but a belief that in general the con-

vention is exceeding its powers and endeavoring to assume legislative functions.

"The prohibitionists, suffragists and religionists will surely oppose the document. The general belief is that too much time is taken to formulate the same, and too many buncombe speeches being made."

I do not see any reason why an auditor or recorder should have $4,000 a year, when a clerk performs longer hours' service and can be employed for $1,800 a year, and I will venture to say I can get the same work performed as effectively for $1,200 per annum, as I am paying $1,800 for. And the time will soon come when this matter of high salaries will have to be passed upon by the people, and the people will have to work for lower wages. Why, we are barely making a living in the convention.

Mr. GRAY. In answer to Mr. Mayhew, I will say I think his position is not a sound one. He is putting the importance of the recorder's office equal to that of the sheriff. It perhaps needs a man of equal ability, but it requires a different man. I will state one thing that he forgets: The expenses that the sheriff has to incur. In the performance of his duties he has to keep from one to probably three horses for that service. He has to be out in the country, he has to pay travelling expenses, and instead of being at home where he can go to bed at bed time and get up at the proper time in the morning and have his regular meals at home, he has to be travelling about, and in fact, there is a great deal of disagreeable duty that devolves upon the sheriff's office. Probably he may often see times when he would be willing to be out of the place for all the salary of the year. But the county forces him to take those chances, and he has to take chances, I might say, of his life. There are still more disagreeable duties connected with the sheriff's office. If there is an execution under the law he has to perform it; and with all the criminal business connected with the sheriff's office, it is more or less disagreeable. He has to have charge of all the bad men during the time they remain in the county jail; he has

to arrest them and take all other chances, and in the night time as in the day time. He has to go into all those disagreeable places, and travel perhaps in the mountains for that purpose, and when the gentleman from Shoshone compares these two offices, he fails to see the reponsibility, the danger, and I may say, the disagreable portion of that particular office. And as I have said before the expense attending it is a great deal. He has to have horses, and those expenses are not reimbursed; they will come out of his salary. I think the comparison is not correct. As it has been stated by the gentleman from Latah, the duties of recorder, are largely, if not all, clerical. He has to take care of the records, it is true; he has to make the records, and for a competent man that is not so very hard to do, both the records of the courts and of the recorder's office. Now, I understand from this bill you are not depriving the recorder from taking fees. Am I correct in this?

Mr. REID. The recorder takes the fees up to the maximum, and then the fees are paid into the county treasury. If the business is so great he cannot transact it, we have provided that he may employ additional clerical assistance.

Mr. GRAY. And all that is paid outside of his salary.

Mr. REID. Yes.

Mr. GRAY. But he gets no fees?

Mr. REID. That is the way he is paid.

Mr. GRAY. And he is not paid over this amount?

Mr. REID. No, when it reaches that amount he pays it into the county treasury.

Mr. GRAY. Well, I will agree this far with the gentleman from Latah, that I think $3,000 a year will employ a good man when he is to no more expense than he is ordinarily. I am not in favor of cutting down the sheriff.

The question on the motion to strike out "three" in line 4 and insert the word "four" was put by the chair. Vote and lost.

SECRETARY reads the next amendment: Amend

Section 7 by striking out the word "fifteen" and insert "five." (Carried.)

SECRETARY reads the next amendment: Insert after "dollars" in line 13 the words "forty cents one way."

Mr. CAVANAH. I will withdraw that and offer this in lieu of it.

SECRETARY reads: Strike out all after "law" in line 12 to the word "and" in line 13; strike out the words "not to exceed $500."

Mr. CAVANAH. There is no provision made in the bill for mileage. There is no doubt $500 a year is not high enough for those large counties. In our county $200 is ample, but some of the members have to travel a long ways. Their mileage is considerable. And it is not doing justice to the commissioners that live a long ways from the county seat. It is supposed they are elected from different parts of the county, and I don't think that one who is unfortunately away from the county seat should be compelled to bear the expense of travelling from the county seat.

Mr. BEATTY. I thought a motion had been made to take up these offices and dispose of them in regular order. I make a motion now that we consider these offices class by class so as not to get our amendments mixed.

The CHAIR. The chair is of the opinion that that does not take precedence of the present motion, which is to amend this section.

Mr. REID. We can by unanimous consent, and as suggested by the gentleman from Alturas, we will make more rapid progress.

Mr. CAVANAH. I am willing though.

The CHAIR. If there are no objections made. Unanimous consent is given to take up each office. The next one is probate judge.

Mr. REID. I offer this amendment to line 6.

SECRETARY reads: In line 6 strike out "one thousand" and insert "five hundred."

The question was stated by the chair.

Mr. HAMPTON. Are we precluded from offering amendments as to sheriff or clerk now?

Mr. REID. I thought we had disposed of those.

Mr. HAMPTON. If that is the object, I object to it.

The CHAIR. I think we had better proceed, Mr. Reid.

Mr. REID. Well, I did not want to cut off any debate.

The CHAIR. The chair does not propose to do so either. We will permit the gentleman to offer his amendment after we get through with this section.

The question upon striking out "one thousand" and inserting "five hundred" was stated by the chair. Vote and carried.

Mr. REID. I offer the following amendment to line 8: strike out "one thousand" and insert "five hundred." I will state the reason I am moving to strike out these minimum amounts. In looking over the salaries I am putting the maximum amount so they will cover the amounts now being paid. I notice some counties do not pay higher than $600 to the assessor.

Mr. SHOUP. Wouldn't it be just as well to strike out the minimum altogether?

Mr. REID. No, in some counties possibly it may fall below that. It may be such it will not pay at all. That was the reason suggested to the committee. Some gentleman came in and stated, "If you do away with the salary system altogether, you could not get an officer to do even the little business there is to be done. In this county the office is really productive. But we fix the minimum so it would barely support the office.

The question upon striking out "one thousand" and inserting "five hundred" in line 8 was put and carried.

Mr. REID. I now move the following amendment in line 9: Strike out "four" and insert "three."

Mr. MAYHEW. That is in relation to treasurer, is it not? I hope that motion will not prevail, for this reason. The treasurer of the different counties is a responsible officer; he has to give large bonds, and I do not care how small the county may be, if he is

responsible and performs his duties faithfully he should be paid for it. I think $400 is enough. He holds this political office, and it makes no difference what his business may be which he is engaged in, he is required to sacrifice that business all the time to perform the duties of the office. He may be engaged in business involving a considerable amount, and then on account of his official duties he must sacrifice his personal engagements and his business. And so in consideration of that fact I think he should have $400 a year. This thing of saying that if a man does not want this office he need not seek it, does not meet the question. The people in the different counties of this territory will seek and endeavor to nominate, in both political parties, men for that office that are the most responsible; not responsible pecuniarily only, but responsible in various ways, the most honest and careful men in the county. The treasurer of our county a year ago, when I had occasion to call his attention to some matters of public administration, said to me, "My business is such that I have got to sacrifice a great deal of it to attend to the business as public administrator." It takes a man from his business. He cannot deputize anyone to do it, but he must seek the business and attend to it as public administrator as well as treasurer. And I say, that unless a man will seek that office for the mere honor that is in it, we will not get a person who is capable; but that is not always the case. A man may be surrounded by affluence and be a wealthy man; and yet not for that reason alone be qualified for office; yet, the wealthy man can attend to the business of this office, because he has no other particular business, or he can hire some person to attend to his own business. I say it should not be stricken down to $300.

Mr. HEYBURN. That is the minimum.

Mr. MAYHEW. Very well, I am opposed to the minimum. I think it ought to be not less than $400 a year.

Mr. REID. The reason we put it at that, the county treasurers' salaries are as full as I could get them.

Mr. MAYHEW. Where does Shoshone come in?

Mr. REID. No member of your delegation knew what it was.

Mr. SHOUP. The treasurer of Custer county gets $700 a year and gives a bond for $22,000.

Mr. GRAY. Whatever he gets as administrator is fees, and that is an addition to what the salary is at the present time as read there. Now I understand that is to be taken into account in the salary.

Mr. REID. That is it.

Mr. GRAY. Then I should certainly agree that it should not be cut down.

Mr. REID. It does not cut the salary down. We found we were putting the minimum higher than we are paying them now, and that is the reason we cut them down. The reason of the purpose now of cutting it down from $400 to $300 is that here are two or three counties only paying $300. In counties where the officer is public administrator the commissions as treasurer run it up higher than that; he can go to $1,000. We thought $1,000 was enough for the treasurer in any county. That is all you pay the state treasurer, and he will have to give $100,000 or $200,000 bond. So we put the maximum at $1,000 and the minimum at $300. If the money he handles does not amount to $300 you must make it up; if it amounts to more than that you can go as high as $1,000, but when it gets to that the excess goes into the treasury.

Mr. MAYHEW. I do not desire to prolong this debate or speak at any length, but I have to say this in addition to what I have already said. We had last fall rather a warm political discussion and quite a contest for county offices. The republican candidate who ran for county treasurer in our county was successfully elected. Now, on account of the fees we got a good man; just as good a man as lives on God's green earth, I think, was the republican candidate. He saw that the fees of the office were so low that he would not qualify for $400. The former treasurer only got $400 a year, and I know from what business I had with that gentle-

man that it would not pay him to take the office. I know that he was engaged in business elsewhere, and in order to take charge of an estate involving a small amount of money, he had to sacrifice his business and travel a long distance. I sent for him myself, and the expenses of that treasurer were $30 or $40. He had to come home and go back again, and the fees and the amount of business he did would not amount to $15, and still he sacrificed thirty or forty dollars. Now, Mr. President, I don't believe in such economy as my friend from Nez Perce advocates here. I say that you get men in office that are inefficient to perform their duties; yet the gentleman seemed to argue that because the people in North Carolina, a cheap state (laughter), surrounded as they are by a different class of people from what we are in this country—men in this country have an idea that their services are worth more than they are in the states, and they are correct—were satisfied to pay their officers a mere pittance, we should do the same here. What they do in the states I know nothing about; I left the states in my infancy, and have been reared in these different territories. I say the highest priced man for office is the best, although I do not desire to be extravagant in this or any other measure; but I do say that $300 is too small for any respectable man who is responsible to accept that position. I don't care what they do in my own native state, New Jersey, the greatest old state in this Union (laughter). What are you laughing about? *The greatest state in this Union!* Has always adhered to the constitution and produced such a gallant troup of soldiers; and I have one in my own view from that state, who has done more for the preservation of the Union than any other, although I am travelling out of the question. But I say, Mr. Chairman, coming back to the question, let us have officers in the different departments of the county who are capable and efficient to perform their duties, and let us pay them for their responsibility. The small pittance of $400! What does the gentleman do? I am satisfied in travelling around in these political circles of the county you will spend over

$400 for that office, and nobody can have it but a responsible man. There are men seeking the office because there is money in it which they can speculate on, but if we make this officer responsible and pay him for it, he will not try to get even, otherwise than the salary which is given by the law. If you put the office out for nothing, there are plenty of men in the territory who will take it, take it without a cent. Why? Because they believe that during the two or three months they have the money in their hands they can speculate on it and make something out of it. An honest man won't do that. And I will say, to be just to the main party—I desire to be just to the party who opposes me in politics —that I think there are plenty of men in both parties, who are not just to themselves or the party or the people either.

Mr. BATTEN. We have spent about half an hour discussing what is nothing more or less than a cheese-paring proposition. I am in favor of economy, but niggardliness I am opposed to, and I think this mere drop of $100 is rather a cheese-paring idea, on the idea of niggardliness.

Mr. HOWE. I move the previous question.

Mr. BATTEN. I second the motion.

Mr. REID. I hope the gentleman will withdraw that amendment. These are important matters, just as important as fixing the state salaries. One gentleman in discussing it made a fling at North Carolina, and another made a fling at the niggardliness of the committee.

Mr. BATTEN. No fling at the committee.

Mr. REID. Well, a gentleman is supposed to mean the force of his words. The treasurer is getting $300 in Logan county. Is it niggardliness? The treasurer of Oneida gets $300. We wanted to fix the limit so that those two counties would not have to pay more than they pay now. So far as North Carolina is concerned, there are fifty North Carolina men, if you put this salary higher than a thousand dollars, that won't vote on this constitution. They are good honest grangers and ranchers, developing Idaho, and adding to its taxes.

Here is a North Carolinian, of the board of county commissioners, that gets up and speaks in the interest of economy. Why do we do it, gentlemen? I will tell you. The district attorney of our county and some other gentleman there are preparing a pamphlet to circulate in Virginia and North Carolina to try to get those people out here to help develop this country. And when we go there and tell them, as I have to write letters to them every week, that their taxes are going to be three and four dollars on a hundred dollars worth of property, and you will have these enormous county governments to support, they will go right where the farmers are making this trouble, as my friend read here about Washington territory, and you won't get a single settler from that country. They do live under cheap government, and they cannot understand these prices; and if you want to drive away immigration and keep people from locating here, keep on piling up your taxes, and have your expensive government, but not only that. The gentleman says you have got to answer to the people for this; and if you go before them and show that you have fixed it so that your county treasurer shall have more than your state treasurer, more than you are paying them now, those men in Owyhee will say "If we get into the Union we will have to pay our treasurer a hundred dollars more," and the men of Idaho county will say that, and they will say that if this is to cost more than that, we had better stay under territorial government. It was not niggardly, nor because we want to be so cheap and stingy about it, but for the best interests of the territory, and to meet a demand, that we had all these minimum figures put in, and then gentlemen came to us and told us we had the minimum rates higher than they were before.

Mr. MAYHEW. Mr. President—

The CHAIR. The previous question has been demanded.

Mr. MAYHEW. Just a moment.

The CHAIR. By unanimous consent the gentleman can proceed.

Mr. MAYHEW. I am glad the gentleman says he and some other gentlemen have gone into the writing of pamphlets to get immigrants out to this country, or people to come here. I hope he will be one of the members of that committee. I would like to say something in behalf of my own native state, New Jersey. I think the people from New Jersey are as good as they are from North Carolina or Virginia or anywhere else.

Mr. BEANE. I rise to a point of order.

Mr. MAYHEW. The gentleman doesn't understand what the point of order is; I am replying to the gentleman.

Mr. BEANE. Yes, I think I do understand the point of order.

Mr. MAYHEW. I don't desire to become personal, but I do desire to say this, to disregard any state in this Union, and let us perform a duty here according to the circumstances and our surroundings. I care nothing about Virginia or Pennsylvania or New Jersey; we are Idaho people. (Applause.) Let us become a state without being guarded by anybody or any particular section. I say the people of this territory are high minded, honorable men—those who seek for office, at least it has been my observation—throughout this territory, and I don't want any innovations made upon their prices and desires. I don't care where the man comes from, whether North Carolina, Virginia, Pennsylvania or New Jersey. When a man comes to live in the West as long as I have, and many of the men who compose this convention, he is not in favor of cheap labor. We are all opposed to cheap labor. I don't care what the class of people may be, whether negroes or Chinamen; we are opposed to cheap labor, and I believe in paying for the performance of those duties those men who have those offices, letting them get a legitimate living out of their office. If they are not entirely engaged in that business, put it at such a figure that if they have to sacrifice their private business they get paid for it. That is my idea about this thing, and I think I have spoken

to the point; notwithstanding my friend Beane thinks I was out of order.

The CHAIR. The question is, shall the main question be now put? (Carried.)

The CHAIR. The question is now upon the amendment of the gentleman from Nez Perce. (Carried.)

Mr. REID. I offer the following amendment.

SECRETARY reads: In lines 10 and 11 strike out the words "not less than two hundred."

Mr. REID. It strikes out the minimum. This office will be paid by fees, and it provides that whenever the coroner gets as high as $1,500 the excess shall go into the county treasury, and if he gets no business, he won't get any pay. The same way with the county surveyor. I find there are no salaries paid those officers, and I strike those words out so it leaves the maximum, which they can get.

Mr. MAYHEW. This is in relation to coroner and surveyor. Now, I say, for a coroner to get $1,500 and not less than $200—what does the coroner have to do? In the event the sheriff is interested in a law suit, or in the issuing of a writ, then the coroner has got to serve those papers, where the sheriff is incapacitated for doing so. The coroner has to do what? If anybody is found dead or drowned or killed, where there is no person at all present, then it is his duty to call a coroner's jury to ascertain how that man came to his death. And again, the coroner should be a physician; he may have the supervision of the health of the county, and the legal person according to the law passed by the legislature to regulate hospitals and pest houses and things of that kind; that is all of his duty. I don't know what the county commissioners may do in different counties, but I say for the coroners in our county it is far in excess of their necessary duty, and I hope this amendment will be for the coroner not to exceed $250 anyhow.

Mr. REID. I will accept that, but there might possibly sometimes a murder be committed, which the coroner would have to investigate perhaps a week or two. Take that Cronin murder in Chicago. Looking

at that emergency that possibly the coroner might be engaged sometimes two or three weeks at a time, we put this limit. If the convention think that limit is too high, cut it down. I think one gentleman remarked to me that the coroner in his county would perhaps run as high as $1,000. Others informed me that one investigation sometimes costs $150 or $200. But if this is too high, and some gentlemen, who are familiar with these matters will indicate it, I am sure the committee will have no objections to cutting it down, and cutting the minimum out altogether.

Mr. HEYBURN. I think our coroner's office last year probably amounted to $1,200 or $1,500, paid in civil cases where the sheriff was not competent to act. I think the gentleman from Shoshone has a wrong idea of the working of this matter. He speaks of the county commissioners allowing the coroner so much. The county commissioners cannot allow him anything under this provision with the amendment suggested by the gentleman having the bill in charge, because he only gets fees, and if he does not make any fees he does not get anything. He cannot get paid for anything he does not perform services for under this bill, and the commissioners cannot allow him a cent out of the treasury. It is fair to presume that if he performs services, which the law says he shall perform for so much, he might get the fees. I know in one case last year in which our coroner was unfortunately crippled and laid up for months, and it doubtless cost him a great many dollars, while serving papers. In one of the mountain trails his horse fell off with him, and he was seriously injured. He was called for and set out about evening, and travelled all night in the mountains to perform this service, the sheriff not being competent to perform those duties. His duties are pretty expensive and perilous sometimes.

Mr. GRAY. You say that your coroner receives so much. He gets that for his service as sheriff, does he not?

Mr. HEYBURN. Yes.

Mr. GRAY. It is not his duties as a coroner. When

he acts as sheriff in the event the sheriff is disabled, or he takes the office, he is paid the same as a sheriff.

Mr. HEYBURN. Yes; but what fund would that come from? It certainly should not come out of the sheriff's salary.

Mr. GRAY. It would come out of the county.

Mr. HEYBURN. The next section provides that they shall receive no pay from any source, except the fees.

Mr. GRAY. These fees have all got to be fixed by the legislature; and in the event of fixing the fees by the legislature, if they fix a fee for the sheriff, would not that be a fee for the coroner?

Mr. HEYBURN. All I want is that he shall receive that fee, but not that there shall be maximum fees.

Mr. GRAY. At the present time when he performs the duties of sheriff he receives the same compensation.

Mr. HEYBURN. But it is provided so the sheriff shall not receive any compensation above the maximum. Now, suppose the first six months of the year he runs to the maximum; in the last six months there would be no credit from which the coroner could draw.

Mr. GRAY. While he is acting as sheriff he gets the fees of the sheriff; and when he is acting as coroner he gets the fees of the coroner.

Mr. HEYBURN. If he gets the fees of the sheriff, and the sheriff has already exhausted the maximum fees of $4,000, where would the coroner come in?

Mr. GRAY. The county must pay him this fee.

Mr. HEYBURN. But the next section says it shall not.

The CHAIR. The question is upon the amendment offered by the gentleman from Nez Perce. (Carried.)

Mr. REID. I was going to offer an amendment after the words "five hundred dollars" in line 13, so as to read that the county commissioners receive "such per diem as may be prescribed by law, not exceeding five hundred dollars in the aggregate;" but I understand some other gentleman wants to offer an amendment that

would cover that, and I am willing to accept the amendment offered by the gentleman from Alturas (MR. PINKHAM) to include "and constables" after "justices of the peace," and I will not offer that until I hear what these gentlemen propose.

SECRETARY reads: Strike out all after "law" in in line 12 to the word "and" in line 13.

Mr. CAVANAH. That just leaves it to the legislature. There is no provision for per diem there, and in some counties it is not high enough. In some counties they hire and pay $600.

Mr. REID. He would have to put in "such per diem and mileage" and then strike the other out.

Mr. CAVANAH. Leave it to the legislature.

Mr. REID. Insert "and mileage" after the word "per diem," but leave it to the legislature to fix the amount.

Mr. CAVANAH. I will accept that amendment.

Mr. REID. The only question is, shall we leave this to the legislature to fix up the amount to be paid the commissioners or shall we fix a limit?

Mr. GRAY. It would be manifestly unjust to leave it as it is now. Suppose there is a county commissioner living at the county seat; he boards at home, gets $500, and the man that has to come forty miles loses all his time travelling there, and probably has to board at the hotel. Certainly if it remains as it is now, there should be mileage besides the $500.

The CHAIR. The question is upon the adoption of the amendment suggested by the gentleman from Elmore to strike out the words "not to exceed five hundred dollars" in lines 12 and 13 and insert the words "and mileage" after "per diem" in line 12. (Carried.)

Mr. REID. I will accept the amendment of the gentleman from Alturas (MR. PINKHAM), and insert after "justices of the peace" the words "and constables." I think there are no other amendments to be offered, and I now move the adoption of the section as amended.

Mr. SHOUP. I ask the gentleman, having the bill

in charge, if it will not be necessary to mention constable in Section 6, which refers to the officers?

Mr. REID. No sir, if the gentleman will notice, it says, "The legislature may provide for township, precinct and municipal offices." Constable is a precinct or township office.

Mr. SHOUP. But it also says the officers provided for in Section 7.

The CHAIR. I understand the words "and constables" are inserted by unanimous consent after the word "peace" in the thirteenth line.

Mr. BEATTY. If I did not misunderstand this section as it now stands, and the bill together, it is now left so that officers shall be entitled to the maximum fees prescribed if the fees prescribed by the legislature shall amount to that. Now, I desire to suggest in that connection, that if it is left in that way, the legislature may prescribe such fees as to make these maximums in every county in the territory. The result is going to be that at every session of the legislature the officers from all over the territory will be here working upon the legislature to increase their fees. Let us see what it will amount to. Provided we can get the legislature to raise these fees in the county, the offices of sheriff, clerk, probate judge, assessor, treasurer, coroner and surveyor, taking the maximum fees it would amount to $15,500. Now, if we put no further limit on this, it leaves it in that way, that the legislature may so increase the fees as that in any county in this territory the fees may amount to the sum of $15,500 for those different officers. The sheriff's maximum is $4,000; the clerk is $3,000; probate judge $2,000; assessor $3,000; treasurer $1,000; coroner $1,500; surveyor $1,000. That amounts to the whole sum of $15,500. Now, I do not say that any legislature will go so far as to make the fees so high that it will amount to that; but you leave this loophole open, that at every session all the officers in this territory will be here by themselves or proxy to increase the rates of fees; and the result is going to be that every man that has litigation or anything to do

with county business will have to pay enormous fees. Then when it gets to the maximum, of course that balance goes to the county treasury. In other words you are so fixing it that people who have business and litigation in any one of these counties have got to pay enormous fees, and a surplus goes back into the county treasury. Now, Mr. President, I think one provision of our present law should be incorporated in this, and if that is incorporated, I would be willing to vote for the section as it stands, and that is to leave it to the county commissioners to fix the amount of these salaries or fees between these maximum and minimum amounts. Then the result will be that the county officers will have no motive—

Mr. AINSLIE. I move we take a recess until two o'clock. (Carried.)

AFTERNOON SESSION.

Convention called to order by the president.

The CHAIR. The unfinished business before the convention is the further consideration of the article on Counties and County Organization.

Mr. REID. I move the adoption of the section as amended. (Seconded).

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 7 by inserting in line 3 after the word "dollars" where such word occurs the second time, the words "together with such mileage as may be prescribed by law." (Seconded.)

Mr. HEYBURN. The object of that amendment is this: There is no provision made, and I think under the section as it stands none could be made, for the payment of mileage in civil cases or any other class of cases for service of process. The entire amount that is allowed to the sheriff as the maximum by this article, in our county would be absorbed in the expenses of travel incident to the service of process. The expense of the sheriff's office in our county runs over $3,600 a year incident to that particular service; and unless he is allowed mileage in addition to the fees allowed, the sheriff would be in debt at the end of the year

and would not have his board. The sheriff must necessarily be away from home nearly all the time. Sometimes when he starts out to serve process, civil or criminal, it is necessary for him to hire and change his horses three or four times. Our county is about one hundred and twenty miles in length, and if it is necessary for the sheriff to travel the length of that county his expenses will amount to a very considerable sum of money. When he is away from home he has to pay out in cash for his meals, his lodging and the keep of his horse. Those expenses are not provided for by this article as it now stands.

Mr. REID. I accept the amendment. The intention of the committee was to give the sheriff his salary net, and this mileage will not come out of the taxpayers, but only those who have business with the sheriff's office, as the fees do. But as the gentleman says, the committee overlooked the mileage businss as to the sheriff. It would take nearly all his salary to cover the expenses, and it was intended to give him that for his work, and I will accept the amendment.

The secretary rereads Section 7 for the information of the convention.

The question upon the adoption of the amendment offered by the gentleman from Shoshone, which was accepted by the chairman of the committee, was put by the chair.

Mr. HAMPTON. I do not know whether the gentleman contemplated that this mileage should cover the criminal business also.

Mr. REID. I will explain that. The sheriff will receive fees in criminal cases as in civil cases. Where a defendant is convicted and is solvent of course it carries costs and he will have them to pay. Where he is insolvent, both fees and mileage come out of the county. That is the practice where the officers are paid by fees. ("Question, question.")

The question was put by the chair. Carried.

The CHAIR. The question now recurs upon the motion to adopt the section as amended. (Carried.)

Mr. HASBROUCK. Your committee on Engrossment is ready to report.

ARTICLE VII.—FINANCE AND REVENUE.

SECRETARY reads: "Mr. President: Your committee on Engrossed Articles of the constitution have had under consideration the article on Revenue and Finance, and find the same correctly engrossed. Hasbrouck, Chairman."

The CHAIR. The question is upon the final passage of the article just reported. The secretary will read the article.

SECRETARY reads the engrossed article referred to.

Moved and seconded that the article be adopted.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, King, Lamoreaux, Lewis, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Steunenberg, Stull, Sweet, Taylor, Underwood, Vineyard, Whitton, Mr. President—51.

Nays: None.

The article was adopted and referred to the committee on Revision and Enrollment.

COMPENSATION OF STENOGRAPHERS.

Mr. HASBROUCK. Mr. President, your committee on Ways and Means desire to report.

SECRETARY reads: "Your committee on Ways and Means have had under consideration the matter of fixing compensation of the stenographers of this convention referred to them by the convention, and recommend they be allowed $15 per day for the number of days the convention has been in session, and if their services are required after the convention, that they shall not be allowed to exceed $10 per day after said adjournment."

Moved and seconded that the same be adopted. Carried.

SECTION 6, ARTICLE XVIII.— COUNTY ORGANIZATION.

The CHAIR. Before proceeding to the pending order of business, I wish to call the attention of the convention to the fact that Mr. Shoup pointed out some objections to the amendment which was adopted to Section 6 with regard to non-eligibility of assessor and sheriff. I did not catch the objection at the time it was made, but on adjourning I found the objection was well taken, that the way it is now they are made ineligible in reality four years instead of two years, and I therefore ask unanimous consent that the following may be substituted: "No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected."

Mr. REID. I ask unanimous consent that that be substituted in the place of the other.

The CHAIR. If there are no objections it will be made.

The CHAIR. This morning, while another motion was pending, the gentleman from Owyhee arose for the purpose of moving the reconsideration of some question that came up on yesterday.

Mr. HAYS. If it is in order now I renew my motion.

Mr. REID. I thought it was understood that we would complete the article, and then go back and reconsider.

The CHAIR. If that is satisfactory we can do so.

Mr. HAYS. Yes.

SECTION 7.

Mr. REID. I now move that Section 7 as amended be adopted. (Carried.)

The CHAIR. The chair is informed that there was an amendment pending offered by Mr. Ainslie which was not passed on, to Section 7.

Mr. AINSLIE. My amendment was to strike out "fifteen" in line 10 and insert "five." It is not very

material, except $1,500 for coroner I thought was too high, and by putting it at $500 I thought it would look a little better for the people. (Seconded.)

Mr. REID. I will add as an amendment to move in line 11 to strike out "one thousand" and insert "five hundred" also. (Seconded.)

The question was put by the chair to amend Section 7 by striking out "fifteen" in line 10 and inserting "five" in lieu thereof. (Carried.)

The CHAIR. It is also moved and seconded that line 7 of Section 7 be amended by striking out the words "one thousand" and inserting "five hundred" in lieu thereof. ("Question, question.")

Mr. MORGAN. Is it intended by the chairman to limit the fees of county surveyor to $500?

Mr. REID. Yes.

Mr. MORGAN. I do not see how you can get a county surveyor at any such a price.

Mr. REID. I will withdraw the amendment if there is objection to it.

Mr. MAYHEW. I object.

The CHAIR. The amendment is withdrawn.

Mr. MAYHEW. I object to that amendment being withdrawn. I am in favor of $500.

The CHAIR. The gentleman withdrew the amendment.

Mr. MAYHEW. Can a member withdraw an amendment without the sanction of his second to the motion?

The CHAIR. The question is then with regard to the adoption of the amendment offered by the gentleman from Nez Perce and seconded by the gentleman from Shoshone, to strike out the words "one thousand" in line 11 and insert "five hundred."

"Question, question."

Mr. MORGAN. I am opposed to that amendment. A good instrument for a county surveyor would cost him $300 at the least calculation. We cannot always be forced to elect a man who has an instrument already, and it seems to me this amount is altogether too low. I do not think we can get a county surveyor that will do

the work for $1,000, and as I understand it he is only to receive that amount, and it strikes me that as all he obtains from the people over and above this amount must be paid over to the county treasury, it is certainly too low now. That is simply a maximum, and the conclusion will be that he cannot go above this amount. I move that the word "one thousand" be stricken out and "fifteen hundred" be inserted. (Seconded.)

Mr. GRAY. I am in favor of the original motion. I would like to ask the gentleman what benefit we derive from that office?

Mr. MORGAN. From county surveyor?

Mr. GRAY. Yes; if there is the least contest at all another surveyor is brought on the ground, and there is no more in the action of the county surveyor than any other surveyor. My opinion has been that in this county they have, if anything, been a detriment, under a pretext of being an officer. If I have any surveying to do I will go and employ my surveyor and get such a one as I think is competent, not such a one as the people may see fit to elect.

Mr. MORGAN. I will say, Mr. President, that is good argument in favor of not having any at all; but it does not seem to me to amount to anything if you are going to have one. If you are going to have a surveyor he ought to have something for his services. This money is paid to the surveyor by the people who employ him. The moment his salary gets to $1,000, according to that section, he must turn the balance into the treasury. I say he cannot provide the proper instruments and do the work for any such sum of money. And as the county does not have to pay, the people can employ some one else if they see fit to; but there are various matters which will be provided for by law in contest cases over lines where the survey of the county surveyor will determine the question, and it requires a man of considerable skill in his business. People should select such a man, and he ought to be permitted to earn $1,500 a year if the people see fit to employ him and pay him.

Mr. GRAY. If he performs services that we were

bound by, I would say yes, but when he performs nothing but what can be refuted by any man that can come, a more competent man, why should he be paid? Some of these county surveyors ought not to have any instruments, because they don't know what to do with them when they have them. They cannot set stakes even, to say nothing about reading an instrument; and the first thing is to go and change the government corners and say they are not straight. What difference does it make to them whether they are or not? If the government established them, we have got to go by them, and that is the difficulty with these men elected to that office. I have yet to see in Idaho territory one of those officers that has been any benefit to the people or the territory.

Mr. MORGAN. We do not elect such men in our county.

Mr. VINEYARD. I have sent up a motion to strike out in line 11 the words "county surveyor."

SECRETARY reads: Strike out in line 11 the words "county surveyor."

Mr. VINEYARD. I am convinced by the argument that the office is not worth anything.

Mr. REID. I hope that motion will not prevail, for this reason.

The CHAIR. The motion as it stands now by the gentleman from Alturas will embrace all of line 11, and "dollars" in line 12.

Mr. VINEYARD. I will accept that amendment.

Mr. REID. I know we are apt to get impatient and strike out things we ought not to. I hope the convention will be patient and we will proceed understandingly in the matter. You gentlemen are familiar with the fact that we have to lay out roads and have controversies about roads; that is all county business. Frequently in capital cases surveys have to be made.

Mr. MORGAN. Determine the line between counties also.

Mr. REID. Yes, and all that. Now, if you fix the fees in the bill you keep down exorbitant charges by private surveyors, and have a man to do things that will

take official action. Of course, in private controversies to which my friend alluded, private rights in civil suits, we generally have our own surveyors; but the necessity for a county surveyor, and the reason we fix his fees, is that sometimes there is official business to be done, such as laying out of roads, settling controversies between the public and municipalities as well as individuals, and there is hardly a constitution in the states that does not provide for county surveyor. And because the gentleman is a little impatient about the progress of this section I don't think we ought to proceed hurriedly. Since the gentleman from Bingham has made his argument I am satisfied $500 is too small and I shall vote for $1,500, because it will not come out of the taxpayers' pockets, but only those people that have business, except on this official business, and then the fees would be regulated by law. If he has no business he has no pay, because we struck out the minimum fee. But I think he is a useful and necessary officer.

Mr. BEATTY. I desire to ask the gentleman a question. Having struck out the minimum fee, what would be the construction as to what the county shall allow him?

Mr. REID. The legislature will fix his fee for official business, and having struck that out, we only fix the maximum.

Mr. BEATTY. Then the question would be, suppose there are no fees, would the county allow him anything?

Mr. REID. Not a cent. We fix it, beyond which they cannot go. Suppose a county has a great deal of surveying during the year, running it to three or four thousand dollars? He cannot draw more than $1,000 the way it is. I think the gentleman is right about $1,500. The committee could not take in every phase of the subject. A good surveyor has to have good instruments and travel around. The mileage has been one of the greatest abuses. I had a witness to come sixty miles last court and attend six days, and had to pay $45 mileage, and the litigant was a poor man and had to sell his

horse to pay the mileage of that witness, and the witness was necessary to the winning of his case.

Mr. VINEYARD. I am satisfied from the arguments here upon this office that it is a supernumerary office simply. That so far as the duties of the office are concerned in making surveys in which the county is interested, or roads or county lines, the county commissioners representing that county would have authority and a perfect right, in settling lines and laying out roads, to employ a competent surveyor, and oftentimes can get a much more competent man than would generally be elected to that office. Outside of that office, private affairs, private surveys that are required, there is never any application to the county surveyor to do anything. It is a supernumerary office, pure and simple.

Mr. BATTEN. I rise to a point of order. Was not this section adopted, and are not all of these amendments now being introduced out of order?

The CHAIR. Not except this whole discussion would be out of order, but it is proceeding upon unanimous consent, upon the motion of the chairman of the committee, supporting the original amendment. It is moved and seconded that the words "one thousand" in line 11 be stricken out and the words "five hundred" be inserted in lieu thereof. To that an amendment is offered to strike out "one thousand" and insert "fifteen hundred." To that a substitute is offered to strike out all of line 11, and the word "dollars" in line 12. The question comes first upon the adoption of the substitute. (Lost.)

The CHAIR. The question recurs upon the amendment to the amendment offered by the gentleman from Bingham to strike out the words "one thousand" and insert "fifteen hundred." (Lost.)

The CHAIR. The question now recurs on the original amendment to strike out the words "one thousand" and insert "five hundred." (Vote.) The chair is in doubt. (Rising vote.) The result of the rising vote is Yeas 19; Nays 24, and the motion is lost. The question now recurs upon the adoption of the section as amended. (Carried.)

SECTION 8.

Section 8 read, and it is moved and seconded that it be adopted. Carried.

Mr. REID. I move that the adoption of that section be followed by a section to be numbered Section 9.

SECTION 9.

SECRETARY reads: Section 9. The neglect or refusal of any officer named in this article to account for and pay into the county treasury any money received as fees or compensation in excess of the maximum amount allowed to such officer according to the provisions of this article, within forty days after the receipt of the same shall be a felony, and the grade of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense."

Moved and seconded that the same be adopted.

Mr. REID. The section was drawn by my friend from Shoshone (MR. HEYBURN), and as suggested by him, I think it is a very pertinent one. It provides that when officers reach this excess—you notice in Section 6 they shall be strictly accountable for these fees—this section simply provides that when they get to that excess they shall within forty days pay it to the county treasury, and if not, it will be consiedred a crime such as embezzlement of public moneys, to be punished as such.

Mr. MORGAN. I want to say one word. It is still introducing criminal statutes into the constitution, and I do not think it belongs here. I think we ought to leave it to the legislature, and I was only informed this afternoon, I believe by Mr. Hasbrouck, that this constitution will be about ten times as long as the constitution of California, and I think that some of these things ought to be left to the legislature. That is one of the criminal statutes that ought to be enacted and will no doubt be, by the legislature, to enforce all the provisions of the constitution with reference to these limitations which are imposed, and I am opposed to the insertion of this section.

Mr. HEYBURN. Mr. President, the object of drawing and offering it—I admit it is in the nature of legislation—was only to complete a subject that we are considering. If no part of this article were in here and the legislature were left to deal with it, of course they would make a provision of this kind; but there is no use in providing that these officers shall be paid in fees, and that they shall account for the excess to the public treasury, unless you do in some act make some provision, because this amounts to an act of legislation—the whole article. You must make some provision to compel them to do it; otherwise it would probably pass by the legislature; but we have undertaken to deal with the subject, now let us deal with it thoroughly or let it alone.

Mr. GRAY. All I have to say is, what was said by the gentleman from Bingham. I am opposed to putting the criminal practice code in the constitution, and while Mr. Hasbrouck has said that it would be larger than the statutes of California, I would not wonder if it was larger than the Bible. (Laughter.) I do think it is as much out of place as anything could be. If we are to be allowed only to lay a broad basis for the legislature to act upon, I think we are doing that, if not stretching it a little; for that certainly is a provision that should be in the criminal practice code, and there is no doubt but what the legislature in the future, as they have in the past, would take into consideration all these things that might be criminal. I would hardly know how to handle it when you get there. Suppose you enter an indictment under it, how would you do it? It would not be really under the criminal practice code; that would have to be The State against somebody. But where it comes under a provision of the statute, we understand exactly what the punishment shall be, how the indictment shall be drawn; but when it comes to this, suppose the legislature should not exactly conform to this punishment, or to whatever might be deemed the crime, or what the crime is said to be here. Then there is certainly a conflict; and I do think, and I will submit if it does not seem that we have statutes enough; we

have them now in our statutes that would cover that very offense; and I doubt whether the legislature would see fit to take it up. There will be no need to do it if we take it up.

Mr. MAYHEW. I move that Section 8 be stricken out.

Mr. HEYBURN. It has been adopted.

Mr. MAYHEW. I mean Section 9.

Mr. REID. That has not been adopted; it has been proposed for the section. Now, just one word in reference to the argument of my friend from Ada. I do not believe our constitution is subject to the criticism he makes. I picked up the Spokane Falls *Review*, a very able paper, really a branch of the *Oregonian*, and which has been watching the proceedings of the six conventions very closely, and it recommends to the territory of Washington to take the articles we have adopted as models of terseness and brevity, and I will throw this challenge to the gentleman, that he may take the articles passed at their final reading by this convention and compare them with every constitution in this Union, and he will find that for brevity and terseness they will compare favorably with any. I believe they are shorter. It is true, we have had our differences, but out of those differences and disputations and discussions we are getting a model of a short constitution, and while it is going to to be a long one, it is not longer than the others. But as to this question in point, I admit all this is matter of legislation, but here is what we are trying to do: We are taking a radical departure in this county government system, and the gentleman will find in these nine sections, that they are shorter than any article on municipal or county government in any of the constitutions. What have we done? We have been leaving this to the legislature, and in one article have said that the legislature shall provide a uniform system of county government, and stop there; but we have changed that and fixed it so they shall provide this system of uniformity in a certain way. How? Striking down the salary system and going to the system of fees. Then

what? We have provided not all the machinery, because it will take two or three pages of statutes on county government to carry into effect these general principles, but we have wound up here now—and I thought the suggestion was a good one, and it will call attention to the constitution when you put it before the people—you have provided this system, that your officers shall be paid by these fees, and when they come to a certain amount then they shall go to the people. Then if they do not turn those excess fees over it is a crime for which they can be disfranchised, cannot be allowed to vote, because it will amount to a felony, being the embezzlement of public money for which the legislature may disfranchise them. And I say, while it may be put in the constitution, the legislature may not do it. But it is left to them. I presume they will; I think the legislature that meets here after we have adopted this constitution will come in, and by calling attention to these fees, they will readily adopt it. I know they will if the people will look to their interests. Now, if they find this section properly prohibits these officers from taking the excess fees collected by them, there will be a statute adopted under which you can draw indictments. Of course you could not draw an indictment under this section, but it is put in the constitution defining it as a crime, and the legislature will provide the machinery so that the district attorney can draw the indictment. It will not burden it much, and it is very apt to come in here and call attention of officers and the people to it, and make them more readily accept it, if we have thrown every safeguard around this new system, in the constitution. If it does not work well, there is no one who will be more ready than I to join in with the people and demand that we change it by an amendment to the constitution.

Mr. SWEET. Mr. President, I do not think there is any forcible objection alleged by the gentleman from Ada. It is a fact our indictments usually read "contrary to the form of the statute in such case made and provided," but I think hereafter our indictments will read "contrary to the constitution in such case made and pro-

vided," and that being the case, I do not think there is any force in the objection urged by the gentleman from Ada. Furthermore, it does seem to me, Mr. President, as if it would be an outrage to send the constitution out to the people without anything in it on the subject of embezzlement. It seems to me there is probably no more important subject to be treated by the law-makers of this state than embezzlement. You can steal nothing of a more serious nature than money that I know of, and to send a constitution out to the people of the state without drawing it as providing for the treatment of embezzlement, it seems to me would defeat the constitution itself; and the sole objection that the indictment should read "against the constitution in such case made and provided," should, it seems to me, be no objection.

Mr. GRAY. Why don't you put all the embezzlements in; embezzlement of any fund?

Mr. SWEET. I have been contending, Mr. Gray, all the time that the criminal code ought to be in here.

Mr. SHOUP. I am a little surprised to hear the gentleman from Bingham make the assertion he did a minute ago that our constitution would be ten times longer than the constitution of California. The truth is, I am satisfied it is not nearly as long, nor will be nearly as long.

Mr. MORGAN. I stated that I was informed that such would be the fact.

Mr. SHOUP. Very well, I will say this, that I have just looked at the constitution of his own state, that of Illinois, and I think our constitution will be a little more than half as long as that.

Mr. MORGAN. I am not a champion of the state of Illinois.

The CHAIR. The question is upon the adoption of the additional section. (Vote: division demanded. Rising vote, Yeas 40; Nays 3.)

Mr. REID. I ask that Section 9 be numbered Section 10.

The CHAIR. There being no objection, the number will be changed accordingly.

SECTION 10.

Section 10 read, and it is moved and seconded that Section 10 be adopted.

Mr. CLARK. I sent up a substitute.

SECRETARY reads: Substitute for Section 10: The board of county commissioners shall consist of five members. The probate judge shall be ex-officio chairman of the board. He shall vote only when there is a tie, and shall receive no compensation as such commissioner. Each county shall be divided into two districts at the first general election after the adoption of this constitution, and there shall be elected one commissioner for two years and one for four years from each district.

Mr. CLARK. I offer this substitute at the request of a gentleman who has held the office of county commissioner, and several other offices in this county, and has given the matter a great deal of attention. As it is somewhat new, I trust the convention will look into the matter a little closely before voting it down, simply as an innovation. The gentleman who placed the amendment in my hands made this statement, that by making the probate judge, who is an officer not overburdened with duty, the chairman of the board, people would always have at the court house and at the county seat a permanent officer to whom they could bring commissioner business. He thought this would be very desirable and as he would receive no extra compensation the cost would be nothing extra. He further stated that the board of county commissioners at present is only three, and it frequently was a hindrance to business from the fact that it was not always practicable for the members to be present for the transaction of business at the county seat. But the larger number, four, would always insure that more perfect consideration of public business, and he thought the county would be more carefully represented in the management of its public affairs. Perhaps objection might arise, that it creates one more commissioner to be paid; but as the commissioner fees are the smallest thing in the county, it would not aggre-

gate in the entire territory a sum that the people would find made any material increase to their burden.

"Question, question."

The CHAIR. I would like to call the attention of the convention to a matter which strikes my mind now. There are four commissioners, but only two are provided for.

Mr. CLARK. The intention was to make it two in each district. It says one for two years and one for four years in each district; and as there are two districts, that would make four men.

The CHAIR. It is moved and seconded that the section sent up by the gentleman from Ada as a substitute be adopted as Section 10 in the printed bill.

Vote and lost.

Mr. McCONNELL. Mr. President, I have an amendment.

SECRETARY reads: Amend Section 10 by striking out the word "six" in line two, and insert in place thereof the word "two," and strike all of the remainder of the section after the word "years" in line two out.

Mr. McCONNELL. Mr. President, my object in offering this amendment is this: the county commissioners, especially in the agricultural districts, are made up largely from the farming classes, and very frequently it occurs that a gentleman is chosen for county commissioner on account of his success in the management of his home affairs, and his conservatism, and after he is tried in the board of county commissioners he proves unequal to the task imposed upon him. I think every gentleman of the convention will bear me out in saying that there are too many instances of that kind on record in the management of our county affairs in the territory, and if such be the case, under the provisions offered we have that kind of a gentleman dealing with our affairs six years instead of two. If the board of county commissioners give satisfaction during the first two years of their office, it is easy to nominate and elect them again; but I think before electing any gentleman a term of six years we ought to know something about

his ability to manage the finances of the county. I think six years is too long a term to take a man on trial.

Mr. HASBROUCK. I hope the amendment will not prevail. The facts are not borne out as the gentleman states them so far as I have observed. Where they are elected for only two years, it takes them about two years to get acquainted with the business. They are generally elected from the body of the county, and they are not as a rule business men, and it takes them about their whole term to find out what the business is they have to conduct. I propose that they have this long term, and every two years there is only one elected, so there will be two holding over that do know something about the business and finances of the county. And I believe it is much the better way. The other way has been tried and it has proved just as I state, that those officers do not really find out what their duties are until they are put out of office, and a new set of officers put in. And it does not follow either that they are re-elected but the reverse is the case generally.

Mr. McCONNELL. I think his argument is in support of my proposition. If there is any gentleman elected county commissioner who requires two years to learn the duties of the office, he has no business in the office. And the reason, very largely, why they are not re-elected is because they have shown that they are not fit to fill the position. We have in our county one commissioner who is now serving his second term because he showed that he had ability to fill that position, and any gentleman who is on the board of county commissioners in our county, or I think in any other county in this state, who has shown proficiency in the work he has undertaken, can be nominated and re-elected without regard to the politics of the county. There is one position in which I believe party lines are not drawn, because it is an office in which every man in the county is interested, and I would far prefer to see every member of the board of county commissioners elected only two years, and then we can find out whether it does

take him two years to learn his duty. If it requires him two years, I do not want him any longer.

Mr. HEYBURN. And in a new country, Mr. President, where men know each other very slightly, they are apt to make grave mistakes, sometimes, in the election of these officers. We have been unfortunate enough to do so in our county. If we had elected our members for two years only, it would have been better. We have had to come down to Boise City to hold our meetings in order to accomodate one gentleman who has now three years served, but we do not suppose that will occur very often; but in new countries like ours those officers should not be chosen for a longer term than two years. As the gentleman has said, if we find a particularly good officer we can re-elect him without any difficulty.

Mr. AINSLIE. I believe the amendment proposed is right in line with democratic and republican principles. I do not see why a county commissioner should be elected six years any more than sheriff and recorder and probate judge or any other officer. The duties of the other county officers outside of the county commissioners are as difficult to learn and to discharge as the duties of county commissioner, and still you elect a sheriff two years, and then prohibit him from running again under the provision of this article. Also assessor. You don't allow him to serve a second term consecutively. I think two years is long enough, and I propose to stick to that rule.

The CHAIR. As there are two propositions involved, I will put them separately.

Mr. REID. If the first one is adopted, the last one goes out, so you can put it together.

The CHAIR. That is correct.

The question was put and the amendment adopted.

Mr. REID. I move the adoption of the section as amended. (Carried).

SECTION 11.

Section 11 read, and it is moved and seconded that it be adopted. Carried.

Section 3.

Mr. HAYS. Mr. President, I move that the vote by which Section 3 of this article was adopted be reconsidered. (Seconded. Rising vote, yeas 27; nays 22, and the motion to reconsider is carried).

The CHAIR. The question is now on the adoption of the section.

Mr. HEYBURN. Mr. President, I move that Section 3 be stricken out. (Seconded).

Mr. WHITTON. Mr. President, I send up a substitute.

SECRETARY reads: No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off voting on the proposition at a general election, shall vote in favor of such division. Reid.

"No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off petition the legislature in favor of such division." Whitton.

Mr. REID. I will explain the substitute I offered.

Mr. HEYBURN. I raise the point of order, that if the first question is on the motion to strike out, if it is struck out those will not be necessary.

Mr. REID. I will address my remarks to the motion to strike out. I claim my five minutes.

The CHAIR. I think the rule provides that all substitutes "shall be taken up in the order in which they are offered." The motion to strike out should come last.

Mr. SHOUP. I think you will find that is the rule.

Mr. HEYBURN. I think it is, and if it is stricken out, there will be nothing to substitute.

Mr. REID. I will address my remarks to the motion to strike out. I am opposed to the motion to strike out for the reason that if it is stricken out it leaves nothing on that subject. If nothing is left in there at all, it then relegates these division suits to the legislature, what the committee intended. Now, I have offered the substitute I have proposed, which provides for the case that the gentleman spoke of yesterday. He said there was a large

country there called Camas Prairie that wanted to be put into Alturas county. That was the objection. Now, this lets that Camas Prairie country vote whether they will go or not. And it allows any section that proposes to be cut off from any county to vote on that subject. Now, gentlemen, is it right to prohibit a county from moving its county seat when a new county is to be made, without the vote of the people, but to say that you may come to the legislature and cut off a slice of the county without the people having a say-so on it? All my substitute provides is simply this, that when you propose to cut off a piece from a county, two-thirds of the voters there shall say that they want to go. For instance, suppose as has been said by the gentleman from Alturas, that he wants Camas Prairie and Ketchum, and Bellevue I believe is in that strip, and they want to cut off Camas Prairie and attach it to Alturas county. They complain that Alturas would have no voice in it, that Logan county would out-vote them. Now, ought you to cut off that strip without that strip wanting to go to Alturas? Is it right and fair to them to force them to come up to the legislature and force them to lobby and spend money by sending men here to look after the fight that will be precipitated upon them? Then you are doing that strip of country the same injustice that Alturas county is complaining of now. I will apply it to my own county. Suppose there is a strip up there on the other side of the river that really belongs to Latah; and so far as I am concerned I think it ought to go there—I don't mean the Potlatch country, but that piece next to Genesee; a line ought to be run there with the reservation, unless that reservation is opened up. I believe we have had it added to Latah county for school purposes. Now, if the people want to go to Latah county, although I live in the other part of the county, and although it will weaken us that much, I am willing they should go, although I think it ought not be in the power of the legislature to attach them to Latah unless the people say so. I don't think you ought to place it so that they will be obliged to come here and lobby for it. When you want to move a county

seat, let the people say so; when you want to divide a county, let the people say so. If that is what these gentlemen want, to straighten their county lines, and take a slip off of Logan county including the town of Bellevue, then I say a majority of those people ought to vote that they are willing to go; if not, you perpetrate upon them the same injustice that the gentleman from Alturas complains of now; and I merely allude to that for illustration. I am satisfied now of the gentleman's law. No part of a county ought to be cut off without it; you ought not to cut off a part of Nez Perce or Latah or Shoshone or Idaho or any other particular county, unless the people to be cut off vote that they are willing to go. Men settle in a county with reference to the county seat, and with reference to the center of the state. There they make their improvements. Now, what do you propose? You propose to say to those people, "We will go up to the legislature, and because we have more friends there than you have, we will put you in, whether you want to go or not." My amendment simply provides that two-thirds of the people living in the territory to be annexed to a new county, shall vote to go, and if they vote to go, let them go. And if they vote against it, you cannot legislate them in against their consent.

The CHAIR. I have to say that the chair was in error with regard to the question yesterday. I examined the rule and find it is different. The first question is upon the motion to strike out Section 3. Are you ready for the question?

"Question, question."

Question was put by the chair and vote taken. The chair being in doubt, a rising vote was required, which resulted yeas 21, nays 26, and the amendment was lost.

Mr. AINSLIE. I call for the yeas and nays.

The CHAIR. The secretary will call the roll.

The secretary proceeded to call the roll.

Mr. MAYHEW. I desire to explain my vote on this question. On yesterday I was in favor of striking the section out, and on principle I am in favor of striking it out today, but I desire to say this. The amendment

that is proposed by my friend from Nez Perce strikes me as meeting or should meet, to my way of thinking, with the approbation of this convention. I think by adopting the amendment as proposed by Mr. Reid, the chairman of the committee, it will be a fair submission of this matter, and better than to strike it out. I therefore in consideration of the amendment as offered by Mr. Reid, am compelled to vote no.

Mr. McCONNELL. My reasons for voting against this motion to strike out are the same as given by my friend Mayhew from Shoshone. I vote no.

Mr. MORGAN. I am in favor of the substitute offered by these gentlemen respectively. I will take either one of them in preference to that section, and I therefore vote Yea.

Mr. SWEET. Mr. President, if Mr. Reid's amendment has left it to the majority of the people to say where they desire to locate themselves, I would vote no. Inasmuch as I consider a two-thirds vote on any proposition equivalent to no vote, I vote yea.

Roll call:

Yeas: Allen, Anderson, Batten, Beatty, Bevan, Crutcher, Glidden, Hammell, Hays, Heyburn, Myer, Morgan, Moss, Pierce, Pinkham, Savidge, Sinnott, Shoup, Steunenberg, Stull, Sweet, Underwood, Vineyard, Mr. President—24.

Nays: Ainslie, Armstrong, Beane, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Gray, Hampton, Harkness, Hasbrouck, Hogan, Howe, Jewell, Kinport, Lamoreaux, Mayhew, McConnell, Melder, Parker, Pefley, Pyeatt, Reid, Robbins, Taylor, Whitton—28.

The CHAIR. The motion to strike out is lost. The question recurs on the substitute offered by the gentleman from Logan.

Mr. WHITTON. I desire to withdraw my substitute.

Mr. REID. I ask for the reading of the substitute.

SECRETARY reads: No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division.

Mr. McCONNELL. I move to amend by striking out the words "two-thirds" and substitute in their place the following, "a majority." (Seconded).

Mr. MAYHEW. Am I in order now, Mr. President?

The CHAIR. The gentleman is in order.

Mr. MAYHEW. Thank you. Mr. Chairman, I am in favor of the expression of parties on matters on which they are voting. For instance, if there is a proposition to strike off certain portions of a county, I believe the persons who live within that portion proposed to be stricken off should have a voice, and a strong one, too, before they should be stricken off. I think a two-thirds majority is right, although in some instances it is contrary to our general republican principles to interfere with the majority of the voters, but I say in these county affairs I should be in favor of a two-thirds majority of the people saying whether any section or portion of the territory within a county should be stricken off. On yesterday I was in favor of striking out this section, and I still in principle am in favor of it. But when the proposition has come up by way of amendment as proposed by the gentleman from Nez Perce, I will say it meets with my approbation, more than any other proposition that has been made before this convention. I say a two-thirds majority of the county should be adopted. Two-thirds of the voters in the county; not that it should be two-thirds of the majority, but two-thirds of the voters in the county. Now, you know, Mr. President, as well as anybody knows, (and I presume to say, gentlemen, that the president knows more than anybody on that subject so far as the division of counties and removal of county seats are concerned; I am satisfied no one understands this question as thoroughly as the president does himself), that the people ought to decide; and I say I am opposed to interfering with the county lines and the county seats of any county in this territory unless by a two-thirds majority of the voters or the petitioners asking that the county seat shall be disturbed. I am in favor altogether of the proposition as made by the gentleman from Nez Perce

county, and I think it should be adopted. I think it is equitable and fair, notwithstanding it is somewhat against the general principle of our republican form of government; but we must be arbitrary in many of these things, or we will never get rid of this vexing question as to the changing of county lines and changing county seats.

The CHAIR. An amendment is offered to the substitute of the gentleman from Nez Perce to strike out the words "two-thirds" and insert the word "majority."

Mr. SWEET. It is my candid opinion that a principle is being placed in the constitution here in the organic fundamental law established, that has no place in the constitution at all, and which if inserted here as a principle is to sacrifice to a county seat fight, in which two-thirds of the people of this territory are not interested at all. That is the first thing in connection with it. The second principle that is violated by this section is, that the majority shall not rule. Now, sir, if there is any reason why a majority of the people should not rule in a matter of dividing a county, when it is submitted to the people who ask to be attached to some other county, any reason why a majority should not rule in that case as well as on any other public question, I would like to have somebody give the reason for it. So far as Judge Mayhew is concerned, he carries this question into the removal of county seats. Perhaps that is another proposition. That is disturbing county property, and a county may have a good deal of money invested in county buildings and the county seat, and perhaps there ought to be more consideration given to it, because it would be an expense to the county. But this matter under consideration is to be decided purely and solely by the people affected by the same. And I say that a majority ought to rule, not only in that case, but in every other case, and there is no reason, in the first place, why that Section 3 should be in this constitution at all, except that it is sacrificing, as I said before, a fundamental principle to a county seat fight, in which three-fourths of the people are not interested at all,

and then secondly, it is sacrificing another principle to the same object, and for the same purpose, and that is, that the majority shall not rule.

Mr. HEYBURN. I send up an amendment.

SECRETARY reads: Amend the substitute as follows: "*Provided,* That this section shall not apply to the creation of new counties." (Seconded).

Mr. HEYBURN. Mr. President, my object in introducing this amendment is that I saw, or thought I saw, in some of the remarks, an impression that gentlemen might have that this would allow a county to vote itself into two new counties or into a greater number, if they saw fit. I think this section is not intended to touch that question, but in looking at the language of it I saw it would be very easy to so interpret it. It says no county shall be divided except on certain conditions; if one-half of the county or a large portion of the county sees fit to vote itself away from another portion, they might do it under that language, unless there is some restriction, and I think probably we had better guard against that. It is only intended to apply to the taking of a piece of one county and annexing it to another.

Mr. REID. If the substitute is adopted I will accept the gentleman's amendment. I would like to read the provision in the Colorado constitution.[1] The statement has been made that it is not in constitutions. "Section 3. No part of the territory of any county shall be stricken off and added to an adjoining county without first submitting the question to the qualified voters of the county from which the territory is proposed to be stricken off; nor unless a majority of all the qualified voters of said county voting on the question shall vote therefor." That was just like it was in the original article; we had the whole county vote on it, whether they would let this part go, but I modified that so as to meet the demands, and I think it is a fair and equitable rule, to allow the people stricken off to determine. And why we put in two-thirds of the voters was, because in

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1—Art. 14, Sec. 3, Colo. Const., 1876.

a matter so important as cutting up a county, you might get one majority, and that one majority might not be composed at all of the people who really own the property and pay the taxes, and would be affected by it; but by making it two-thirds of the voters you are sure to get in the men who will have to bear the financial burden that will necessarily accrue from the division of the county. It was contended, like the removal of a county seat, that these matters should not be on wheels, to be determined on a mere pretext or all at once, but put it at a general election; and that is the only reason for relegating this to the people who are to be affected by it, and to have a good majority in favor of it.

Mr. VINEYARD. The argument used by Mr. Reid, that it might be carried by one majority, and therefore ought not to go by as slim a margin as that, has no application in a democratic form of government, where the maxim is that the majority rules. Four times the president of the United States has been elected by one majority. And yet, according to the argument of my friend from Nez Perce, it would not count. A proposition is involved, as it is here in a county seat or change of a county. And as has been stated by my friend from Latah, Mr. Sweet, the argument that you are voting against the hasty removal of county seats where a large amount of county property is situated, these things ought to be in a measure permanent and fixed, and unless for good cause shown, it never ought to be removed from that point to some other point in the county. But here is a proposition to amend Section 3 and in its effect it does not remedy the evil complained of all the time by the supporters of the motion to strike out this section. It remedies no evil at all in the counties affected by it. Why? I can illustrate. There might be a case where the one particular section of country affected by the change might be in favor of it, there might be a little strip somewhere else that might be against it, some local fight or otherwise. Some consideration or other that turns them the other way. If the two-thirds majority is to obtain, the people, the

great majority, the overwhelming majority, but less than two-thirds, would be entirely defeated by a fictitious minority, and justly defeated, and that section of the country would be tied up for all time to come, and is tied up by this Section 3 without any remedy, and without any relief whatever. What I had contended for here is that this is legislation in the constitution. I do not care what is in the Colorado constitution on this subject. The Colorado constitution, which the gentleman read, does not go to the extent which he states, and which this amendment or substitute proposes. It says a majority, a majority of the county. I say it does not remedy the evil. I venture to say there is not a constitution in the United States that has as radical a section in it as this one now proposed. I know there is some feeling involved in this contention, and I am not responsible for it, I plead for people who are downtrodden, and perhaps ask relief and cannot get it. Why? Because of fictitious opposition somewhere; I don't know where to locate it. I don't know who is responsible for it. I regret that these things are so, but if that section is left in here as it is now, the result of it will be that you will antagonize a large portion of the intelligent people of this territory, not only in Alturas county, but elsewhere in other counties of this territory. You undertake to bind down by iron rule, by a rule that is fixed like that of a tyrant, and cannot ever be changed in your fundamental law. The thing is ridiculous and preposterous upon its face. A thing that is so vital to the local interest of our district and localities, to be affected by it, it smacks, gentlemen of the convention, of tyranny of the very worst cast, if you allow that to be put in and put it in in that shape. No remedy, absolutely powerless, lying at the feet of powers that know no redress and no relief. That is the position this thing will be left in if that section goes in without any amendment to relieve us against those things—that two-thirds. I raised this cry on yesterday; and even on the proposition of yesterday when this question was under debate, there was nothing, even then it was simply proposed to rush

this thing through, and it was put through. I stated then in my little talk, that the section of county to be affected would have no voice. Today the chairman of the committee proposes—what? To say that those affected by the change, if they can carry it by a three-fourths vote, then the legislature may entertain a proposition to change that county line. Driven at last to admit some portion of the argument advanced yesterday, he deals out to us now a three-quarters majority, which is no relief at all under the circumstances. It simply shows, gentlemen of the convention, the spirit which actuates this whole business.

Mr. SHOUP. I desire to offer an amendment. I will say in regard to this amendment, I have not the substitute before me, and I do not know just where it should be inserted, but I would like to have it somewhere in the substitute.

SECRETARY reads: Substitute. No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off voting on the proposition at a general election, shall vote in favor of such division. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed.

Mr. REID. I will accept the amendment to the substitute; also the other amendment of the gentleman if it is adopted. Now, just a word. When the gentleman states that I have any feeling in this matter, he is mistaken about it. I have no feeling whatever; I am doing just exactly what Mr. Beatty said yesterday, if it was left in that fix so that the entire county could vote, then this line could never be straightened. Now——

Mr. SWEET. Allow me to ask you a question. Was not that clause inserted in the constitution to regulate the affairs of Alturas county?

Mr. REID. Not at all; it was inserted without reference to Alturas county. One week after this committee made up its report—and we did not know anything about Alturas county, never thought of it, it never occurred in the committee room—someone came,

I forget what gentleman it was, and asked what regulation we had on that subject, I told him we had adopted it from the constitution of California,[1] or Colorado, just about in substance that clause, and followed the Montana[2] constitution and the California constitution, and others, on that subject, so there should be uniform rules for the removal of court houses and the division of counties and the location of the counties, that the people themselves might adjust them without having any trouble with the legislature. Alturas county never crossed my mind, and I doubt if it crossed the mind of any gentleman in the committee. One week afterwards something was said about it, propositions were made from both contending factions that we should alter this report. I called them before the committee, and we said we had nothing to do with local law; this was general law applicable to the whole territory, and should go in there, so that it should be kept out of the legislature. And yesterday when it was charged that we were perpetrating an outrage—I had not intended to open my mouth about it at all—but when it was charged that we were perpetrating an outrage, I rose and defended the committee. I have no feeling in the matter whatever, but in the spirit of compromise and conservatism I proposed this very language, because the gentleman yesterday said that if they were left in this way the county of Logan, which was next to them, would never vote for them to have the territory they wanted; that the Camas Prairie country there wanted to come to Alturas. Now, I have submitted a proposition so that if Camas Prairie and Bellevue or any other section lying contiguous to Alturas wants to go to it, it can go. Now, this amendment proposed by the gentleman from Custer, Mr. Shoup, that no man can vote unless he has been there ninety days, will not obviate the difficulty, because they might fill up the territory with residents of the county ten days before, and carry it. If there is any territory that

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1—Art. 11, Sec. 2, Cal. Const. 1879.

2—Art. 16, Sec. 2, Montana Const. 1889.

wants to go out, all right. If the convention thinks it should not be by a two-thirds vote, put it a majority. And the gentlemen seem to complain of that. If they think a majority ought to decide this question of cutting off a county, very well; but I merely proposed it in the spirit of compromise. I think something of the sort ought to go in the constitution. I don't think every time this legislature meets down here, with these counties constantly filling up with people, and every new town springing up and thinking it ought to have the court house—I don't think the legislature should be crowded with that sort of business; especially when we are only going to have sixty days sessions, and biennial ones at that. I think the legislature ought to pass general laws, not special laws. We ought to have uniform laws. We have declared that the legislature shall not pass special laws on many special subjects; and the people in the division of a county ought to say when that county shall be cut up; it is a right they have, but they ought to vote on it, and we have provided that if any section says it wants to go to Alturas county or Nez Perce county, they must do so by a substantial majority. It is going to affect our own county to have a piece taken from it; it will affect us who live in Lewiston, because it cuts off a strip of the best agricultural country right next to us, the Potlatch country. But naturally it belongs to Latah, the people already trade at Genesee. The last legislature passed an act that we might go to Latah to school, but if those people want to separate from Nez Perce and go to Latah, it is right and fair that they should go. Now, I have no feeling in this matter. The fact is, my sympathies are all with Alturas county. The city of Hailey was the one I first visited in this territory, and I think it is one of the most beautiful cities in the territory, and I am sorry they are in the condition they are, but a general law ought to go into this constitution. Instead of being against them, I had proposed a compromise which it seems to me is just to them and just to the territory that is to be annexed. I say, gentlemen, if that terri-

tory that they want to annex to Alturas does not want to go, they ought not to be made to go by a special act of the legislature. If they do want to go they ought to have means to say so, either by a majority of two-thirds or whatever the convention may choose to put it. I have no feeling in the matter at all.

Mr. HASBROUCK. I was a member of this committee of which the gentleman from Nez Perce is chairman, and I do not wish to make any extensive talk on this matter and delay the convention, but I wish to say that every statement he has made is correct. And further, that it was as harmonious a committee as there was. Everything was done unanimously, and this matter was not heard of in that committee.

Mr. BEATTY. Mr. President, I am in behalf of the citizens of Hailey very much obliged to my friend from Nez Perce for the sympathy he has expressed for them. But, Mr. Chairman, we need something more than sympathy. They need that the laws as embodied in this constitution be such that in the future they may have some actual relief, and not mere sympathy. I wish to add but few words to what has been said. Alturas county has been referred to. I did not intend to open my mouth in this discussion; I intended to leave it to this convention to do what they pleased in the matter without saying a word. But the gentleman has plausibly placed this before the convention as something exceedingly fair. It may be fair as to his county; it may be fair as to some other county, as to requiring two-thirds of the people who desire to be attached to some other county to so express themselves. But, now since Alturas county has been referred to, allow me a few words of explanation as to the situation there, and I will be brief. The line between Alturas and Logan counties as now drawn is three miles and a half or four miles south of Hailey, the county seat. Bellevue lies just one mile south of the county line, or a fraction, a little more or a little less. Bellevue proposes to be the county seat of the new county of Logan, and undoubtedly will be when the people come to vote upon it, because the majority of the people live

there and near there, near enough to make that the county seat. Then you have two county seats within four or four and a half miles of each other. That, now, is the kind of legislation you propose to place upon the people and fix it for all time to come. The gentleman says it is perfectly fair to leave it two-thirds of the district to be cut off. Why, gentlemen, if Alturas county is to get any relief at all, it must be by extending her line southward, and she cannot go south a mile until she gets to Bellevue. Now, how can we make a jog in there and cut a little strip out of Camas Prairie and leave Bellevue out? If we extend the line at all, we have to take in the town of Bellevue. Very well. Now, when you come to do that, Bellevue will always have votes enough to more than control the rest of the population in that district. Their votes are far more than the votes of Camas Prairie. The result is, by your two-thirds system, we get no relief whatever; it simply, so far as we are concerned, is of no earthly benefit. I would just as soon the section would remain in the original form as to have this substitute with the two-thirds majority. The truth is, Bellevue has more than a majority, and can always control that, and with this act passed we have no relief, and we have no interest in the matter one way or the other, because they will always have a majority of the votes to control it. Now, you say that is fair. Well, gentlemen, if this had been proposed years ago, perhaps it might have been fair. We are now in a different situation. As you all know, I think there is not a man here that does not understand the condition we are in. We are left without any relief with this law in the constitution. With it out of the constitution the legislature might possibly at its next session, when it comes to look into our situation, grant us some relief from what I know will be bankruptcy unless we have some relief; and when I use the word bankruptcy I am not drawing upon fiction; I am drawing upon facts, what I have before me, and which are true and correct, and you will find out before a year expires that that county will be without the means to pay its debts or

meet the burdens already upon it. All I ask thus far is that this should be left out of the constitution, and if we can show the legislature that it is just that that part of the territory taken from us should be returned to us, leave us to battle with the legislature on that question, and not debar us forever from any relief. For I claim that either this section as it is amended, or the substitute proposed by the gentleman from Nez Perce, comes so far from being a relief that I would rather leave the section as it stands than to adopt the substitute the gentleman proposes, because that requires a two-thirds vote of the people to be cut off, and as a matter of course Bellevue will always control the vote there.

Mr. SHOUP. As a delegate in this convention I suppose we are going to frame a constitution for the state of Idaho. Now, the gentleman who has just addressed you, and myself, stand in this position. A vote has been taken on whether Section 3 shall be stricken out or not. It has been decided that the section shall not be stricken out. Now, a substitute is offered which gives relief to all the rest of the territory, I believe, except his own particular case; but as long as he cannot be relieved, he gives us the inference that he is going to vote against the relief of any of the rest of the territory.

Mr. BEATTY. I beg the gentleman's pardon; I make no such assertion. I simply say that what you propose is of no benefit to us, and I would as soon have the section as it stood originally.

Mr. SHOUP. The gentleman has said he would rather see the section remain as it is than to have the substitute adopted.

Mr. BEATTY. With the two-thirds, I would.

Mr. SHOUP. But there is an amendment offered to reduce it to a majority, and Mr. Reid said he was willing to accept it.

Mr. REID. I want the convention to vote on it.

Mr. SHOUP. But I think the gentleman from Alturas ought to be fair about this. It cannot make his county any worse off than it is if this substitute is adopted.

Mr. BEATTY. That I grant; it cannot be made any worse than it is.

Mr. SHOUP. Now, as he did not get the relief he expected, (I voted to strike out the section myself) he should not vote so as to cut off all the rest of the territory.

Mr. GRAY. I have a few words to say in this matter. I think, as has been properly said by some of the gentlemen that preceded me, that we came here to make a constitution for Idaho. We are not here to legislate especially for any particular wrong, but we are here to legislate for the entire state, if it is admitted under our constitution. And as to what has been done to Alturas county, I say if it is wrong, it is wrong; but we are not here at this time to redress those wrongs. We are here to pass general laws, to make a general constitution to cover it all. I will ask the gentleman from Alturas, had this been the law one year ago or two years ago, then would he have opposed it? Would the proposition as it is made by the gentleman from Nez Perce have been opposed by him then; because under such a law his territory that he claims——

Mr. BEATTY. I am not asking that you legislate at all upon this question. I am simply asking that it be left to the legislature.

Mr. GRAY. I understand the gentleman's position, and then I want to say to all those that were in the legislature last winter, do you want such a recurrence of affairs to be thrown into the legislature again? I might say for two legislatures. In fact, it really controlled the legislature of this territory, that very section of country that he claims has been taken from him. Now, I say for that one reason, as I stated yesterday, and which I will say no more about, it would be a recurrence if it is permitted to go in that manner. Now, as to the two-thirds majority matter, I will suppose that the people of a little section of country that lies along on the side of the county, for some reason or other want to take themselves from one county to another. By their two-thirds majority vote they may be able so

to do, and if they do it by two-thirds, I am willing. The injury to the county may be considerable; it is a matter of quite a good deal of importance, and I think it should certainly be at least a two-thirds vote. The rest of the county is not protected in any manner, the property of the county is taken, and I think it should be guarded; and had the gentleman from Custer been guarded in that matter a year ago, it would not have won.

Now, here is where the difficulty lies. Often a little feeling will arise, and there might be a strip of country which was advantageous to the county, yet the people for some local reason became dissatisfied with the management of the county, and they say, "we want to leave, and we will take a majority on that and leave." Now, I say it should be two-thirds. The gentleman from Latah, Mr. Sweet, said that we will put it in the removal of a county seat. That strip of country may contain buildings that belong to the county which are valuable.

Mr. BEATTY. I would like to ask the gentleman a question. I do not understand from that substitute that even a petition of two-thirds of the citizens, or a majority of the citizens make an absolute division. It is wholly left to the legislature to judge whether or not it is proper to make the division after that petition is presented.

Mr. GRAY. That is not my understanding. My understanding is that it has to be submitted to the vote of the people, and if two-thirds of them vote it, they go.

Mr. REID. That is it.

Mr. GRAY. It is left to the people. Now, here, the two-thirds, as the gentleman from Alturas, Mr. Vineyard, says, that is two-thirds of the number voting. I cannot see really any difference in it. Local matters are so apt to control the legislature and control the elections of the people, that I think upon matters of that importance it should be two-thirds, and I should have voted for that had there been a convention two years ago. But, as I say, I believe we came here to pass laws for the territory, or for the state—to make a constitu-

tion for the state—not to redress wrongs claimed to have been done to Alturas county. As the people are honest and mean to do right, they can do so. That section of country that has been cut off, the gentleman says, if it went back again, Bellevue is going to control it. I do not know as much about the geographical position of the county as the gentleman does, but it seemed they could form county commissioner districts and appoint one of them in Bellevue, one in Hailey and one in Ketchum, and I cannot see but what they can draw a line perhaps that would make the county boundary and leave Bellevue out, and take in Camas Prairie.

Mr. CHANEY. I move the previous question. (Seconded).

The CHAIR. The previous question is called, and the question is, shall the motion of the gentleman be now put? (Vote and carried).

The CHAIR. The question now recurs upon the substitute offered by the gentleman from Nez Perce with the amendment.

Mr. REID. There is an amendment proposed to the substitute first.

The CHAIR. The chair was going to say that the vote would be taken on the amendment, the last amendment being voted on first according to the rule. The secretary will report the substitute and then the amendment in order.

SECRETARY reads the substitute; then reads Mr. Heyburn's amendment providing that the section shall not apply to the creation of new counties; also Mr. Shoup's amendment that no person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed.

Mr. REID. Both of those are accepted and are a part of the substitute. To that there is another amendment.

The CHAIR. Yes, to strike out "two-thirds" and insert "majority." That is the only amendment then pending to the substitute.

Mr. McCONNELL. The amendment was that the

words "two-thirds" be stricken out and "majority" inserted in its place.

The CHAIR. The question is on the amendment to the substitute to strike out the words "two-thirds" and insert the word "majority." (Vote). The chair is in doubt. (Rising vote; yeas, 27, nays 22). The amendment is carried.

Mr. AINSLIE. I call for the yeas and nays on this amendment.

Roll call:

Yeas: Allen, Batten, Beatty, Bevan, Blake, Campbell, Chaney, Crutcher, Glidden, Hammell, Hampton, Hays, Heyburn, King, Lamoreaux, Lewis, McConnell, Myer, Moss, Pierce, Pinkham, Robbins, Shoup, Steunenberg, Stull, Sweet, Underwood, Vineyard, Mr. President—29.

Nays: Ainslie, Anderson, Armstrong, Beane, Cavanah, Clark, Coston, Gray, Harkness, Hasbrouck, Hogan, Howe, Jewell, Mayhew, Melder, Morgan, Parker, Pefley, Pyeatt, Reid, Sinnott, Taylor, Whitton—23.

The amendment was adopted.

The CHAIR. The question now recurs upon the adoption of the substitute as amended for Section 3. (Carried).

Mr. AINSLIE. I have an amendment to the substitute as adopted.

SECRETARY reads: To amend by adding the following: "When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Mr. REID. I will accept the amendment; it is a very proper one.

Mr. BEATTY. I have no objections to the amendment, but if the gentleman will examine the laws we now have[1] he will see that they provide abundantly for that very thing, and as fully as can be provided, and we propose to continue those laws in existence. I think the amendment is entirely unnecessary; not that I have

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1—Sec. 3605, Rev. Stat. 1887.

any objections to it, for that is just what we have already.

Mr. REID. There are such provisions in half a dozen constitutions. I think it has been decided in the courts anyway, but to put it beyond all doubt I think it should be put in here. It is in the statutes of Idaho territory, but we are not incorporating them.

The amendment was re-read by the secretary.

Mr. VINEYARD. The legislature would no doubt make such a provision in its laws on that subject. To say that one portion of the territory of a county could get from paying its just proportion of the debt, so far as that particular locality was concerned, would impair the obligation of a contract to some extent. You have got it on your statute books already, as the gentleman says. I think it is purely legislation.

Mr. AINSLIE. It looks to me like they want one-half the clause in, and the other half out. It is equity, if it is not law. But it won't be the law of the state unless they put it in the constitution. I admit it is in the statute law of the territory, and ought to be in the constitution, as we have provided in Section 3, how a county can be divided. If it can be divided by a majority vote, suppose either portion of the county is deeply in debt, and the part of the county that is wanting to go has no funded or bonded indebtedness. If they go over to a new county—you will find sections of different counties that are deeply in debt, nearly every county, or two-thirds of them will want to go off to neighboring counties that do not owe such a big debt, and then they won't be responsible for a single dollar of the indebtedness they are dodging by going to another county. For instance, take the gentleman's county, Alturas. Suppose a part of that county wanted to be tacked on to Lemhi or Custer. Without this provision in there, they would not be responsible for the indebtedness. The legislature may or may not pass such a law; but you have provided how the counties shall be divided, and I propose they shall comply with the condition subsequent by assuming

their ratable proportions of debt. It is no more than fair and honorable.

Mr. McCONNELL. I would like to offer an amendment to that amendment. It is this: *Provided,* They shall not be held liable for any portion of the indebtedness of the county to which they are to be attached, contracted prior to said change. (Seconded).

Mr. McCONNELL. The proposition is, under this amendment, to hold that section of country which is to be detached from one county for their pro rata share of the indebtedness of the county from which they are to be detached, and place them in such a position that they will be obliged to pay a share of the indebtedness belonging to the county to which they are attached, the new county; so they will have the indebtedness of both counties, standing their pro rata share of the indebtedness of both counties at the date when they are attached. We might as well not have any substitute, because there is no section of people that want to pay the debts of two counties or assist in paying them.

Mr. REID. The gentleman would like perhaps to have the country lying between the Indian reservation and Genesee to go to Latah county, and if she goes, she has got to help pay our court house bonds; and if she stays, she might have to help pay some of Latah county's school district indebtedness.

Mr. McCONNELL. That is right. It is proper for that strip of country which the legislature in its wisdom last winter say fit to attach to Latah for educational purposes, to pay its pro rata of the school fund in that district; but it would not be right, if they want to come to Latah and be a part of Latah county, that they should be obliged to help pay the debts of both counties. We have been acting in this matter in a spirit of fairness. Those people may propose to remain with Nez Perce; I don't know. The people of Camas Prairie may propose to remain with the people to which they belong now; but should they conclude to go to Alturas, they would not want to pay the indebtedness of Alturas county.

Mr. REID. I hope the amendment will not be adopted. Suppose the county of Ada should take a strip from Boise county. Under this amendment the people in that strip taken from Boise would not be responsible for any of the old indebtedness of Ada county; and when the assessor goes over this strip that comes from Boise every year to levy taxes, he would have to skip those people. Now, when they come over here, they come with their eyes wide open. It is right and just that they shall not shirk any of the burden for which they have the benefit. And I announce as a principle of law that which has been decided repeatedly by the courts—and I know this is the fact, because I looked into the matter when we divided Nez Perce county—that no part of a county can shirk the old debts. That has been decided and settled, so we are merely enacting what is already common law. But suppose they go to a new county; they cannot shirk the old burden thereby, and you cannot legislate them out of it. I say the amendment is unfair, and will produce confusion. If they go to a new county they ought to assume any debts or taxes levied to pay the existing debt.

The CHAIR. The question is upon the amendment to the amendment offered by the gentleman from Latah, that any portion of a county being cut off shall not be required to pay any part of the debt of the county to which it is attached. (Vote and lost).

The CHAIR. The question recurs upon the amendment of the gentleman from Boise.

Mr. SHOUP. Let us have that read.

The amendment was read by the secretary.

Mr. SHOUP. Mr. President, I think the county to which this territory is attached should pay that indebtedness, not the people. They are getting those people into the county, and then if they have to pay the indebtedness, the entire county should pay it instead of the section stricken off.

Rising vote; yeas 27, nays 8, and the amendment was adopted.

Mr. REID. I now move the adoption of the substitute as amended. (Carried).

Mr. REID. I now move the adoption of the article as amended. (Carried).

Mr. REID. I now move that the article be referred to the committee on Engrossment, and that its final reading be set for nine o'clock Monday morning.

Carried, and the article was so referred.

Mr. MAYHEW. I would ask if there is anything on the secretary's desk or the chair's desk to be taken up this evening?

The CHAIR. The chair is of the opinion that there is nothing to be done.

Mr. CAVANAH. I move we adjourn until nine o'clock Monday morning.

COMMITTEE ON MEMORIAL.

Mr. REID. Before we adjourn I will ask the chair if the committee on Memorial was announced.

The CHAIR. The committee which was provided for by the resolution on the convention on yesterday, the chair will announce as follows: Pinkham of Alturas, Hays of Owyhee, McConnell of Latah, Armstrong of Logan, Ainslie of Boise, Reid of Nez Perce, Taylor of Bingham, Clark of Ada and Cavanah of Elmore.

Mr. VINEYARD. Before the convention adjourns I would like to have—I understand the report on Apportionment has been printed—I would like to have that report distributed so that the members can see it between now and Monday morning.

The CHAIR. That is ordered to be done, and the votes also ordered to be printed in connection with the bill.

Mr. VINEYARD. I understand the report is printed and I would like to have it distributed.

The CHAIR. We will suspend proceedings until the pages distribute it.

The motion was thereupon renewed to adjourn until nine o'clock Monday morning. Carried.

TWENTY-SEVENTH DAY.

MONDAY, *August 5th, 1889, 9:00 o'Clock A. M.*

Convention called to order by the President.
Prayer by Chaplain Smith.
Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Batten, Beane, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, McMahon, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Stull, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Brigham, Crook, Hagan, Hendryx, Poe, Pritchard, Salisbury, Woods.

Journal read and approved.

Reports of standing committees:

Mr. HASBROUCK. The committee on Engrossment desires to report.

ARTICLE XVIII., COUNTY ORGANIZATION, FINAL PASSAGE.

SECRETARY reads: Mr. President, your committee on Engrossment have the honor to report that they have carefully examined the article on Names, Boundaries and County Organization, and find the same correctly engrossed.

The CHAIR. The question is now upon the final passage of the article reported by the committee on Names, Boundaries and County Organization. The secretary will read the same.

The roll was called by the secretary and the vote upon the adoption of the article was recorded.

Mr. BEATTY. Mr. President, I shall vote against that bill, and I state my reasons briefly for it. In the first place, Section 3 as it there stands, as I consider it, ties up the county boundary lines of this territory for all time to come. In the next place, the section which provides for the payment of officers by fees is a return to the old system, which, for one, I have always objected

to, and which I think we will get tired of before we try it many years. I am in favor of the present system, although it needs some modification; and for those reasons I vote against the bill. I vote No.

Mr. SHOUP. The gentleman sitting immediately back of me says that one amendment has been left out as read this morning.

The CHAIR. Will the gentleman please state what it is?

Mr. HARKNESS. Not allowing assessor to serve two terms.

The CHAIR. That is incorporated.

Roll call:

Yeas: Ainslie, Anderson, Armstrong, Batten, Beane, Bevan, Blake, Campbell, Cavanah, Chaney, Coston, Crutcher, Gray, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Stull, Taylor, Underwood, Wilson, Mr. President—49.

Nays: Beatty, Vineyard, Whitton—3.

The CHAIR. The article is adopted and referred to the committee on Revision and Enrollment for incorporation into the constitution.

ARTICLE XIX.— APPORTIONMENT.

The CHAIR. Gentlemen of the convention, the next business is the consideration in the convention or in committee of the Whole, of the report of the committee on Apportionment.

Mr. SHOUP. I move that the house resolve itself into committee of the Whole for consideration of the report on Legislative Apportionment. (Carried).

Mr. MAYHEW in the chair.

Mr. SHOUP. I move that the committee rise and report the report back to the house without recommendation. (Seconded).

Mr. BEATTY. I move as a substitute for that that the committee proceed to the consideration of the bill. (Seconded).

The question was put by the chair. Vote and lost.

The CHAIR. The question is now upon the motion that the committee rise and report the bill back without recommendation. It should be, to be considered in the house; I suppose that is the intention.

Mr. SHOUP. Yes.

The motion was put by the chair. Carried.

Mr. CLAGGETT in the chair.

Mr. MAYHEW. Mr. President, as chairman of the committee of the Whole I am directed to report the Legislative Apportionment bill back to the house for further consideration in the convention.

The report was adopted.

The CHAIR. The secretary will read the article.

SECRETARY reads Article XIX.

Mr. MORGAN. Mr. President, I offer the following amendment.

Secretary reads: Amend as follows: After the word "Bear Lake," in line 17 insert "Oneida." Amend line 19 by striking out "Oneida" and inserting in lieu thereof "Owyhee." In line 21 strike out the words "and Owyhee," and make the word "counties" read "county."

Mr. SHOUP. Mr. President, if that is susceptible to those amendments I will accept them. If I understand this amendment it gives the county of Bingham one senator alone, and the counties of Bingham and Bear Lake and Oneida one senator, the counties of Owyhee and Cassia one senator, and the county of Owyhee one senator alone.

Mr. STULL. I second the amendment.

The CHAIR. By leave of the convention these matters will be put separately. It is moved and seconded that in line 17 after the words "Bear Lake" the word "Oneida" be inserted. Are you ready for the question?

Mr. BEATTY. Are you proposing to vote now upon the whole amendment, or only a part?

The CHAIR. Vote upon it in detail.

Rising vote; yeas 32, nays 14, and the amendment was adopted.

The CHAIR. The question recurs upon the second portion of the amendment, to amend line 19 by striking out the word "Oneida," and inserting in lieu thereof the word "Owyhee." (Vote and carried).

The CHAIR. The third clause of the amendment of the gentleman from Bingham is to strike out in line 21 the words "Owyhee and" and make the word "counties" read "county."

Mr. BEATTY. Mr. President, I have an amendment to that.

SECRETARY reads: Amend by inserting in line 21 in place of "Owyhee" the word "Alturas." (Seconded).

Mr. BEATTY. Mr. President, I do not know how the committee have arranged this report, or anything about the changes proposed in it. But I do know that in the report there are some very grave inequalities, and I will call attention to one now, which this amendment is proposed to meet to some extent. It is an amendment hastily prepared, and this report is a lengthy one and hard to gather up and comprehend in a hasty glance. It is proposed by the amendment offered by the gentleman from Bingham that we strike from line 21 the word "Owyhee" and that changed will leave Elmore county with one senator alone. Now let us see whether that is just or not. Elmore has 685 votes. It requires 889½ votes to entitle any county to a senator. The reason I propose to attach Alturas to that is because Alturas by this report is entitled to one senator. She has 1,031 votes. She has 141 votes more than enough to entitle her to a senator, while Elmore county has about 141 less than enough to entitle her to a senator. This report, if you adopt the amendment of the gentleman from Bingham, will leave Alturas county with 141 votes for a surplus, equal only to Elmore county with about 141 votes of a minority. Now that is an unjust apportionment. Perhaps by adding the two counties together and giving them a joint senator, it might equalize it, but at any rate it is not equal as it is

here. I see some other counties here too that have only 760 votes, which by this report are entitled to one senator and two representatives—the counties of Lemhi and Custer, and quite a number of others. I do not understand how the committee ever happened to make such a report as this, but this amendment of the gentleman from Bingham is unjust. It will give Elmore county one senator with only 685 votes. It leaves Alturas with 1,031 votes upon the same footing with Elmore county. In other words, Mr. President, we are getting back to the proposition early advocated here of giving each county a senator regardless of its voting population. Now, unless some good reason can be assigned for that, I am opposed to that amendment. I cannot see what it is intended for, unless it is the result of some combination or trade I know nothing about. It cannot be admitted as just; it cannot be just to give this county of Elmore, with only 685 votes, a senator, while a number of other counties—and Alturas is not the only one; for instance, Logan has 999 votes, nearly the same as Alturas, and gets but a senator—you are putting small counties upon an equal footing with the large counties. And unless the gentleman can assign some good reason why it should be done, I am opposed to it and I think the amendment I offer is better than the one he has proposed.

Mr. SHOUP. The gentleman from Alturas, it seems to me, is spinning a very fine thread. As regards the apportionment in those counties, we have had a custom in nearly all the states, I believe, that where a county has more than half enough to entitle it to a senator, that it shall be allowed one. Or, if it is more than half enough more to entitle it to one senator, that it is entitled to two. As regards the county of Alturas, it has over 200 votes more than enough for one senator. Now, these hundred votes have to be given to another county; that is, a hundred votes short of being entitled to a senator, but it does not belong to Alturas. If Alturas county had more than half enough more than

for one senator, then there would be some reason why it should be attached to that county. But I don't think it would be good policy for the counties of Elmore and Alturas to be in a senatorial district, even if they had the requisite number of votes. I think those two counties better be kept separate on any political question, for the good of the inhabitants.

Mr. STULL. Mr. President, there is an additional reason to the very good reasons which the gentleman from Custer has given. In the division of Alturas county, precincts were divided along the line of Camas Prairie. The returns which show here that Elmore casts 685 votes are not just to that county. They are the votes that were given by precincts which were held intact; whereas, the present territory comprised in the county of Elmore cast a considerable number of votes that are not included and are not shown in these statistics. Elmore county today has a considerable number more than 685 votes. She has more votes today than old Alturas has, and this provision we make here is only a provision that is proposed to remain until another arrangement shall be provided by law. Let the legislature come together, and if they find Elmore is not entitled to a senator, then let the legislature correct the evil and put the balance where it belongs. That is all we ask. But we say that these statistics are not right; the geography of the country shows that they are not right; but there are formations of precincts which belong now to Elmore county which contain a considerable population, and which are not reckoned in this 685 votes. Elmore is entitled to a senator, and she ought to have it, and above all, do not place Elmore and Alturas in the same senatorial district. That would not be conducive to the harmony for which our chaplain has so eloquently prayed.

Mr. MORGAN. Mr. Beatty has asked me if this is the result of a trade. I am a little surprised at the glibness with which the gentleman makes charges or insinuations of this kind, and I want to say that I am

not in the habit of making trades with anybody on these matters. I want to say further that I have no interest in this matter whatever. The reason this change was made with reference to Elmore county was to make a place for Owyhee county. Some of the representatives in the lower part of the territory were very much opposed, among others the gentleman from Owyhee to being put with Elmore county. They wanted to go with Cassia, and the gentleman from Bingham county was not satisfied with the matter, and Oneida county was not satisfied with the apportionment. In order to satisfy those counties below, I concluded to offer this amendment and put Owyhee and Cassia together, and Bingham, Oneida and Bear Lake. Then we must, of course, give Elmore a senator, and that is the reason it was done. I have no interest in Elmore at all, and I have no interest against Alturas county.

Mr. ANDERSON. May I ask you a question, Judge Morgan?

Mr. MORGAN. Yes.

Mr. ANDERSON. Why is it you have reduced Bingham, with its 1447 legitimate votes and something, over disfranchised votes, to one and one-third, while Elmore with 600 odd votes is given a senator alone? It was stated that without giving representation for persons who could not vote, as a matter of fact there were only 150 legal votes in Bear Lake county, and we have in Bingham county, the gentleman will notice by reading the bill through, given it a large share in the house of representatives. She makes up perhaps a larger share than she is entitled to in the house of representatives, which makes up for her loss in the senate.

Mr. KINPORT. I simply wish to ask the gentleman from Custer, who made the statement that it was the general practice, where the number of votes in the county ran over one-half of the number sufficient to entitle them to a senator, that they usually gave them a senator. And also where the number of votes

ran over the number required for a senator and a half, that they gave them two senators. I simply wish to ask him why this principle was not applied to Bingham county in this convention?

Mr. SHOUP. I would say in answer to that question, that this amendment is no amendment of mine; that is, in the report of the committee. That is an agreement, as I understand it between those counties themselves. They were allowed four senators among them, and they were going to divide it up as suits themselves.

Mr. KINPORT. I don't think that is as stated, notwithstanding one of the statements made by the members from that county. In the first report framed by this committee Bingham county was allowed a senator and a half. According to this last apportionment we get but one and one-third. And we have, according to this last apportionment a surplus of 226 votes; this is in addition to the fact that we have already been cut down fully one-half of our representation. I think it is altogether unjust to Bingham County.

Mr. BEATTY. I do not propose to spin any thread, fine or coarse; I am not a spider. I generally do what I do openly, and never in the dark as spiders do. My friend from Elmore calls attention to the fact that the report of the committee here as to the number of votes cast for those different counties is not correct. I understood him to assert that the county of Elmore had as many or more votes than the county of Alturas. If the gentleman so stated, he is certainly mistaken. I have understood all the time that this report here is substantially correct. It is true these new county lines did not go according to precincts, but ran through them; it ran straight; in other words, regardless of what it cut or struck, whether a mountain or a precinct or a house or a mill or anything else. But I have been informed before coming here, and since I have been here, that this report is as nearly correct as can be arrived at, without an actual count of the inhabitants them-

selves. So that I think my friend from Elmore is mistaken. I understand and I believe that this report is substantially correct within a few votes; and I do not know which way it would vary if an actual count was taken. Now, if it be correct let us see where we stand. Elmore has 685 votes; 889 votes entitle them to a senator; that gives them a deficiency of 204 votes. Alturas county has 141 votes more than enough to entitle her to a senator. That 141 votes added to 685 votes which Elmore has, would make 826 votes, just about enough to entitle them to a senator. Now, Mr. President, my object in making this motion was not that I expect to cheat Elmore county out of a senator. I expect Elmore county under this arrangement would have a right to a senator, but Alturas county would have a right to vote upon it. I propose it because I think it is fair. In other words, it will not be throwing away our surplus votes, but will let us vote upon the second senator, and undoubtedly Alturas getting one, Elmore would get the other. It was not because I was anxious to be attached to Elmore county, but I think it is all bosh about our not being able to work together. A portion of our citizens are daily dealing with a portion of the citizens of Elmore county, and no doubt our relations will be such in the future that they will work together harmoniously. It was not particularly because I wanted it to be attached to Elmore, nor because I am anxious to be kept away from Elmore. I think the animosity does not exist, that it is all talk, and if there ever was any feeling between the two counties it is dying out so far as those two counties are concerned. I propose this amendment because I know of no other county adjoining Alturas to which it could be joined in a senatorial district and make it harmonious. I would be very happy to be joined with Custer county, but I do not see how it can be arranged. Custer now has a senator with only 797 votes. I should not object to having the surplus votes of Alturas put with those of Custer, if it would be agreeable to the gentleman.

Mr. SHOUP. It is not agreeable.

Mr. BEATTY. Very well; that is it. These gentlemen seem to want a senator of their own for each county, regardless of the number of votes they have. Now I submit, is that fair; is it fair that a county with only 685 votes shall have as much representation as a county with 1,031 votes? If, on the contrary, you put the two together, it makes 826 votes for this senator, and as I firmly believe, the county of Elmore will have a senator, I have no idea in the world that Alturas county will get two, but give us the right to vote for the other, and it is not throwing our extra 141 votes away. I have suggested that; I don't know anything about this amendment, did not know it was coming, but I suggest that as the first thing that appears to my mind as a fair solution of that question. It is in there and no gentleman can say that it is fair to give one county with only 826 votes as much as a county with over 1,000. It puts it equal to Logan with her 999 votes, and is unequal as regards some others.

Mr. SHOUP. Alturas county gets more representation in the house of representatives.

Mr. BEATTY. Well, I have not looked at that yet. I am only looking at this.

Mr. CAVANAH. The gentleman from Alturas says there was no animosity between the two counties. There is not, except polygamy; and I guarantee that if there was a vote taken in Elmore county today, there would not be ten votes in favor of going to Alturas county. They would prefer going to Nez Perce or Bingham county.

Mr. BEATTY. Alturas county is not asking Elmore county to come back.

Mr. CAVANAH. But you are asking us to come back politically. Now, it would not be right, because Alturas is full of politicians, and there isn't one in Elmore county. They want voters; that is all they want.

Mr. REID. Mr. President, I offer a substitute for the first 25 lines of the report.

SECRETARY reads: Until otherwise provided for

by the first legislature elected under the provisions of this constitution, the apportionment of the two houses of the legislature shall be as follows: Each county of the state shall elect one senator. (Seconded).

Mr. SHOUP. That is in opposition to the Legislative Department which has already been adopted, which provides——

ARTICLE IV., SECTION 3.

Mr. REID. I anticipated that objection, but if you turn to Section 4 of the report, and I don't suppose there will be a disposition on the part of the convention or the chair to put the gag on and force this thing through—the same power that made that section is making this Apportionment Bill, and it says 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. If we go right along and say until the first legislature meets—in convention we have a right to do that, just as we have the right to move to reconsider this section at any time, so I take it that point of order is not tenable, and if it were tenable it would come with bad grace—if this convention chooses to alter it, it can do so. And if I can get a second to the substitute——

Mr. MAYHEW. It has been seconded.

Mr. REID. I am offering this substitute against the interest of my own constituents. In this apportionment bill we have the benefit of the surplus in Nez Perce, and get to vote for two senators.

Mr. SHOUP. In whose interest are you offering it then?

Mr. REID. In the interest of Idaho, as I propose to show. I offered this in good faith when it was up before, and I say it is against the interests of those I represent—I mean my own constituency; but I came here to legislate for this entire territory. We will get half a senator with Idaho and half a one with Latah. Under this proposed substitute we get one whole sen-

ator; it is the same thing to us when we get a chance to elect two. We might get to nominate both men, and if they turned out to be elected, whether democratic or republican ,would be of small importance if they were Nez Perce men, and came here to represent a county that is going to be wonderfully developed. But that is not the question; this legislative section provides, "shall be apportioned to the several legislative districts of the state according to the last vote for delegate." I maintain that that last vote for delegate does not show the true vote in the territory. I have the figures to show that in the county of Nez Perce there was 20 per cent of the voters that did not go to the polls, and the best estimate that has been made of the vote at the last election shows that there were 10 per cent of the people that stayed away. Now why should each county have one senator? It is true there will be three or four large counties that won't get as much representation. The first legislature that meets will elect the United States senator. The first legislature that meets will apportion the districts of this state and that perhaps will last for eight or ten years, and if you make such an apportionment as you have now, gerrymandering, as I believe, either in the interest of party or in the interest of aspirants. It may not be so, but I believe it, either one or the other, or both. What do you do? You do not come here and legislate for a non-partisan convention for a non-partisan purpose. I want, when the first legislature meets in this territory, if every county is republican to have a republican there, not simply to represent the party, but what? To take part in saying who shall be the first senators that shall serve us in the United States senate. I want the smallest county in this territory to have as much voice in that question as the largest one. You may say that it is not fair in proportion to population; we don't know what the voting strength is. Then what? When the legislature meets to apportion it, which perhaps will last for eight or ten years——

Mr. SHOUP. I raised a question of order, and ask that that be decided before the gentleman speaks.

The CHAIR. The chair did not hear the statement of the point of order.

Mr. SHOUP. That the motion is in conflict with the Legislative bill, or the article reported by the legislative committee.

The CHAIR. The chair has heard it stated that way before, and will rule that the point of order is well taken.

Mr. REID. Then I appeal to the convention on the point of order, and desire to give my reasons. Now, gentlemen, when the proceedings of this convention, whether we have been for one thing or another——

The CHAIR. The chair rules that it is out of order for the gentleman to argue the question before the chair——

Mr. REID. No, I am appealing to the——

The CHAIR. The chair holds that the rule of procedure is that the chair shall state the point of order. The gentleman from Custer raises the point of order that the substitute offered by the gentleman from Nez Perce is out of order. That we have adopted in the Legislative bill a proviso declaring how the senatorial districts shall be apportioned by the vote. The chair holds the point of order well taken, and the gentleman from Nez Perce appeals from the decision of the chair. the question is, shall the decision of the chair be sustained?

Mr. MAYHEW. I call for the yeas and nays. (Seconded).

Roll call:

Yeas: Allen, Armstrong, Beatty, Campbell, Glidden, Gray, Hammell, Hampton, Hasbrouck, Hays, Heyburn, Howe, Lewis, Maxey, McConnell, Melder, Morgan, Moss, Pinkham, Pyeatt, Robbins, Savidge, Shoup, Sweet, Underwood, Wilson—26.

Nays: Ainslie, Anderson, Batten, Beane, Blake, Cavanah, Chaney, Clark, Coston, Crutcher, Harris, Hogan, King, Kinport, Lamoreaux, Mayhew, Myer, Parker, Pefley, Pierce, Reid, Sinnott, Standrod, Steunenberg, Stull, Taylor, Vineyard, Whitton—28.

The CHAIR. The decision of the chair is overruled, and the gentleman from Nez Perce is entitled to the floor.

Mr. HEYBURN. Mr. President, I demand a call of the house.

The CHAIR. It is too late.

Mr. HEYBURN. I would like to know under what rule it is too late. Is there anything before the house?

Mr. REID. The chair ruled that I had the floor, and I do not yield it.

The CHAIR. Mr. Reid had the floor at the time the question arose. He lost the floor only temporarily for the purpose of taking this vote, and this vote being taken, he is entitled to the floor until he concludes.

Mr. REID. As I was stating, I believe, it would be for the reason of these important questions, to come up in the first legislature, that it would be just and fair to have every county in this state have a representative in the legislature. Then what? The substitute provides that whenever the legislature meets, not that it may apportion according to the votes, but that it shall be apportioned according to the vote. Then you will not only have the vote cast for the different officers and every man brought out, but you will have a census taken by the United States to determine who are of voting age, and you will get even those who stay away from the polls; and then when the legislature meets it will have all the data necessary to make a correct apportionment of this territory according to the provisions provided in the legislative article of the constitution. I say it would be fairer; that is the reason I maintained it when we had the bill up before. The convention did vote each county should have representation; then in order that the larger counties should have additional representation you took the surplus from the eighteen counties and gave the additional representation to the large counties. That is all right, they have a larger proportion; but each county shall be represented in the legislature, and when you come to vote for United

States senator and fix this apportionment for the future, the little counties will have as big a voice, although in the lower house, and the larger counties will have a disproportion then, but I take it, gentlemen, because I think it is right and fair and proper, that these little counties should be represented. Take this apportionment now. Take the county of Latah and see how it is done. Why not give Latah two representatives and two senators, and not attach her to these other two counties? What will be the trouble when you split up half and half with each county? And who shall be elected? Not either party; the consequence will be when you get down to that quarrel, the larger counties, democrats and republicans will unite on a county alone, and the little county will be left out. I think every little county ought to have one representative in that senate that meets the first time. After that I should be opposed to it; I would have the legislature then to observe this restriction provided for in the legislative article. I hope the substitute will prevail.

Mr. McCONNELL. I have been somewhat amused at the remarks made on this question. Of course, there is no politics in this, oh no; this is purely a nonpartisan measure. The gentleman suggests that these small counties should have at least one representative in the senate. And he refers to my county of Latah, which under this report is allowed only one senator. We are tacked on to two democratic counties for joint senators. The gentleman well knows the majority of those small counties; they are occupied and inhabited by miners; he knows the larger counties of this territory have double——

Mr. REID. (Interrupting): Will the gentleman allow me to ask him a question? It is based on the last vote for delegate. Didn't Nez Perce county elect a republican the last time?

Mr. McCONNELL. Yes, because they resolved themselves into a lot of mugwumps, a nondescript specimen of humanity which will be entirely extinct as

soon as we are admitted to statehood—at least I hope it will. No, my opinion is, and the opinion of my friends and colleagues will sustain me, and others, unless it is the democrats, will sustain me in that opinion, that this is purely a partisan measure. I had hoped we would get through the last few days of this session without drawing party lines; but the time has come when it is precipitated upon the republicans to stand by the report of this committee.

Mr. REID. I will ask you if that apportionment now is not in the interest of the republican vote made at the last election?

Mr. McCONNELL. If it is a question as to which side shall have it in their interest, I propose if possible to have it in the interest of the republican party.

Mr. PARKER. I am here from Idaho county, the largest county in the territory. I come from a county, sir, that is once and a half times as large as the state of Massachusetts. How big it would be if it was spread out flat, I don't know; but at any rate, I come from the largest county in the territory, and my county has the smallest representation in the state. I should like to call the attention of this convention to the fact that my neighbor county, Nez Perce, is getting two half-interests in joint senators. The third senatorial district, says this wonderful report, shall consist of the counties of Nez Perce and Idaho, and shall elect one senator. The fourth senatorial district shall consist of the counties of Nez Perce and Latah, and shall elect one senator. Now, Mr. President, why cannot those two votes be consolidated into one, and one elected from Nez Perce county? My county polled at the last election 675 votes; the only democratic county in the territory. Taxes and Idaho county are the only things that are left of the democratic party now. But it cast 675 votes in the last election. Now I see counties that only polled forty or fifty votes more than my county are given a whole senator, and my county only half a one. Only a joint interest is no senator. What

is the use of giving our people a vote, sir? Why not be disfranchised at once? What is the use of giving us a vote if we cannot have our representatives in the halls of the state legislature? Why, Mr. President, under this apportionment, two great counties can run this whole territory, or this state rather. We have seen in the legislature in this capitol building for the last four years that one county, the county of Alturas, has blocked legislation and stopped all useful legislation in order to keep that county intact. Nez Perce county is consolidated with the county of Shoshone, and it is a part of the code of ethics that the tail shall not wag the dog, but the dog surely is going to wag Nez Perce county every time there is going to be a joint senator elected. So too in Latah county, it is going to have practically three senators. It is consolidated with Kootenai in the election of a joint senator and consolidated with Nez Perce in the election of a joint senator. And the other counties are to be deprived of representation in the senate of the state of Idaho. There is no justice in it. More than that; all those great counties, Mr. President, have their resources developed, and their population, while these little counties, like mine, for instance, and Nez Perce, which are hampered with reservations, have all their resources yet to be developed. There the matter stands today; counties that need legislation for their development are practically deprived of it.

PARLIAMENTARY DEBATE.

Mr. HEYBURN. I renew my demand for a call of the house. (Seconded).

Vote, and the chair stated: "The noes seem to have it."

Mr. HEYBURN. I call the attention to Rule 18, which does not require a majority to call the house.

Mr. AINSLIE. It was decided once before upon that point, made by myself, that it requires a majority

vote, and we did not appeal from the decision of the chair on that.

Mr. SHOUP. It has been decided several times that it only requires three-fifths, and any three members have a right to demand a call of the house; but if there is objection made, it must be sustained by one-fifth. It only requires one-fifth to sustain the call.

Mr. MORGAN. Rule 18 decides it.

Mr. BEATTY. You have not yet announced the result of that, and before you do, I call for a division, although I believe Rule 18 covers it.

Mr. SHOUP. There is no question about this rule. Any three members have a 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.

Mr. AINSLIE. I stated that same objection two weeks ago on a very important matter about that suffrage bill, and the chair ruled that the majority could prevent a call of the house. We took that very ground you take now, and we were voted down on it.

Mr. SHOUP. I call the gentleman's attention to what happened five or six days ago. Mr. Mayhew moved a call of the house. Objection was made, and the vote was taken where it only required one-fifth. I think Mr. Reid was in the chair at the time.

Mr. McCONNELL. Mr. President, I do not remember what former decisions of the chair have been on that subject exactly, but I do remember that decisions in this house have been at variance at various times. I remember the first decision made by the vice-president in the chair; he afterwards admitted it was incorrect, and if the president——

Mr. REID. Does the gentleman mean to intimate that I have ruled on this question?

Mr. McCONNELL. Not on this question, but on another question. And I do think it is highly proper for any presiding officer when he makes a mistake in any particular ruling, and afterwards becomes convinced that it was a mistake, to change his decision.

I do not think there is any gentleman on this floor that will argue that a minority has no right to call the house. What is the object of a call of the house? It is to protect the minority, is it not? What other protection would they have? Suppose it should occur on any question here that the democrats should be in a minority, and they were anxious before a vote was taken on a certain subject to have their members brought in. If they were in a minority under this rule they could not have a call of the house and could not have their members brought in. It is purely a matter of fairness and this rule is established in all bodies to protect minorities, to give the minority an opportunity to get their members in.

The CHAIR. It was decided by the chair when this same question came up some time ago that on a demand for a call of the house, if objection should be made the demand should be sustained by one-fifth. That calls for a vote, as the chair understands it, upon the question as to whether there shall or shall not be a call of the house; otherwise one-fifth may hold the entire convention here all day long, or else we would be driven to this proposition that one-fifth may demand the call of the house; and then a majority may dispense with the call, and the other fifth again call for it, and the majority still dispense with a further call. And it is the opinion of the chair that it stands precisely on the same basis as it would be in the case of a call for the previous question. If the previous question is demanded, you put the question to a vote, shall the main question be now put? And the majority decides the question that it shall be put; and so if one-fifth of the members decide for a call of the house, you then put the question whether the call shall be made; and if they vote it down there is no call. That is the understanding of the chair, and if he is wrong he must be shown by some parliamentary manual where the matter has been considered. It strikes my mind that that is the plain sense of the matter.

Mr. SHOUP. Do I understand the chair to rule that where three members demand a call of the convention and objection is made, that it shall require a majority of the convention to sustain the call? Is that the ruling of the chair?

The CHAIR. That is the ruling of the chair. If objection is made, it requires that the demand for the call shall be sustained by one-fifth, and when the one-fifth is obtained, then that entitles that one-fifth to vote with regard to the question.

Mr. SHOUP. If that is the decision of the chair, of course I shall take an appeal from it, for I am positive the chair is in error.

A MEMBER. I think you had better adopt democratic tactics and filibuster until adjournment.

Mr. HEYBURN. Mr. Chairman, I would ask if it was not the constant practice in the house of representatives, for the minority of any party which finds themselves in the minority, to demand a call of the house until their members are present?

The CHAIR. If the gentleman will go and get some recognized manual to show that the chair is right or wrong, it will hold accordingly.

Mr. HEYBURN. By the time the manual could be found and the rule produced and the argument made on it, I presume there would be necessity for a call of the house.

Mr. BEATTY. Mr. President, I do not understand that the chair announced the decision on this question of division.

The CHAIR. Pending the announcement the question arose.

Mr. BEATTY. Then I call for the yeas and nays.

Mr. HEYBURN. Mr. Chairman.

Mr. MAYHEW. Are we voting whether there shall be a call of the house?

The CHAIR. We are voting on the question as to whether there shall or shall not be a call of the house.

Mr. HEYBURN. I raised the point of order, and

I would like to have a ruling upon it, that when a call of the house is made it only needs to be supported by one-fifth, and that no vote is in order until the next order, on being supported by one-fifth.

The CHAIR. The point of order has been raised, and by the gentleman of Custer, and has been decided to the contrary.

Mr. HEYBURN. I desire to appeal from the ruling of the chair.

The CHAIR. The chair decides it is too late at this time to take the appeal, for another motion has intervened, namely, a motion for roll call.

Mr. HEYBURN. I understood the gentleman from Alturas to say that no decision had been rendered upon it.

Mr. BEATTY. I will withdraw the motion for a call of the yeas and nays.

Mr. HEYBURN. I renew my appeal.

The CHAIR. The motion for the yeas and nays being withdrawn the gentleman from Shoshone appeals as to whether a call of the house can be determined by a majority or——

Mr. HEYBURN. I call for the yeas and nays.

The CHAIR. All those in favor of sustaining the decision of the chair will vote yea; those opposed will vote nay. The secretary will call the roll.

The secretary thereupon called the roll.

Mr. BEATTY. I desire to explain my vote. I shall vote no in this case, for the reason that I believe the ruling here is not what it should be, and I desire a call of the house should be had. It is not for the purpose of reflecting upon the decision of the chair, for that I think may be technically correct; but I will vote no.

Mr. KING. Mr. Clerk, I desire to have my vote recorded. I did not hear the call.

Mr. AINSLIE. There has been so much noise here that I call for the reading of the roll call by the clerk.

The CHAIR. The secretary will read the names.

The SECRETARY reads the roll call:

Yeas: Ainslie, Anderson, Batten, Beane, Bevan, Blake, Cavanah, Chaney, Clark, Coston, Crutcher, Harris, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Myer, Mayhew, Parker, Pefley, Pierce, Reid, Sinnott, Standrod, Steunenberg, Stull, Taylor, Underwood, Vineyard, Whitton—32.

Nays: Allen, Armstrong, Beatty, Campbell, Glidden, Gray, Hammell, Hampton, Harkness, Hasbrouck, Heyburn, Howe, Lemp, Maxey, McConnell, Melder, Morgan, Moss, Pinkham, Pyeatt, Robbins, Savidge, Shoup, Sweet, Wilson—25.

The CHAIR. On the question as to whether the decision of the chair shall be sustained, the vote stands yeas 32, and nays 25, and the decision of the chair is sustained.

ARTICLE XIX.—APPORTIONMENT. SECTION 1.

Mr. McCONNELL. I move to lay the substitute on the table, and on that I demand the yeas and nays. (Seconded).

Mr. REID. I ask that the substitute be read.

SECRETARY reads the substitute.

Mr. MAYHEW. Mr. President——

The CHAIR. The substitute has been offered by the gentleman from Nez Perce to strike out Section 1 and adopt the substitute, which has been read from the secretary's desk. The motion is made by the gentleman from Latah to lay the substitute upon the table.

Mr. MAYHEW. Well, the gentleman was making inquiry if the vote was taken now, it does not go to the adoption of it?

Mr. REID. Oh, no.

Roll call:

Yeas: Allen, Armstrong, Beatty, Campbell, Chaney, Glidden, Gray, Hammell, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Howe, Lemp, Lewis, Maxey, McConnell, Melder, Morgan, Moss, Pinkham, Pyeatt, Robbins, Savidge, Shoup, Sweet, Underwood, Wilson, Mr. President—30.

Nays: Ainslie, Anderson, Batten, Beane, Bevan, Blake, Cavanah, Clark, Coston, Crutcher, Harris, Hogan, Jewell, King, Kinport, Lamoreaux, Mayhew, Melder, Parker, Pefley, Pierce, Reid, Sinnott, Standrod, Steunenberg, Stull, Taylor, Vineyard, Whitton—29.

The CHAIR. On the motion to lay the substitute offered by the gentleman from Nez Perce on the table the vote stands yeas 30, nays 29, and the substitute is laid upon the table. The question now recurs upon the question before the convention——

Mr. REID. I rise to make parliamentary inquiry. A motion to lay the substitute on the table carries with it the original proposition also, does it not?

The CHAIR. I certainly do not consider so, when the substitute is entirely a new proposition.

Mr. REID. I just wanted to submit what is the usual ruling on such questions.

The CHAIR. Gentlemen, it is moved by the gentleman from Bingham and seconded, that in line 21 of Section 1 of the pending measure, the words "and Owyhee" be stricken out, and the word "counties" be made "county," so that it will read: "The Thirteenth shall consist of the county of Elmore and shall elect one senator." To that an amendment is offered by the gentleman from Alturas to strike out the words "and Owyhee" and put in the words "and Alturas," so that it will read: "The Thirteenth shall consist of the counties of Elmore and Alturas, and shall elect one senator." The question is first upon the amendment to the amendment.

Mr. STULL. Mr. President, the vital principle of our institutions is that laws shall be passed with the consent of the governed. Now, Mr. President, if you were to go into Elmore county today and make the proposition, shall Elmore county be joined to Alturas, as proposed by this amendment, there would not be one vote, not one in that county. We desire first of all that we shall have one senator, but——

Mr. BEATTY. Mr. President.

Mr. STULL. (Continuing)—but if we do not have a senator——

Mr. BEATTY. Mr. President.

Mr. STULL. I do not yield the floor.

Mr. BEATTY. For a question?

Mr. STULL. No; no. I do not want any questions. We desire first of all that Elmore shall have a senator as it is entitled to. If in the wisdom of this convention it be decided that Elmore shall never have a senator, do not join us to Alturas county.

Mr. CAVANAH. Wipe us out first.

The CHAIR. The question recurs first upon the amendment of the gentleman from Alturas to strike out the word "Owyhee" and insert the words "and Alturas."

The vote was taken and the amendment lost.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Bingham to strike out the words "and Owyhee" and change the word "counties" to "county," so that the clause as amended will read, "The Thirteenth shall consist of the county of Elmore and shall elect one senator." (Carried).

The CHAIR. What is your pleasure with regard to this section?

Mr. GRAY. I move the adoption of the section. ("Question, question." Carried).

SECTION 2.

Section 2 was read.

Mr. SHOUP. I move the adoption of the section. (Seconded).

Mr. McCONNELL. Mr. President, I have an amendment.

SECRETARY reads: Amend line 3 by striking out the word "three" and insert the word "four." Strike out line 4. Amend line 5 by striking out the word "two" and inserting the word "three." Amend line 10 by striking out the word "two" and inserting the word "one," and add after line 10, "the counties of Custer and Lemhi one member." Amend line 11 by adding "the counties of Elmore and Logan and Owyhee one member." Amend line 18 by striking out the word "two" and inserting the word "one." Strike out line 24.

Mr. SHOUP. I have heard of gentlemen being good

at ciphers. I think the gentleman from Latah should be given a chromo.

Mr. CAVANAH. I think so too. I second that motion.

Mr. SHOUP. Under his amendment he proposes to give the county of Custer, with a vote of 797, one member in the house of representatives, and give the county of Washington, with a vote of 763, two members. He gives the county of Lemhi, with a vote of 763, only one member also. Here are two counties he gives one member who have more votes than the county of Washington to which his amendment would give two members.

Mr. CAVANAH. And gives Lemhi one-third of a member, with 685 votes.

Mr. McCONNELL. Mr. President, the chairman of the committee suggests that I am entitled to a chromo for my mathematics, if I understand it correctly. If that is a fact, I think he is entitled to a large steel engraving, because he ranks me, certainly, in his style of mathematics. The object of this amendment has been to try and prevent such an apparent misrepresentation or over-representation as the gentleman tried to gain for his county. These amendments must be all taken together to be properly understood. The county of Custer polls 797 votes; 444 would require them to have a representative. They got those two members, one additional one on 353 votes. I have made no alterations in regard to Washington county. The county of Alturas only got two members, and the county of Ada with an addition of 337 votes they make no allowance for when attaching it to Elmore. The county of Lemhi they give an additional member for 319 votes. Yet they do not say anything about giving an additional member to Ada for their 337 votes. Now, they have an increase; they had one senator for each of those counties, which is more than they were entitled to under the count. If we give the county of Custer one representative, the counties of Lemhi and Custer one member, and give the county of Lemhi one member, taking into consideration the

additional representation they get in the senate, we will have the equilibrium maintained by their then receiving a representation for twelve votes more than they have in the two houses. They will then be entitled under that provision to a representation for twelve votes in the two houses, more than they have actually got. I am looking a little after the interests of Lemhi and Custer, and I am trying to divide this surplus representation which they have under this bill, around among the other counties. I think in the judgment of the chairman in trying to gain a large representation for his county, he lost sight of mathematics entirely. However, I would be willing to grant him his steel engraving.

Mr. SHOUP. As regards this apportionment for those counties the gentleman has alluded to, there was no objection at all in the committee, which was composed of eighteen members. This question was never raised, that the counties of Lemhi and Custer were given more representation than they were entitled to. Those two counties taken jointly have 1,560 votes. Giving them two members in the house of representatives still leaves them 771 votes unrepresented in the house of representatives. We have got other counties with a smaller vote than either of those counties with the same representation they have got, as I pointed out to the gentleman; the county of Washington which is left unchanged has the same representation in both houses that the other counties have. Now, if we were to give either one of those counties—say the county of Lemhi, the smaller one of the two—a joint member with some other county, where would we attach it? There is no small county connected with it. We have to attach it to Custer county, which only lacks a few of having enough for two members.

Mr. McCONNELL. I would ask the gentlemen of the convention to take their pencils and set down these figures and be yourselves the judges as to the fairness of this. The county of Custer polls 797 votes. Requiring 444 votes for one member would leave a surplus of

353 votes. The county of Lemhi polls 763 votes. Deducing 444 would leave 319 votes surplus for Lemhi. Now, 353 plus 319 would equal 672 votes between the two counties to be represented, giving them a joint representative in the house, and taking 444 votes would leave them 228 votes yet unrepresented in the house. But they have a representation of 91 votes over in Custer , in the senate, and 125 votes in Lemhi, showing that they have a representation in the senate of 216 votes more than they are entitled to. They have 216 more representation in the senate, and they are short 228 in the house. So they lose their representation in the house and gain it in the senate, and come more nearly being equally represented according to apportionment than any county in this state will be, as there is only the slight difference of 12 votes. Now, these counties are not situated as some of the other counties are. We have heard a good deal about the larger counties. The larger counties, with the exception of Shoshone, are agricultural counties, and there is a large class of people in those counties that are not represented at all, taking the representation on the basis of the vote. And while I am willing to concede anything that is fair to any smaller county, yet I don't think it is right to give those counties so much larger representation than the larger counties in proportion to their population. They have the advantage under this amendment which I propose of being represented, having any over-representation in the senate. I think it is a very fair amendment, and I hope it will be adopted.

Mr. CAVANAH. The way the secretary read it, you strike out line 4. Is that right?

The CHAIR. Does the gentleman desire a division of this amendment?

Mr. McCONNELL. If any gentleman desires. They properly should be voted on together, I think.

The CHAIR. The chair is of the opinion that it would be more fair and equitable to divide it.

Mr. McCONNELL. I have no objections.

Mr. BEATTY. I want to offer an amendment to that amendment. I think in line 11 he proposes to add the words "Logan and Owyhee," so as to give Elmore, Logan and Owyhee one member. I desire to amend, if the gentleman will accept it, by striking out "Owyhee" and leaving Owyhee alone for a member, instead of each one a third.

The CHAIR. There is an amendment upon each one of these clauses, and we will get into everlasting dispute.

Mr. BEATTY. Well, I simply ask if the gentleman will accept that amendment.

Mr. McCONNELL. What is the amendment?

Mr. BEATTY. To strike out the word "Owyhee" in line 11, so as to leave the counties of Elmore and Logan with one-half in each, instead of third each. I understood his amendment to be this, that in line 11 he adds "Logan and Owyhee."

Mr. McCONNELL. I will accept that amendment.

Mr. SHOUP. I rise to a question of order on that. The legislative bill provides that each county shall be entitled to one full member of the house of representatives. If this is taken or accepted as an amendment to the amendment of the gentleman from Latah, the half member with Elmore and Ada is stricken out, and now you attach the other one member that Elmore is entitled to to some other county, and it will not give Elmore one whole member.

Mr. CAVANAH. Gives her only one-third.

Mr. SHOUP. Elmore then will not have the full representation in the house of representatives, which is out of order.

The CHAIR. I think that is the operation of the amendment, and the chair will hold it is out of order. And any other amendment which deprives a county of one representative in the house. We will take this vote, gentleman, upon each amendment as it arises. The first one is to amend line 3 by striking out the word "three" and inserting the word "four" so it will read: "The

county of Ada, four members." All those in favor——

Mr. McCONNELL. Before that is put I desire to say that the amendment does not amend line 11; I do not strike out line 11. Before they vote on this, I want that understood. We allow the county of Elmore one member, and the counties of Logan, Elmore and Owyhee one member.

Mr. GRAY. Would not the first and second amendment have to go together? I will ask the mover if that is not the idea.

The CHAIR. What is the desire of the gentleman with regard to that matter? Mr. Gray inquires whether it is not a part of the same amendment to strike out line 4.

Mr. McCONNELL. We may give to Elmore in line 11 what we lose by striking out line 4.

The CHAIR. Then it is really a part of the same amendment to strike out line 4 and the word "three" in line 3 and insert "four."

Mr. BEATTY. It seems to me these amendments are all so connected together that we cannot vote upon them separately, because one depends upon the other. It seems to me they ought to be voted upon as an entirety, and if we clearly and fully understand the amendments before we vote upon them, there will be no difficulty.

Mr. MAYHEW. I would like to inquire.

Mr. SHOUP. As I understand the motion of the gentleman from Latah, he intended to give Ada county four members instead of three and a half. Now, if he gives Ada four members instead of three and a half, the other half member will have to be taken from Elmore county. That is where he proposes to take it and give it to Ada.

Mr. McCONNELL. No, the gentleman is mistaken. We are taking something from Lemhi and Custer and giving it to Elmore.

Mr. MAYHEW. Does your amendment give Ada four members and a half.

Mr. McCONNELL. Only four members. We strike out line 4.

The CHAIR. Are you ready for the question?

Mr. CLARK. Mr. President——

Mr. SHOUP. Mr. President, I have not yielded the floor yet.

Mr. CLARK. I simply rise to make an inquiry. The motion is to strike out all of line 4, and in line 11 to add "Logan and Owyhee." Now, where does Elmore county get one representative by itself, as the rule prescribes?

Mr. McCONNELL. The county of Elmore gets one full member and a joint member with the counties of Logan and Owyhee.

The CHAIR. The amendment is to add at the end of line 11 the words "the counties of Elmore, Logan and Owyhee, one member," which will leave the county of Elmore with one member and a third of a member in addition. It is not to strike out any part of line 11, but to add to it.

Mr. CLARK. The county of Elmore then under line 11 gets one member in connection with Logan and Owyhee.

Mr. McCONNELL. Yes, and one member by itself.

Mr. CLARK. It means then that the county of Elmore gets one member, and in addition with the counties of Logan and Owyhee it gets one member.

Mr. McCONNELL. Yes.

The CHAIR. It is moved and seconded that line 4 be stricken out; that line 3 be amended by striking out "three" and inserting "four," so as to give the county of Ada four members. (Vote). The nays seem to have it.

A division was called for and a rising vote resulted yeas 8, and the amendment was lost.

Mr. HEYBURN. I move the adoption of the section as reported. (Seconded).

Mr. WHITTON. Mr. President, the amendment——

The CHAIR. The amendment is out of order, as we are now proceeding upon one amendment.

Mr. HEYBURN. I thought it was all included in the motion.

Mr. WHITTON. Mr. President, I want to speak to this second amendment.

Mr. McCONNELL. I will withdraw my amendments now. When one is voted down it carries all with them.

Mr. HEYBURN. I now renew the motion to adopt the section as reported. (Seconded).

Vote and carried, and Section 2 is adopted.

Article XIX. Adopted.

Mr. SHOUP. I move the adoption of the article as a whole. (Carried).

The CHAIR. The question is now upon fixing a time for the final reading of the article.

Mr. MAYHEW. I move that this article be considered engrossed; there are no amendments to it to amount to anything; and that it be made a special order for final reading at two o'clock this afternoon.

The CHAIR. The chair will ask the gentleman, the chairman of the committee on Engrossment, whether it could not be engrossed by two o'clock.

Mr. HASBROUCK. I think it can.

Mr. MAYHEW. Very well, I have no objections.

The CHAIR. it is moved and seconded that the bill be engrossed and the hour of two o'clock this afternoon fixed for its final reading. (Carried).

REPORT OF COMMITTEE ON SCHEDULE.

The CHAIR. The next question that comes before the convention according to the standing order of business, is the report of the committee on Schedule.

Mr. GRAY. Mr. President, the printed bills have not been distributed.

The CHAIR. The secretary informs the chair that they have not yet come from the printing office.

Mr. MAYHEW. I demand the report of the committee on Printing. We have not had a report since the convention has been in session.

The CHAIR. No individual member can demand a report from any standing committee.

Mr. ALLEN. The Printing committee have read this report; the proofs have been read and the printers are printing as rapidly as possible and agreed to have it here by noon or before.

Mr. HEYBURN. I would state for information, that I have just inquired, and I understand they have gone down after it, so I guess probably in a few minutes it will be here.

Mr. ALLEN. I want to say for the benefit of the convention that the printing committee has done all it could for the hastening of this report.

Mr. REID. I would suggest to the chairman of the committee on Schedule that I have had some talk with the gentleman who represented the minority report, and it was thought if we let this matter go over to two o'clock, during recess we could agree on a certain time it was to be debated, and agree when the vote should be taken on it, so we could expedite the business of the convention, and I think if we adjourn now or go on with some other business and let this go over until afternoon, that would be advisable. And if that meets with the approval of the chairman of the minority report, and with the consent of the house, I will make that motion.

Mr. GRAY. I will agree to that.

Mr. REID. I move that that report now be laid over until two o'clock, to be considered then. (Carried).

Mr. BEANE. I move we take a recess until two o'clock.

ARID LANDS—LETTER OF SECRETARY OF THE INTERIOR.

Mr. MORGAN. I have here a reply of the secretary of the interior to the memorial sent by Governor Shoup lately, and I would like to have it read for the information of the convention.

SECRETARY reads:

Washington, D. C.

Honorable G. L. Shoup, Governor,

Boise City, Idaho.

I have just received resolutions adopted by the constitutional convention transmitted by you to me through telegram. A full reply to this question I think is found in the following provision of the appropriation act of Oct. 3, 1888,[1] which reads as follows: "For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation and the segregation of the irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees in field and in office, the cost of all instruments, apparatus and materials, and all other necessary expenses connected therewith, the work to be performed by the geological survey under the direction of the Secretary of the Interior, the sum of one hundred thousand dollars or so much thereof as may be necessary. And the director of the geological survey under the supervision of the secretary of the interior shall make a report to congress on the first Monday in December of each year, showing in detail how the said money has been expended, the amount used for actual survey and engineer work in the field and in locating sites for reservoirs and an itemized account of the expenditures under this appropriation. And all the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches or canals for irrigation purposes, and all the lands made susceptible of irrigation by such reservoirs, ditches or canals, are from this time henceforth hereby reserved from sale as the property of the United States, and shall not be subject after the passage of this act to entry, settlement or occupation until further provided by law; *Provided*, That the President may at any time in his discretion by proclamation open any portion or all of the lands reserved by this provision to settlement under the homestead laws." This is the law of today, unreserved, unrepealed and in full force. You perceive its vast extent, and the immense consequences that will follow therefrom in the direction that your resolution points unless there be further action in relation thereto by congress. It follows necessarily that the speculators, corporations or other persons referred to in the resolutions are under the effect of this law and unable to obtain the advantage that you say they are seeking unless the law is repealed, or the President opens the lands to settlement under the homestead laws. The government must have and will take everywhere

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[1]—25 Stat. at Large, 526.

absolute control of every acre of arid land that may be redeemed by the system of reservoirs, canals and ditches provided in the appropriation act mentioned. The subsequent appropriation act has not affected the above provision. This I think is a full solution of the whole trouble between the territory of Idaho and Utah, and parties entering upon these lands in either territory will be subjected to the superior title and further control of the United States. I have directed the commissioner of the land office to notify the local officers of the law and prohibit entries of the kind you specify, and I have also ordered the superintendent of the geological survey to proceed rapidly with the surveys on Bear River; the statute you observe reserves these lands from the dates thereof, and the assistant attorney general of this department agrees with me that it is constitutional and effective to the extent expressed. I fully appreciate the conflict of rights that must arise between territories and also between territories and states, but these can and will be better regulated by national control than local conflicts, and contradictory legislation, if even that statute to which I have referred is not known in western territories to the extent at least that it ought to be, and I will have your dispatch and this published today in full.

John W. Noble, Secretary of Interior.

Mr. VINEYARD. I wish to inquire what is the purpose of this dispatch.

Mr. MORGAN. The object of reading it here was to give the convention information.

Mr. VINEYARD. I saw this two or three times in the newspapers.

Mr. MORGAN. I am sorry the gentleman has been informed of this twice, Mr. President.

The CHAIR. The answer of the secretary of the Interior will be entered in the journal of the convention unless there is objection.

COMMITTEE MEETINGS.

Mr. HASBROUCK. Before the convention takes a recess I desire to announce that there will be a meeting of the committee on Ways and Means, and I desire all members to be present, and I request that the members of the special committee on Finance meet with us, directly after adjournment.

Mr. BEATTY. Mr. President, I respectfully insist

that all members of the committee on Revision meet in this room immediately on adjournment.

The CHAIR. The chair will announce that the committee on Address will immediately on recess meet in the supreme court room.

It is now moved and seconded that the convention take a recess until two o'clock this afternoon.(Carried).

AFTERNOON SESSION.

Convention called to order by the president at two o'clock.

The CHAIR. The first thing in order is the consideration of the report of the article, which was agreed upon this morning, and made a special order for consideration at two o'clock.

Mr. HASBROUCK. Mr. President, the committee on Engrossment is ready to report.

ARTICLE XIX.— APPORTIONMENT. FINAL PASSAGE.

SECRETARY reads: Mr. President, your committee on Engrossed Articles of the Constitution have the honor to report that they have examined the article on Apportionment, and find the same correctly engrossed. Hasbrouck, Chairman.

The article on Apportionment was thereupon read by the secretary.

The CHAIR. The question is upon the final passage of the article just read. The secretary will call the roll.

Mr. REID. Mr. President, I desire to vote No, and to state in doing so that this bill violates the whole principles upon which the convention was called, and it is unjust to the county and state to gerrymander in the interest of partisanship. I find the county of Custer with only 797 votes given a senator, with Nez Perce having about the same number of votes, with no more than half a representative; I therefore vote no.

Roll call:

Ayes: Ainslie, Allen, Anderson, Bevan, Blake, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Pyeatt, Robbins, Savidge, Sinnott, Shoup, Stull, Sweet, Underwood, Whitton, Wilson, Mr. President—46.

Nays: Batten, Beane, Beatty, Harris, Kinport, Parker, Reid, Standrod, Steunenberg, Taylor, Vineyard—11.

The article was adopted and referred to the committee on Revision and Enrollment for incorporation in the constitution.

STENOGRAPHIC NOTES OF PROCEEDINGS.

Mr. HASBROUCK. Mr. President, I ask the consent of the convention to introduce a resolution.

SECRETARY reads: *Resolved,* That it is the sense of the convention that it is not advisable to have the stenographic notes of the debates of this convention transcribed or published at this time; but that said notes be deposited with the territorial secretary. Hasbrouck.

Mr. HASBROUCK. For the information of the convention I will say that I have conferred with one of the stenographers, Mr. Sholes, and he informs me that there will be about six thousand folios, and that it will cost about $1,200 to transcribe these notes. And furthermore, that it will make a book about as large as the Revised Statutes of Idaho, and if they are published it will cost probably from $3,000 to $4,000. It is the sense of the committee on Ways and Means, and also the special committee on Finance, to whom I referred the matter, that it was not in the interest of economy to have those notes at the present time transcribed or published. Therefore, I would like to see this resolution adopted.

Mr. BATTEN. I am rather opposed to the resolution. I think it would be a very great misfortune indeed if the eloquence with which we have been stormed day after day, should be confined to the unread-

able hieroglyphics of the stenographer and allowed to rust away.

Mr. HEYBURN. Mr. President, I do not know what it has cost to take these notes originally, but if they are not put in such shape that they can be used in the future, whatever it has cost is that much money thrown away. I do not know what the object of this convention was in providing that two stenographers should be in attendance to report the proceedings of the convention, unless you have those notes transcribed. I should think it would not be necessary or wise to have them printed; but I doubt if there is anybody on this floor, except the stenographers that can ever use or read those notes, and it seems to me they should be transcribed, and that transcript filed with the secretary. If the notes alone are filed, you might as well file them in Sanscrit. I think in the interest of economy, we should not throw away what we have done. I do not think it is material whether this "eloquence" has been or will be perpetuated or not; that is rather a trivial side of the case; the business side of this case is whether we are going to get any value for the money we have expended, and that can only be done by having these gentlemen, who may not, and doubtless will not be at hand if the state ever wants these notes transcribed, in which event it would be utterly helpless. Those notes are not something that any man can transcribe; one man cannot read the shorthand notes of another.

The CHAIR. It is moved and seconded that the notes of the stenographers of the debates of the convention shall not be transcribed in longhand, but that the notes shall be deposited in the archives of the territory.

Mr. HEYBURN. I move to amend the motion so that it shall provide that these notes shall be transcribed and filed with the secretary of the territory, but not published. (Seconded).

Mr. SWEET. I would like to ask two questions for information. The first one is, whether any other stenog-

rapher can transcribe these notes. And second, what it will cost simply to have them transcribed without publishing. The chairman of the committee on Ways and Means, I suppose, can answer the latter question.

Mr. HASBROUCK. One of the members of the convention informs me that he thinks that other stenographers in case of an accident happening to those who have taken them, can transcribe these notes.

Mr. MORGAN. Do I understand that one of the stenographers so informed you?

Mr. HEYBURN. I will ask Mr. Sholes' opinion on the subject.

Mr. HASBROUCK. Mr. Sholes told me that it was doubtful whether they could or not; that it might be so, but that they could not do it as well. As to the cost of it, I also got that from Mr. Sholes, that it will cost, at twenty cents a folio, $1,200; that probably some of it might be cut out and reduce the cost to $1,000.

Mr. MAYHEW. I am just informed by one of the stenographers to the effect that the transcribing by another cannot be done; that one stenographer cannot write out another's notes. He may write out part of it, but not entirely.

Mr. HEYBURN. We have at least two gentlemen on the floor, members of this convention, who probably can give us some light on it, because I think they both understand the science.

Mr. STULL. No man who has ever had practical experience in stenographic work would ever suppose that one stenographer can make an exact transcript of another's notes. One stenographer can take the notes of another stenographer and make an abstract of it, but he never could make a verbatim transcript; it is not possible.

The CHAIR. The question is first upon the amendment offered by the gentleman from Shoshone, Mr. Heyburn, that it is the sense of the convention that these stenographic notes containing the debates of the convention shall be transcribed into long hand, but that they shall

not be published. (Vote). The chair is in doubt. Those favoring——

Mr. BEATTY. I want to ask a question before I vote, whether it is contemplated that each stenographer will make a report or whether the work will be divided.

Mr. HEYBURN. We only want one copy of it; that is the object and intention of my motion.

Rising vote, yeas 40, nays 5, and the amendment is adopted.

The CHAIR. The adoption of the amendment disposes of the motion that was made.

Mr. HEYBURN. Mr. President, if there is nothing before the convention, I ask leave to introduce a resolution.

SECRETARY reads:

RESOLUTION IN RE TARIFF ON LEAD ORE.

Whereas, The laws of the United States provide for the collection of a duty on imported lead ore, and

Whereas, Under a ruling of the treasury department, Mexican and British lead ores are admitted, duty free when the value of the silver contained in them exceeds the value of the lead, and

Whereas, The prosperity of Idaho Territory depends largely upon the lead mining industry, which the present ruling is fast destroying, and

Whereas, The claims of the ore producers to obtain the protection guaranteed them by the law have been carefully and exhaustively presented to the honorable secretary of the treasury, and

Whereas, The said secretary has made no decision of the question presented, and the uncertainty caused by the delay in rendering such decision is almost as detrimental to our interests as an adverse decision would be, and

Whereas, We have no authority or statutory right to become parties to a suit in which the justice of our claims can be decided by the courts. Now, therefore, be it

Resolved, That we respectfully call the attention of the President of the United States to the fact that the ruling of the treasury department deprives this great industry of the protection which by law it is entitled to, and works great hardship upon the thousands of persons engaged in this industry, and respectfully request them to take such steps as will secure the

enforcement of law by the treasury department in such manner as to secure to this industry the protection to which it is entitled.

Mr. HEYBURN. I move the adoption of the resolution. (Vote and carried).

COMPENSATION OF STENOGRAPHERS, ATTACHES AND MEMBERS OF CONVENTION.

Mr. McCONNELL. Mr. President, I am not aware what the report was of the committee on Ways and Means concerning finances. The question was brought up the other day in regard to wages to be paid our stenographers; but at the time we had that question under consideration the best bid we could have for the vouchers, as chairman of the special committee appointed to investigate for that purpose, was a discount of 33 1-3 per cent. I desire to state to the convention that I have a further bid today, which is a discount of 25 per cent. The object of the committee on Ways and Means was to place a figure upon the wages of our stenographers which, after deducting the discount proposed, would give them $10 a day, which the convention is in honor bound to pay them. In consideration of the fact that we now have a better price offered for those vouchers, I think it would be necessary to take that matter under consideration, if it has not already been settled, as to the price determined upon for the wages of the stenographers. They do not ask more than $10 a day, and under the report made, as I understand, by the committee on Ways and Means, they would get more for their vouchers than the price agreed upon. Thirteen and one-third dollars per day under the offer we now have, would give them a net income of $10 per day. I would like to ask whether there was any action taken on that report, and how the record now stands.

The CHAIR. The report was adopted, fixing it at $15 a day, by reason of the fact of the discount of one-third.

Mr. MORGAN. I would ask unanimous consent of

the convention to allow the Ways and Means committee to fix the wages of those gentlemen at such a price as will net them $10 per day. We are trying to do the best we can with this subject, in getting as much as we can for the vouchers, and we may have still a better bid for them; and if the convention will instruct the Ways and Means committee to report as to the wages these gentlemen shall receive, I am satisfied the committee will deal fairly by all parties concerned. We do not have to have it appear on the record that we pay more to any of the employees of the convention than what they were originally hired at. I would therefore move that it is the sense of this convention that the Ways and Means committee be instructed to fix the wages which will be paid these gentlemen at such a price that they shall receive $10 per day after receiving their vouchers. (Seconded).

Mr. CAVANAH. I wish to offer an amendment to that, that all the attaches of the convention be added. I think they should get their wages as well as the stenographers.

Mr. McCONNELL. Do you include the members?

Mr. CAVANAH. No, I think they are getting too much now.

Mr. McCONNELL. I prefer to have the convention vote upon the amendment.

Mr. BEATTY. I desire to add an amendment, also to direct the Ways and Means committee to provide for the pay of the clerk who is now enrolling this constitution. And I desire to say that he is working out of hours, and ought to have more days allowed him than the actual number of days allowed, and leave that to the committee; and also the question of his pay. I hope the committee will fix it at a very fair sum, because he has done a most excellent piece of work. I make that as an amendment to the motion, that the committee be instructed to arrange with him for his pay with the other officers.

Mr. REID. I hope the amendment of Mr. Cavanah

will prevail. Our pay is fixed at six dollars; by cutting it down a third or a fourth we get about what legislators get, four or five dollars a day, four and a fraction. We have allowed our reporters their net price, and our employees and clerks, etc., who have been faithful and obliging, and I hope the pay of all the members of the convention, all the employes, will be fixed at such a price as to net them what we have allowed them. I hope the amendment offered by the gentleman from Elmore will prevail. It will make very little difference; possibly a hundred or two dollars in the price, and congress will not stumble at that, after the matter is explained to them; and these gentlemen who discount the vouchers, taking the risk, will be paid for their risk, and these faithful employes—they do not get mileage as we do, and most of us, you know, do not ride on passes, and the twenty cents mileage will more than pay the five cents we are out.

Mr. McCONNELL. The reason I desire to have the vote taken on the amendment is, not that I would wish to have the wages of the employes cut down; but with regard to the wages of the stenographers, we do not want to take any chance on that vote, because it is understood that they are to receive that amount; nor do I desire that they should receive any more, for while we are in honor bound to guard the interests of the gentlemen we have employed, we are also in honor bound not to pay any more than we originally employed them for. I think the employes of the convention ought to receive additional compensation sufficient to make up the discount, and I will vote for the amendment offered by the gentleman; but I would like to have it voted upon separately.

The CHAIR. It is moved and seconded that the committee on Ways and Means be instructed to fix the pay of the stenographers at such price as after deducting the best discount that can be obtained, makes their pay net them each $10 a day. To that an amendment is offered by the gentleman from Elmore that this order

be extended to all the attaches of the convention; that is, that the price be fixed at such a figure that after allowing the best discount, what is left is equivalent to the amount to be paid as fixed by the order of the convention. To that the gentleman from Alturas offers as an amendment that the committee on Ways and Means be authorized to fix the pay of the enrolling clerk, and whatever rate is fixed, that it shall be fixed high enough so that after deducting the discount he will realize the amount fixed as his compensation in cash. The question will come up first on the adoption of the amendment offered by the gentleman from Alturas. (Carried). The question recurs now on the amendment offered by Mr. Cavanah. (Carried). The question is now upon the amendment offered by the gentleman from Latah with reference to the stenographers. (Carried).

Mr. WILSON. Mr. President, I have a resolution.

PRINTING COPIES OF CONSTITUTION.

SECRETARY reads: *Resolved,* That 2,000 copies of the constitution formulated by this convention be ordered printed in pamphlet form, and deposited with the secretary of the territory for distribution. (Seconded).

Mr. HEYBURN. Mr. President, I move to amend by making it 5,000.

Mr. WILSON. I accept the amendment.

Mr. MAYHEW. I think that resolution ought to lie on the table until we get through making the constitution. I therefore move that it be laid on the table for the present and taken up after we get through. (Seconded).

Mr. WILSON. We may finish this at such an hour that we won't have time for anything of that kind, and if we do not make any it would not be necessary to print it.

The CHAIR. The motion to lay on the table is not debatable. (Vote). The chair is in doubt. (Rising vote). The vote is yeas 20, nays 28, and the motion to

lay on the table is lost. The secretary will report the resolution substituting the word "five" for the word "two."

Mr. AINSLIE. This resolution seems to be objectionable to a large number, and it seems to me under Rule 56 it lies over until tomorrow anyway. I think it better go over until tomorrow.

Mr. WILSON. I raise the point of order that they did not object to the consideration of it, and it has been acted on.

Mr. AINSLIE. Mr. President——

The CHAIR. The chair will have to rule that the point of order is not well taken.

"Question, question."

SECRETARY reads: *Resolved,* That 5,000 copies of the constitution formulated by this convention be ordered printed in pamphlet form and deposited with the secretary of the territory for distribution. (Carried).

ARTICLE 21.— SCHEDULE.

The CHAIR. The next thing in order is the consideration of the report of the committee on Schedule, which lies upon the speaker's table.

Mr. GRAY. Mr. President, I will state that the majority report was handed to us just at recess. The minority report was handed in as we met today. The minority report is quite voluminous. I understand the majority report myself, but I am speaking for others who perhaps wish to examine them both. The minority report was never examined in the committee, and I myself would be desirous of it, and I have been spoken to by quite a number of members here, that they would like to examine it before action is taken. It seems to me quite a voluminous document, and as it never was in the committee, never has been discussed at all, and was only read from the secretary's desk, and now comes to us for the first time, I will say, as chairman of the committee on Schedule and Ordinance, that I would

like to have every man well informed upon this. One reason is that there seems to be a great interest taken in it, and therefore I would ask that the convention might have an opportunity to do so, and in view of that I would ask that the convention adjourn until 9 o'clock tomorrow morning.

Cries of "No, no, no, no, no."

The CHAIR. Objection is made.

Mr. GRAY. I am willing to take a recess; I am only asking in a spirit of fairness, that this matter may be fully considered. I believe these reports were both reported by the chairman, I acting as such, and it has only come here, and it has certainly never been examined as it should be examined by those that are intended to act upon it as they want to act, advisedly thereon. The minority report has not been investigated before the committee; it has just come to light.

The CHAIR. Does the gentleman move an adjournment until tomorrow morning or simply ask unanimous consent?

Mr. GRAY. I will make a motion that we adjourn until tomorrow morning at 9 o'clock. (Seconded).

Mr. MAYHEW. I desire to amend that motion. It was the hope of a great many—I move that when the convention take a recess it will be until 8 o'clock this evening.

Cries of "No, no, no, no."

Mr. GRAY. I will submit to that.

Mr. MAYHEW. I want to get through today.

Mr. REID. While this motion is not debatable, I would like to say, Mr. President, that there are ten of us that have set apart tonight to draft a memorial to the people to accompany this constitution, and by doing that, and having the other committee at work finishing up this evening, we can all get away tomorrow night. Now with all deference to my friend, the chairman of the committee, there is only one point of difference between these two reports. The majority report simply provides for the submission of the constitution to

the vote of the people. The minority report provides that, and proposes to go farther and have an election of state officers and members of the legislature. I have read both of them through carefully, and that is really the only difference, except some little difference in the machinery. The majority report simply provides for submitting the constitution to the people. The minority report provides for that, and also that we elect a set of officers; and with that difference, I think we can in an hour or two consider and dispose of it this evening, turn it over to the Engrossing committee, and then the Revision committee makes its report, and they can do their work tonight and report it in the morning, and we can go home tomorrow.

Mr. GRAY. I find another provision in the report, which is different, and that is in relation to holding the election.

Mr. REID. Yes, that is to say, they provide for a state board, and the other provides for the machinery we have now. But the vital difference is that they want to elect state officers.

Mr. GRAY. But we have a different opinion as to the management of that. The only thing, Mr. President, is that I would like to have these people have all the opportunity they desire to understand this matter, whether it be so important or not for them; but there seems, from the manifest interest taken in it, that there should be time for consideration. I infer that they consider it very important, and therefore I want those members who have not had an opportunity to examine it, to have an opportunity to do it tonight, and I think it is but just that they should have it.

The CHAIR. It is moved and seconded that the convention take a recess until 8 o'clock this evening.

Vote and lost.

Mr. GRAY. The question is——

The CHAIR. Under Rule 51 the regular order of business is taking up this report in the committee of the

Whole, unless some other order is made by the convention.

Mr. GRAY. Is not this entitled to lay on the table?

The CHAIR. Rule 51 provides that all reports of committees containing matters to be incorporated in the constitution shall be considered in the order in which the reports are made. That upon their introduction and full reading before the convention, such matters to be incorporated shall lie upon the table, and be printed, and when printed shall be placed upon the calendar to be considered in the committee of the Whole. It has been printed and placed upon the calendar, and it is now in order to take it up in committee of the Whole.

Mr. MAYHEW. I move to suspend the rules, and that this report of the committee, both minority and majority reports, be considered in the convention. (Carried).

The CHAIR. Which one does the convention desire to take up first?

Section 1.

Section 1 of the majority report read, and it is moved and seconded that Section 1 be adopted.

Mr. GRAY. Mr. President, my understanding is that they should first both be read. To act upon it section by section without first reading the other report I would not think was altogether correct. There is no motion, as I understand it, here at all, to take up the majority report. There are two reports here, one the majority, and one the minority. Now, I ask that they be read, that the majority report be read, and then the minority report be read.

The CHAIR. If there is no objection, that course will be taken.

Mr. REID. They are both the same down to Section tion 5.

Mr. VINEYARD. Mr. President, these two reports have been read and printed.

The CHAIR. Is there objection made to the request

of the gentleman from Ada? If there is any objection made, the chair will decide the request is out of order.

Mr. BEATTY. I move the adoption of the first section as read. (Seconded).

Mr. GRAY. I am told now that they are the same down to Section 7.

Mr. SWEET. That is a fact, sir.

Vote on the adoption of Section 1. Carried.

SECTION 2.

Section 2 read, and it is moved and seconded that it be adopted. Carried.

SECTION 3.

Section 3 read, and it is moved and seconded that it be adopted. Carried.

SECTION 4.

Section 4 read, and it is moved and seconded that it be adopted. Carried.

SECTION 5.

Section 5 read, and it is moved and seconded that it be adopted. Carried.

SECTION 6.

Section 6 read, and it is moved and seconded that it be adopted.

Mr. BEATTY. I have an amendment.

SECRETARY reads: Amend by inserting after the word "all" in line 2 the word "general." (Seconded).

Mr. BEATTY. I will explain the reason of that. Under the registration law which we now have, there is a provision, which shall apply only to general elections. I presume it is the contemplation of this section that in voting upon this constitution it shall be in pursuance of all laws, including the registration law. As line 2 reads: "This constitution shall be submitted for adoption or rejection to a vote of the electors qualified

by the laws of this territory to vote at all elections." The registration law applies only to general elections, so this should read to apply to general elections.

Mr. MAYHEW. This is not a general election, unless you desire to put it off until next fall.

Mr. BEATTY. No sir, I will explain. "This constitution shall be submitted for adoption or rejection to a vote of the electors, qualified by the laws of this territory to vote at all elections."

Mr. MORGAN. That is a qualification of electors simply.

Mr. BEATTY. Yes, but it is only qualified voters and those registered who can vote at a general election. There is no provision of law for the registration of voters at any other election, and I presume it is the desire of this convention that when this constitution is submitted, it shall be submitted in pursuance of the provisions of the registration law, and that only applies to general elections. If you leave this out you cannot invoke the provisions of the registration law.

Mr. MORGAN. I think the gentleman is mistaken. I would like to know how they can be qualified to vote at all elections, unless also at all general elections.

Mr. BEATTY. Because they may be qualified to vote at some elections, and not general elections.

Mr. MORGAN. But this requires them to be qualified to vote "at *all* elections."

Mr. BEATTY. Well, possibly that would. I will withdraw my amendment.

Moved and seconded that Section 6 be adopted. Carried.

Mr. REID. Mr. President, I make the proposition to the gentleman having in charge the minority report, that we allow the majority report to be read in full, and then the minority report in full. That is, where they begin to differ, and then take the vote on the proposition as a whole. Because if the convention decides to elect state officers, they ought to adopt the minority report in full as a substitute for the majority. If they do not

decide it, but simply decide to submit the constitution, then I take it there would be no objection to the majority report; and to save time, and also to have it in harmony, I suggest we go on and read the balance of the majority report, and then come back and finish the minority report, and then vote upon the two propositions as an entirety.

Mr. SWEET. That is perfectly satisfactory so far as I am concerned.

The CHAIR. Is there any objection to that course being taken, as suggested by the gentleman from Nez Perce? There are no objections.

Mr. GRAY. All I have to say is, there are two propositions; perhaps it will be necessary to vote differently upon them.

Mr. REID. Well, we can ask for a division on them.

Mr. SWEET. I do not understand that we are doing anything more now than simply agreeing that the majority report and minority report shall now be read, and then we are ready to present them to the convention.

Mr. REID. Yes, I take it that the gentleman means that we can return to the next section——

Mr. GRAY. Yes, we can do that.

Mr. REID. And if we can have them read, and vote on the question of state officers first, and if there is any objection to the machinery of the minority report, we can vote on the question whether we shall have that machinery provided, or that provided in the majority report. I suggest that to save time and get at it.

SECTION 7.

SECRETARY reads Section 7 of the majority report and continues to the end of the article.

MINORITY REPORT ON SCHEDULE.

The secretary next reads the minority report, beginning with Section 7.

The CHAIR. What is the pleasure of the convention with regard to these reports?

Mr. REID. Mr. President, in order to bring up the question I move the adoption of Section 7 of the majority report.

The CHAIR. Are you ready for the question?

Mr. SWEET. Mr. President, I think this is perhaps as good a time as any for presenting the views of the minority, and although the minority report is not properly before the convention, still it has been heard, and the majority report has been heard, and we are now proceeding to the adoption of the majority report. It is probably as well now as at any time to discuss the principles and propositions involved in the two reports.

Mr. REID. I make the point of order—there is so much noise in the hall I cannot hear the gentleman as he proceeds.

The CHAIR. Gentlemen, you will please preserve order.

Mr. SWEET. If I have been correctly informed, Mr. President, by the privates and overseers having the matter in charge, the noses have already been counted and the result is already known. But so far as that is concerned, Mr. President, it makes no difference to me. As a member of the committee on Schedule, and the duty of investigating this matter having devolved upon me as one member of that committee, I did so, and I considered it a matter of duty, and in the interests of statehood, that a minority report should be presented, and if sir, there were no other men upon this floor who heard it, and if there were no other men upon this floor to vote for it, nevertheless, I should present it, and nevertheless, I should give my reasons why I think it should be adopted. Having presented that report, and having submitted my reasons therefor, I am ready, sir, to submit to the will of this convention and as it is expressed through a majority of its votes. The minority report is presented without any threats either as open secrets or otherwise; the minority report is presented

here upon its merits. There will be no withdrawals from this convention if it is not adopted; there will be nothing thrown in the way of the adoption of this constitution if it is not acceptable to the convention; on the contrary, I apprehend that every man who advocates the minority report, and every man who votes for it, if in the judgment and wisdom of the majority of this convention the minority report be rejected, will step into the field and work with all his might and main for the adoption of the constitution of the state of Idaho, and for its admission into the Union under such terms and conditions as the majority may agree to.

Now, sir, I beg to submit one word also, that borders, perhaps, on being of a personal character. If anything is true concerning the reports that have been going around here during the last few days and prior to the submission of these reports at all, and before the members of this convention knew what either report contained, it was already decided, and decided in advance how the convention should decide the question. Just exactly how the convention could pass upon the merits of either of these reports before seeing them, I could not understand, nor do I care; the effect is the same. But, sir, for the purpose of obtaining a decision, and for the purpose of obtaining a majority, reports have been circulated here that the minority report would be formulated in the interests of political jobbery, political trickery, or the advancement of some person or persons in the future in this territory. And sir, I have heard it intimated that my own name has been connected with some of these reports, and to such an extent that it was embarrassing for me to present the minority report. But I desire to say that these reports so far as I am concerned, so far as I have any knowledge on the subject, or so far as I have heard, are absolutely and unqualifiedly false; and that there is not now, and that there never has been even a shadow upon which to base them; and I say further, that any person who circulates that story in the future, circulates it knowing

that he circulates a falsehood. That is all I have to say on that proposition.

The opportunity for statehood, Mr. President, is now at hand. I do not claim that the report of the minority as here presented is infallible. It is at best but the judgment of men, and the judgment of all men is not infallible, or of any man. That being true, it is best and it is proper that inasmuch as statehood may be lost or won either by the adoption of the majority or the minority report, that both reports should be very carefully and fully considered. The first thing that I desire to call attention to in these two reports is the difference in the manner provided by each report for submitting this constitution to the people. Section 7 of the majority report provides that it shall be submitted to the qualified voters of this territory next November. It provides no machinery whatever for submitting this constitution to the people. It is true that you may intend that you will submit it through the ordinary channels; that it will be presented to the people just as tickets and candidates would be presented if this were a general election. I undertake to say that so far as the presenting of this constitution is concerned, so far as calling upon any officer to do any work or labor in connection with the presentation of this constitution is concerned; that so far as calling upon any man to act as judge or clerk of election, or to act as canvassing or returning board, you are absolutely without authority to command the act of one single man in the state of Idaho. I contend that this movement for statehood is revolutionary, and was revolutionary from its very inception; that from the call of the governor until such time as congress will by its own act say that this is legal, and thus admit us into the Union and thus legalize our acts, it is revolutionary and nothing else; and nothing can make it valid, and no act by any man in the territory or by any legislature, can compel any man in this territory to act in any capacity whatever. Therefore, Mr. President, I say that the minority report has presented to this con-

vention the full and complete machinery for submitting it to the people. We came here of our own accord. We have been in consultation for more than thirty days. We have never been without a quorum. I notice by reading the papers that at different times the Dakotas have been without a quorum; that Montana has worked hard to maintain a quorum; and these territories, Mr. President, were holding their conventions under an enabling act of congress, under and by virtue of which act every member was certain of his pay. The interest for statehood in Idaho is so great, that without money, and without any absolute guarantee of pay in any way, shape or form, the members of this convention have assembled in Boise and prepared a document, which they will shortly formulate. Now, sir, it is doing no more to prepare the way to submit it to the people, and to prepare an absolute and certain method by which it shall be presented in every county and in every precinct, than in my humble judgment, it ought to do. You have provided here that the governor, the secretary of state, attorney general, and so on, shall act. Suppose they do not act. Then what are you going to do about it? This convention is without power to make them act; this convention is without power to make any man act. If they should act, well and good, if the officers as now constituted throughout the territory, the county commissioners, clerks, and judges of election—if, in other words, the entire machinery of the territory can be placed in operation and these men will all act, very well and good. The minority report does not interfere with them, but on the contrary it provides that they shall meet at their several voting places, and that these regular officers shall make their returns through their regular channels, and that in all respects this constitution shall be submitted, and voted upon as is now provided in the laws of Idaho Territory, and that the officers in Idaho Territory, acting under the present laws, shall count the ballots and return them to the executive offices here. This provision here, then, with reference to the

election of a state committee of this convention, and the appointment of this state committee—all the complete machinery throughout the state, for the purpose of carrying the wishes of the people into effect—is nothing more and nothing less than a preparation for an emergency; and in the event, therefore, of the failure of the officers of the state to carry out the wishes of the people, or to carry out the wishes of this convention, if you please, in submitting the result of their labors to the people, then this convention has itself provided for it, and that is all there is of it. It is urged that we have no law for this, and I admit it. But, sir, we are here without law, for that matter; it is merely the wish of the people. We have taken no step here except that which has been taken by the co-operation of the people of their own free will. And I undertake to say now, and probably it will not be contradicted, that we can take no step, that no step that can be taken, will be considered a lawful step in carrying the work of this convention into effect until congress by its act admits us into the Union under this constitution; and then every step we have taken is by that act of congress declared legal from the beginning. This minority report, Mr. President, does not provide for calling the legislature together for the purpose of submitting it to the people. Upon the necessity of that question, even the members composing the minority of this committee are not agreed. I, for one, did not think it was necessary to call the legislature together, because I do not think the legislature has any power to act. If it be true that the legislature has power to act in the premises, well and good; let them be called together; I have not the slightest objection in the world, nor have I any objections to their being called together to formulate any laws which the members of this convention will desire to lay out for them in requesting the governor to convene the legislature in extra session. But we do not provide for it in this report for the simple reason that we do not believe the legislature in relation to this

movement has any more power than this convention itself, because we do not think that power has been delegated to the legislature in the organic act. Our work, in other words, Mr. President, comes under the right of petition, the struggle for which in congress is so well known doubtless to every member of this convention. We draw this constitution and submit it to the people. If they ratify it, we present it to congress and ask to be admitted into the Union under its provisions. I think it has been practically decided again and again that any territory has a perfect right to do this, and that in doing so they are simply exercising the right of petition; and that I believe is all there is upon that point. We are not without precedent in this matter, and while I shall not go into any lengthy discussion, I desire to call attention to one or two states that have taken the course laid out by the minority report and been admitted into the Union. I will first call attention to the state of Michigan. This is Paine on Elections,[1] page 257. "The state of Michigan was admitted without an enabling act. The state constitution was adopted on the 24th day of June, 1835. The sixth section of the schedule contained the following provision: 'The first election of governor, lieutenant-governor, members of the state legislature and a representative of congress of the United States, shall be held on the first Monday of October next, and on the succeeding day.' The representative was elected at the time so designated. On the 15th day of June, 1836"—Now, Mr. President, you will please bear in mind that is only two days in excess of one year after the election—"On the 15th day of June, 1836, an act of congress was approved, by the president, providing for the admission of the state of Michigan to the Union, upon her assent to certain conditions as to boundaries. The third section of the act contains these words: 'And the senators and representatives, who have been elected by the said state, as its representatives in the congress of the United States,

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1—Foot-note to p. 257, edition of 1888.

shall be entitled to take their seats in the senate and house of representaives without further delay. Upon the assent of the state to the conditions prescribed, a final act of admission was passed on the 26th of January, 1837; and on the same day the representative who had been chosen on the first Monday and succeeding day in October, 1835, took his seat in congress, as did also the senators who had been chosen on the tenth day of November, 1835, more than a year before Michigan became a state, and more than a year before the regulation by the state legislature, of the time, place and manner for election was possible under the constitution."

Now, I will call attention to one more state. [1]"The original constitution of the state of California was, without any enabling act, framed on the 13th day of November, 1849. The eighth section of the schedule contained these words: 'At the general election aforesaid, namely, the thirteenth day of November next, there shall be elected a governor, lieutenant-governor, members of the legislature, and also two members of congress.' On the 9th day of September, 1850, the state was admitted, and the representatives took their seats." Thirteen states of the Union have been admitted into congress without enabling acts since the organization of the Union; but I do not care to go into history or details in connection with the admission of those states. It would take too much time, and the fact itself is sufficient. I will, however, call attention to one point. It is stated and urged that these states, which have been admitted without enabling acts, have the advantage over Idaho in one respect, that they were a part either of the Louisiana Purchase, or of other territories ceded from other states, which under treaty stipulations and acts of congress were authorized to be admitted, and become states when they had a certain number of people. And that Idaho, not being a part of that purchase, or not having been obtained by the government

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1—Paine on Elections, (1888) foot-note, p. 258.

under either of those conditions, could not ask for admission into the Union under the same circumstances. Well, it is a fact that Michigan was not a part of the Louisiana Purchase, and that it was territory obtained by congress; nevertheless Michigan was admitted into the Union without an enabling act, and her senators and representatives took their seats in congress after congress had ratified the act of the people of Michigan, just as this minority report contemplates; and if I am not mistaken, Idaho was a portion of the territory of Michigan at one time. Now, Mr. President, there is another, and to me a very important, reason; and that is the principal reason why these state officers should be elected this fall. It is quite probable that this discussion would really not come down to the question involved in caucus at all, unless somebody should force it right to the real question in issue here. That I propose to do. I entertain very serious doubts, Mr. President, whether or not, if no election be held this fall, a sufficient number of votes can be obtained to secure our admission into the Union. That is to say, I doubt whether the showing will be such as to entitle us to admission. I submit that we cannot hope to be admitted into congress unless we can make a showing, and a reasonable showing, that we have twenty or thirty thousand votes; and I say that we must show furthermore that a majority of the people have ratified this constitution. I think, therefore, it would be necessary for us to poll—and I believe the gentlemen of the convention will agree with me on that proposition,—whether or not they agree with me upon the proposition that they can easily be got to the polls—that it would be necessary for us to poll at least twelve thousand to thirteen thousand votes for the constitution in order that we may satisfy congress that we have enough people in Idaho to entitle us to admission, and that a majority of the people have ratified and accepted this constitution. I beg to call attention of the convention to the fact that Idaho today is not in a condition to be very easily enthused. The

state or the territory, I think it but fair to say, is despondent. In the Wood River country, which is one of the fairest and richest portions of our territory, the people are suffering under very heavy afflictions. One of their principal cities has been almost totally destroyed by fire, while fires have been raging through the entire section of country; and judging from what a gentleman of that section told us in this convention, the people are well nigh discouraged anyway. I do not believe, Mr. President, that under ordinary circumstances they will have enough interest in the matter to come to the polls in large numbers. In northern Idaho, through the agricultural sections of the territory, the season has been such that the farmers are more or less despondent. In Idaho County they are suffering from lack of rain. That is true through the other northern counties to a greater or less extent, and those people naturally are not very enthusiastic under the circumstances. And then your own section of country, Mr. President, the people are suffering from the rulings of the Department on the lead question, suffering from high freights, and before that country will be one-tenth of what it ought to be, and what it is, they must have cheap transportation and a proper interpretation of the law upon that question. I think perhaps in Shoshone county, in the towns of the county, and in the towns throughout northern Idaho generally, this constitution would receive a generous vote. But that you can reach the back precincts in any of those counties without expending a large amount of money, and a great deal of enthusiasm, I do not believe. I believe sir, that the people of this territory should be aroused fully and entirely upon this question. I believe that the fires of statehood should be burning upon every mountain peak in Idaho. I believe the bugle should call the people from every gulch, from every canyon, from every plain; and I do not believe it will be possible to arouse this enthusiasm on simply submitting to them an instrument in writing, and asking them to take it

and vote upon it. My humble judgment is that they will not take sufficient interest in it, even though they be interested, to come to the polls. I think furthermore, Mr. President, that the very fact that they could participate in the election of their state officers would greatly increase their interest. Why, there is many an old man in this territory would walk twenty-five miles to vote for governor, even though he knew he would never take his seat. I believe that is a fact, and I believe that is the spirit of the entire people of the territory. And what does it amount to? It is said if we go democratic, the territory will not be admitted into the Union. Well, if that is true, the reverse proposition is true, that unless we go republican, we will not be admitted into the Union. Suppose that be true, I want to ask any man on this floor, who is here today in the interest of statehood, what it amounts to. Suppose you elect a delegate in congress this coming fall, or a representative in congress; what does it amount to? He is a beggar from one committee room to another, from one congressman to another, from one senator to another, for a year; and if he is fortunate enough to secure, together with those with him, our admission into the Union, he cannot possibly hope to secure it before his time expires. What does it amount to then, and what is the question of whether it be a republican or a democrat who does that work at Washington? What does it amount to in comparison with having a market for our mines, in dispensing with the alien form of government for Idaho, in having a man in Washington to work for irrigation and the improvement of Idaho generally? What does it signify whether the man who is chosen shall be a republican or a democrat? I say, if I were a republican today, as I am, and we had a democratic president and a democratic congress, and I thought the admission of this state into the Union depended upon placing a man there to advocate it, who was in harmony with that administration, I would not hesitate one moment as to how I would vote on that proposition, if,

understand me, statehood was the important consideration. If it is a matter of who holds the offices here, it is not of much account anyway which wins. Now, my honest judgment is, and this minority report is based upon the proposition, that our time for admittance into the Union is now. I do not expect to fool anybody on this proposition; and I do not expect to fool anybody in this convention on this proposition; and I hope this convention does not expect that it will fool the people of Idaho as to its motive either in rejecting or adopting this proposition. I say that politics does enter into the admission of a territory into the Union; it always has, and it has kept territories out of this Union when they have been entitled for five years to seats upon the floor of congress, and to the rights of all the laws and benefits arising from being a member of the Union. There is not a man upon this floor who is not aware of the fact, that it has been, that it is today, and in all probability it will be, a political question more or less. Now, sir, there is no man here who will for a moment pretend to say that, if congress says it will admit no more states unless they have a sufficient number of people under the law for admittance into the Union, and a sufficient amount of wealth, no man here would pretend to say that Idaho would be entitled to admission into the Union. It requires 152,000 people, or thereabouts, to constitute a congressional district. That being true, we would not, as a matter of course be entitled to admission on that basis, and certainly our assessment rolls are not such as to commend themselves to congress very heartily. If it be true that there is any advantage in presenting ourselves to a congress that would be in sympathy with a political party, there probably will never be a better time to take advantage of the situation than today. Supposing, Mr. Chairman, that there be something in this theory—and I know there is something in it, and it is admitted by the gentlemen who have been caucusing upon this matter, that there is something in it—because it is said that if we go democratic the republicans will

not admit us; therefore I will concede that position is correct, and that there is something in it. Now, supposing we fool along with this matter, and receive next year an enabling act, and then go before congress in precisely the same fix we are in now, and that we spend our time fooling along in this manner until we have a democratic house and a republican senate, then I want to ask you in all seriousness, when are we liable to be admitted into the Union. I am aware of the fact, and I am frank to admit it, that so far as the offices of a political contest are concerned for the coming fall, that if it were a question of offices we would be asking the democratic party to submit to what in my judgment would be an unfair proposition. In other words, I believe the republican party would go before the people of this territory with this prestige, that they could say to the voters of the territory, "If you do not sustain us the republican party will not admit you into the Union." I am frank to say that to that extent it is not treating, as a political question, one of the political parties of this territory with fairness. And therefore, if the admission into the Union be a question of whether or not one political party or the other shall be benefitted, then, Mr. President, I am ready to admit that we should not have an election until after congress has acted upon this matter, or until after we have submitted this constitution to congress. But if it be a question of admission into the Union, then I am in favor of going there ready to seat our man; and I believe it will add tenfold to our strength. I beg to call the attention of the convention to the fact that on September 3rd the constitutional convention of New Mexico will be in session; that the convention of Wyoming will be in session; and that it is contemplated by those two territories to go to Washington equipped for statehood, and ask for their seats upon the floors of congress. Now, sir, expecting and conceding that New Mexico will go there as a democratic state, it is expected and understood that Wyoming will go there as a republican state. Now, Idaho today is

ahead of Wyoming in wealth and population, and she stands at the head of the calendar in congress upon the matter of admission. Suppose congress decides to compromise this matter, (and that is the only place where any compromise can be entered into) I submit in all candor to the members of this convention, whether it is not better that Idaho be there ready to accept a compromise, in the event they should decide to admit one democratic territory, and one republican territory. I ask in all candor if it is not probable, if Idaho is not there equipped for statehood, ready to take a seat in the halls of congress, and Wyoming is, and that combination should be entered into, whether or not it is not probable that Idaho would be left, and Wyoming admitted. I desire to call attention to a remark made by Mr. Cox yesterday in Portland as to the objection that would be made probably by the next congress. They were discussing what congress will probably do after the admission of these new states, whether they will increase the ratio for each member, or whether they will enlarge the house of representatives, or what they will do. This question was asked Mr. Cox: "To accommodate this increase from the west will it we necessary to increase the size of the house?" The answer to the question is as follows: "That question has been discussed a great deal. I take the ground that the house is too large. Owing to the fact that the western states want to show their full strength, it is quite probable that the ratio will be kept at 200,000 population for each member, which would give us 350 members. Congress fixes the number of its members every ten years. The whole population is divided by the number agreed upon, and the quotient is the ratio for one member. But there is a fraction over, and the states having the largest fractions get an additional member until the whole number of members agreed upon is exhausted."

Now, Mr. President, suppose we delay this matter until there be a new apportionment; and it is understood and known that the census will be taken in 1890. If

we are not admitted into the Union before 200,000 people are required for admission into the Union, I ask if in all probability it will not delay us from five to ten years?

Now, I want to ask another question. What hurt is an election going to do? What harm can it cause? I don't think it will be denied but that it will interest the people; I don't think it will be denied but that it will call the people forth and interest them in it, because it will send every candidate over the state canvassing for the constitution. Political parties will be in harmony, possibly, both democrats and republicans, whose duty it will be to press the constitution, and they will have their speakers in every precinct and school house in Idaho; and it seems to me it cannot be gainsaid that it will call out three votes to one for this constitution or against it. It will call forth an expression, and I don't believe there is any other way to call that expression forth.

Now, Mr. President, I am aware of the fact that I am consuming considerable time, and I see that members are perhaps getting a little impatient. I will only say one or two words more. In discussing a matter of this kind it ought to be discussed with perfect frankness, and the real fact that governs and controls every man in his vote should be fairly and honestly stated. Now, sir, suppose Washington Territory should fail to adopt its constitution (and it looks very probable over there now, the people are very much dissatisfied); if we are ready, does it not assist us in the matter of obtaining admission? If Washington fails, and we go there to be another state, ready for admission, does it not help us? I think every member must concede that it will. It is urged perhaps by some members of the convention—I have heard it in private conversation—that there will be numerous candidates for office, that some will be disappointed, and those who are disappointed will take the field against the constitution. Well, if that is true, there will be some men who will be nominated, and they

will take the field for the constitution, and in all probability will have as much enthusiasm for it as the men who are defeated will have against it; but so far as that question is concerned, it amounts absolutely to nothing. In my honest judgment, if the people of this territory desire statehood, it matters not what man or combination of men attempt to place themselves in the path of the people. I believe, sir, that any man, or any combination of men that could place themselves in the pathway of this movement and attempt to obstruct the vote of the people would be swept out of existence as if by a whirlwind, because if the people want statehood, what do they care for the disappointments and combinations of politicians? I don't think that question in itself amounts to anything, or cuts any figure so far as the people are concerned.

Now, Mr. President, as the election is merely for the purpose, and for the sole purpose, of interesting the people more fully in the constitution and in its adoption, and as I believe it is the only way you can interest them, as I believe it is the only way in which you can get out enough people to vote down the Mormons and still show a majority of loyal people for the constitution, it seems to me it ought to be adopted, and that the little petty political differences that may arise, or may have arisen, should be buried deep in the one great work to admit us to statehood. I have no criticism to make on parties, or party caucuses. It is the right of any number of men to meet and discuss this question, and decide for themselves, if they want to, how they shall vote as a unit. I do not think it was exactly fair to render that decision before gentlemen knew what the reports were, but I will not even criticise that. It was also the right of any man to say that he would not go into any caucus, and that he would decide the question for himself. I have for neither class of these men any criticism whatever. If these men as a matter of duty thought they ought to caucus upon this matter and decide it that way, well and good; the caucus was held, it was so decided, and

let it go. If some republicans decided to caucus together, well and good. If some democrats and some republicans decided to remain independent and free from any caucus, well and good. It is the right of every man to act as he sees fit. But, sir, as in my honest judgment, statehood for Idaho depends upon our going there fully armed and fully equipped to demand our rights then and there and instantly, I believe it to be in the interest of statehood to elect this ticket now, and therefore I am here to advocate it, conceding the right to every man to take his view, and advocate his view in the same way. I say, sir, that I believe every man on this floor is desirous of statehood; I believe every man on this floor loves his country, and loves his state, and that it is only a question with him as to which is the best method to obtain the ratification of the people, and a strong showing of voting strength. Why, sir, over yonder is a trifling bit of flag that cost twenty-five cents, perhaps, and its intrinsic value is nothing, yet I doubt not, there is not a man upon this floor, either democrat or republican, who would rather die than to see any man or power trample it with contempt beneath his feet. (Great applause); So long, sir, as that is the sentiment of the convention, of both democrats and republicans, I have no criticism upon your course in this matter. All I do ask is, that as men, as citizens of Idaho, as men loving your state and your country, you will not allow your backs to smart and bleed and burn by the whip of party caucus, but that you walk in here like men, consider this proposition fairly, consider what is in the best interests of statehood, consider what will quickest enable you to open your mines to the markets of the world, to flood your plains with water, and to walk into the sovereignty of sovereign states. (Great applause.)

Mr. BEATTY. I would like to ask the gentleman a question before he takes his seat. I understand Mr. Sweet to take the position that the legislature could not meet and authorize a legal election. I desire to know before he leaves the floor what his proposition or plan

is by which we will have an election that will be legal, and none but legal voters shall vote for or against this constitution, or for such officers as may be nominated. That is a question of very much interest to me.

Mr. SWEET. If the convention desires to listen to an explanation of that sort, I am ready to give it. I stated that in my humble judgment it is not within the power of the legislature to enact any law upon this proposition. I do not know what the view of the convention might be upon that matter, and I presume perhaps the lawyers in this convention may differ, but that is my view of it. I think, therefore, that if we submit the constitution itself to a vote, it will be submitted without any authority of law. It is simply by the cooperation and consent of the people of this state. I say therefore, that when you vote on the constitution, you are voting on it without authority of law. You say that the laws governing the general elections in this territory shall be the law under which this election is held.

Mr. BEATTY. Do you mean that everybody shall vote?

Mr. SWEET. No sir, I propose in this minority report that an executive committee should be chosen. Now, I understand there is no difficulty, and probably will be none, except down here in the Mormon counties. I expect those men will be prevented from this election just as they were prevented from the last; that if any man there fails to do it, there is a committee appointed to carry out and execute the will of this convention, who will see to it that the judges, clerks and registrars are appointed, and they will not permit Mormons to register or vote; that they will do just as Mr. Standrod and Lewis and other men did down in those counties last fall; that when those men attempt to register and vote they will not permit them to do it there.

Mr. BEATTY. By what authority will you prevent them from voting? By what law or authority, either for the constitution or for the officers nominated?

Mr. SWEET. By the same law and the same right by which old Ethan Allen demanded the surrender of Ticonderoga; that is, in the name of the Great Jehovah and the Constitution of the State of Idaho. (Great laughter and applause.)

Mr. REID. Mr. President, I have listened with a great deal of interest to the argument of my friend from Latah, and I am glad he has placed this discussion on a high plane where it properly belongs. I listened to hear some argument, some good reason, why we should hold the election for state officers and members of the legislature, and judiciary officers at the same time we submit the question of the adoption of the constitution we have framed to the voters of the people; and his argument has but convinced me that that proposition is not one that should be entertained by this convention at this time. I do not think it necessary for the gentleman to warn members of this convention against any threats that have been made, either about their pay or anything else of that kind. I have found them high-toned, honorable, patriotic men, those we have today in this convention, acting solely for the interest of Idaho, and in many instances at great personal sacrifice. We are not here, gentlemen, at the conclusion of our labors to act solely in the interest of partisanship in this matter. We have divided some on party questions; we could not help it; we are men and partisans, and I respect the man who is a partisan. But we have a question now that does not go to that at all, and therefore parties have not consolidated on it. Men are acting here because they believe that our work will not be consummated, that the edifice will not be established, and we achieve the end we have in view, if we go a step beyond the original purpose and intent of this movement. All this appeal to partisanship, all this talk about threats, goes for nothing. The fifty-nine or sixty men assembled here act from their own patriotic impulses and dictates of conscience and judgment; and that is the way we propose to act, and if any gentleman is convinced here

that his vote as he intended it at first would be wrong, I take it he will change it. But as to this talk about forming our opinions before the reports of the committee come in, that is begging the question. This matter has not been kept in a corner. There is but one question in it: whether we shall elect state officers or not. That question has been talked about, men formed their opinions about it, it was right they should; and then when the matter comes before the convention after hearing the argument on both sides, they can vote intelligently. The first objection I shall urge to the election of state officers is, that it is against the original intents and purposes for which this movement was set on foot, and I purpose to stand myself by the facts. On December 10th, 1888, our delegate in congress introduced a bill providing for an enabling act for this territory to come into the Union. In it he provided that there should be a call for a constitutional convention and many other liberal provisions, very liberal indeed to Idaho, more so than was possible to get through the committee, and more liberal than any other delegate we ever sent there, but he was looking after our interests, as I have found he always has been. On the 13th of December Mr. Mitchell introduced another bill into the senate, and it was reported back favorably by Mr. Platt, and it provided then for an enabling act, so to speak, and in both of those bills our delegate provided this election for delegates to a constitutional convention should be held in November 1889;[1] and also the other one, Mr. Platt, reported back favorably from the committee in the senate, by which the convention was to be held in September 1889.[2] Why? Because as it was then published in the paper and so announced from Washington—gentlemen are familiar with it, it needs no appeal to the fact—we were not then in a condition to come into the Union. We did not have the requisites, the resources, the population, and all the prerequisites gen-

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1—Sec. 3, Mitchell Bill.

2—Sec. 3, Platt Amendment.

erally required for the admission of a state into the Union; but the progress of the territory, and the increase in these respects by the time this enabling act went into effect, to-wit, the last of the year, we would be in a condition, and congress would admit us full-fledged. That matter went on in that way until January, and I had the honor then to introduce the first resolutions in a meeting at Lewiston, in a country that had been favorable to annexation (they wanted to sever the territory) and we there introduced resolutions favoring the steps that had been taken by our delegate and those senators to give us this enabling act. No one there in that joint discussion argued that we were then ripe for statehood, but that we were setting on foot steps which would finally consummate it. That was in January. In March a telegram came out through the papers over the signature of our delegate that if we would form a constitution we would not have to wait that long. The conclusion of it is, after stating that the gentlemen who were then visiting in Washington, representing the Territory of Idaho, and looking after our interests as they have done, were here, and after consultation with the authorities there, we could be admitted; and that winds up in this way: "The only obstacle in the way of the admission of Idaho into the Union is the forming of the state constitution, which her people will undoubtedly provide during the next few months." That was in March. That was the only obstacle; that is what they reported after consultation, and after seeing the senators and representatives. What then? Upon the heels of that came a proclamation issued by our executive; to do what? To meet and form a constitution. And then do what? Submit it to the people for ratification. Not one word, not one line went to your constituents, gentlemen, that you were going to have any election for state officers or any other sort of officers. But you came here for a single purpose, to frame a constitution, and after you framed it it was then to be left to your constituents to say whether they approved

it, and upon that hinged the result. That was the only obstacle, the authorities said, who were in power and in position to know, and who inaugurated this movement for our admission into the Union. Right on top of that our first governor, Governor Stevenson, promulgated this proclamation and said, In pursuance of a proclamation, etc. Then what? The two executive committees met and pledged the support of their respective parties to the objects contemplated therein—that is, in the proclamations. So we are here for those purposes, acting together after gentlemen have consulted and found out what they want; our governor took that course; our parties also approved this course, and we are here now simply and solely for the purpose of forming this constitution and submitting it to the people. That is the work we were sent here to do. I take it that if the people had known that we were going to submit to them the question of election of officers there might have been another phase to it. We are interfering with the vested rights of the people who hold the present offices. If we facilitate this matter and set in motion this state government policy, we will deprive every man who is in office now in state and county governments of his position, because elections for county officers will quickly follow. And it is not contemplated, I take it, by any gentleman—I know it is farthest from my mind, to disturb any man who has accepted his contract; no matter if it will hasten statehood, we can exist under present conditions, and at least allow him to serve his entire term. Now, I take it further, that we do not need these officers. We have a full set of officials, and by the schedule we adopt we can go right on from one to the other; we do not need the legislature. It is not provided for county officers, and above and beyond all that, as admitted by the gentleman, there is no authority of law for it. Suppose you have an election for officers. First of all the question will come up, if you cannot have a legal election, how will you submit this question of the constitution to the people? As the gentleman

rightly stated, we did not go quite far enough in this report, and show how this election for the constitution should be held; but I have had friend Ainslie to prepare an amendment of eight or ten lines, which will cure it all, that this election for the constitution shall be held just like an election for delegate to congress, and the returns made in the same way. How will you keep a man from voting? I will state how we proposed in this committee, drafting a memorial. We are going to appeal to the people to have these commissioners to appoint registrars and have poll-lists as they do in an ordinary election, and ask them to pick the best men in the community, republicans and democrats, to hold those elections and conduct them in every respect just as you do the ordinary elections. And if a man comes up to vote, and his vote is challenged, treating him the same way the law does, and if he insists on voting they do not permit him to vote. Then make your returns.

Now, the gentleman says you want to get the people out, and in the same breath he says that if the people want statehood, no man can keep them down. I say if they are anxious enough for statehood, no man can keep them from the polls, and they will come out and vote for this constitution, especially if the gentlemen that have made it go back home, and on the stump and in the newspapers take it up and urge our people to come out, and show them the advantages to be derived from statehood. But if they do not take interest enough in it to vote for it, they don't want it, and I don't want either them to have it or any other man here.

Now, if you look to the state officers, what is provided? A returning board composed—just notice in that bill—an executive or returning board composed of men to be elected by this convention. They are to be here in session. They are to appoint subreturning boards in each county. It would take a man all summer to attend to that, the balance of the fall. Appoint gentlemen who are competent to do this, that have the time to spare, and just pay them. And furthermore,

hold your election under this. Won't there be contests? Certainly there will; there always are. Contests at the last election. Who is to decide them? Suppose you decide it and the contestant appeals, and it is decided wrong? Where is your judiciary power to which he can appeal? Suppose he is wronged in his rights and knows it. Suppose in appointing these different boards, men are put on them who do wrong. Where is the voter to have redress, the wrong remedied? He cannot appeal to the law because it is illegal, and therefore you leave the title of state officers and members of the state legislature who are to elect United States senators, and the title of your judges and district attorneys, all affected by illegality and fraud, and in many cases the men who are affected by it have no legal redress. That is the predicament you will be in. And who is to remedy it or right it? Well, the same thing about the constitution. Let us look at that. Nobody's personal rights are interested, and no man is likely to change any vote for the constitution, as only the rights and interests of people generally are at stake. It all depends on the contributional machinery, on taking up a collection to defray the expenses. And that is not all. This election he provides for, he says the legislature will pay for. What then? You will have an election for state officers that your legislature has to pay in the future, that will cost you ten or fifteen thousand dollars; whereas, if you want a law of congress to provide for it in an enabling act, it will defray all the expenses, and it won't cost you one cent to elect your officers. And that is one reason I am opposed to it. It was never contemplated for us to do this thing, we cannot do it under the law, and we have no money to spare for it. And the great trouble you will have when you get before the people is the increased cost of state government.

What further? The gentleman speaks on the grounds that congress will admit us into the Union and that it will be on political grounds. Now, I hap-

pened to be a member of the forty-eighth and forty-ninth congress when North Dakota and South Dakota, Montana and Washington were knocking at the door of congress for admission; I heard those discussions in committee and on the floor, and there were political reasons which influenced them, as there always are; and the gentleman says that if the house is democratic and the senate is republican we won't go in. Yet, this very last congress admitted four states when that state of affairs prevailed there, the house was democratic and the senate was republican. They do bring political questions into it, and that is the very reason I don't want to have an election, because it will retard our getting into the Union; and I will give my reasons for it. There is no gentleman—I appeal to the president, or any other gentleman here—wise enough to say how this territory will go on the preliminary vote of its legal voters; you can't tell. You gentlemen have been making your apportionments and getting your political advantages, as you ought to do, I do not object to that; but you that have been figuring it up for political effect, cannot tell how this territory will go. Then you go there in doubt. Suppose you have your election, and it goes republican. But the gentleman says they are admitted for political effect. There is only one or two majority of republicans in the house, and they will say, "we won't admit it, we don't want two more republicans in the senate, and another republican vote in the house to increase your majority." Suppose it is democratic. Well, it is a republican administration, we don't want two more in the senate, and it is doubtful. What then? We will come right down to the merits of the case, on which states are admitted in fact. How has that been? Why has congress admitted states? I undertake to say there have been four reasons that have always governed it, as you, Mr. President, and my friend on the left here, Mr. Ainslie, are well aware. First, that the state shall have a suitable area; second, a sufficient population to entitle them to representation; third, that it shall

have sufficient resources to maintain a state government; and fourth, that its institutions shall not be repugnant to the constitution of the United States. That is the rule, repeatedly stated in the senate of the United States. Mr. Dolph in his great speech last summer for the admission of Washington territory laid that down and enlarged upon it.

Now, do we do that? All this about whether you elect officers will not be inquired into by the committee. The house is so equally balanced it will come to the question of merit. Now, do we possess it? Let us see what it has been before. What is our population now? In 1880 the population of this territory by the census was 32,610 people, with a vote of 7,223, a ratio of one voter to a population of four and a half, much larger than is generally supposed. In 1888 the vote was 16,665, and it has been estimated that at least 2,500 Mormons did not vote, and it is known that ten per cent at least of the voters—I put it at that, but I believe it will average fifteen or twenty—stayed away from the polls. Now, if the average of four and one-half is the same as it was in 1880—and I undertake to say it is greater, because there are more families come in proportion, with our best settlers, and therefore more people in proportion to voters—it would give us, with the ten per cent that stayed away from the polls, nearly 109,000 people in the territory. What has been the rule in congress? Five states have been admitted into the Union with less than 60,000 people. Ten states have been admitted with 50,000 and a little more. Only eight of them had over 100,000 population. That has been the rule. So, we have had twenty-four states admitted into the Union, and only eight of them had the population that Idaho has got today. So we come up to the requisite in that respect. We have over 84,800 square miles. Only four states had a greater area. California, 158,360 square miles; Texas had 265,780 square miles, and Colorado had 103,925. Texas, California and Colorado were the only three states that had

a greater area than Idaho has today. So we have three states in all larger, and twenty-one states less than Idaho is today. Now, have we sufficient resources to maintain a state government? Our assessment roll shows only $21,000,000 and a fraction of property; but we have in all about $56,000,000 in property; that is the estimate when it is properly footed up. We had 3,000,-000 bushels of wheat raised in this territory, which they say is an arid desert; we had 1,250,000 bushels of oats; we had nearly 400,000 bushels of barley; we had nearly, (not quite) 528,000 tons of hay; we had nearly 200,000 bushels of flax seed; we had about 50,000 bushels of corn; we had $11,000,000 worth of precious metals taken from the earth. I do not add to that our livestock; you cannot tell what our manufacturing interests amount to. Add to that our great milling interests, and you have $50,000,000 or $65,000,000 of property here in Idaho subject to taxation if it was properly assessed. I undertake to say that out of the twenty-five states admitted, not half of them had the property valuation that Idaho has today. So we have sufficient resources to maintain a state government.

Now, are our institutions repugnant to the constitution of the United States? That is the situation; that is the only thing left; We have our population and our resources. Now, we come to the last question, and the only one upon which congress can pause; for we have shown them the other three requisites to our admission. What is it tests this constitution? I undertake to say, taking into consideration the favorable comments that have been made upon it, it is not repugnant to the constitution of the United States, but that it is right in line with it. Some of us may have differed on some questions, but when we go up there, if congress will pass its judgment upon it, that will be the only question to contend with, and it will be admitted, and it does not make any difference whether we elect state officers or not. How was it with Dakota? She sent two United States senators down there in 1886, and two representa-

tives, and they were the butt and ridicule of the whole city, and only yesterday, you notice in the prints this morning, when she is ordered to vote on her constitution, and she has to put off the election of her officers until next fall, but she has already got an enabling act to take her into the Union. Those are the reasons why I oppose this minority report. The gentleman says Michigan went in under those conditions. Well, that was in 1836. Since that time state after state has gone in, and congress never has, except in the case of California, adopted the same rules for the admission of a state. California, as you well understand, was the result of a compromise, a compromise which Mr. Clay brought about. That was the reason she got in. The rule is, submit your constitution. And, as Mr. Sunset Cox, from whom the gentleman read about apportionment, stated to Mr. Hagan (when Mr. Hagan came to this convention he traveled with him from Minneapolis out as far as Spokane Falls, and up in Dakota he was invited into his car, and Mr. Cox is one of the most sensible, practical legislators in that body, and had as much to do with the admission of the states as any other gentleman), "Make you a plain, old-fashioned, sensible constitution, let your people endorse it and send it up, and we will admit you into the Union, and let you go forward and elect your state officers." That is his judgment; that is the judgment of all; all the congressmen will tell you the same thing. What do you want to elect state officers for now—have an election within two or three months? There is no machinery provided for it, with the bid held out to every man to go in and cheat and throw the thing in doubt, and after they have done it, no tribunal to try them for it! You gentlemen that stood here and asked us to surrender conscientious scruples for the right of suffrage to enable you to fence those Mormons out, and we did it and stand by you, how will you keep them from voting? How will you keep the result of your election from being tainted by the fraud of illegal voting? Gentlemen tell me that a

thousand of them voted last fall when you had the law above them, when you had it fenced in with test oaths, and today your courts are full of the prosecutions of illegal voters. How will it be when you have no law to guard the ballot, and it is left open for them to cheat and defraud, aye, in some instances when the ballot itself will be in their charge and under their direction? In taking all the precautions you can, when you come to those counties see to it that only legal votes go in for your constitution, and if they cheat in that respect, we can explain it to congress and tell them it is wrong, but you cannot explain away a man's title to office, and every man knows it. That is why I do it. It makes no difference whether the territory is democratic or republican. I say to you today, if we could have a legal election, I would as soon strip and go into the fight for the democratic party now as at any time. Why? You would have no national election mixed up in it; you would have purely a local affair of it, and the race would be better for the territory because you would not have political issues, but the question would be, who is the best man; and the people always come out better when that is the issue. But when they go to the ballot box and find that men can cheat, that they can go in and do wrong and stuff the ballot box, that their votes cannot be counted properly, they do not want to go into any such election as that. You know it is hard to keep this thing straight and pure when we have all the defenses the law throws around it, and the gentleman admits we cannot do it under the law. And if, to get into the Union, we have to do some revolutionary things, as he styles it—might without law, let us not be any more revolutionary than necessary. Let us do what we came here to do, form our constitution and submit it to the people; then go home and explain it to them, show them the disadvantages of living under territorial government, show them the blessings to come from statehood, show them we can live for $50,000 less of taxes, and Idaho will be built up, and her resources will be developed,

and above us will be this old flag that the gentleman has told you about, and in which we all glory, and you will have been benefactors to this state and performed a duty. I hope the minority report will be rejected, and the majority report, with such amendments as it needs will be adopted by this convention. (Applause).

Mr. HEYBURN. Mr. President, the gentleman is mistaken if he thinks the first move for statehood in Idaho started with his mass meeting in the town of Lewiston.

Mr. REID. I did not state that.

Mr. HEYBURN. I understood the gentleman to say that the meeting that was held in January in Lewiston was the first open step towards statehood in Idaho.

Mr. REID. I stated, if the gentleman will pardon me, that the first resolution was introduced by our delegate in congress, and following that we had our meetings, and afterwards I stated each step that was taken.

Mr. HEYBURN. I understood the gentleman correctly. I was proceeding to say, and I did say, that he claimed that was the first step taken in Idaho. The introduction of a bill in congress was not a step taken in Idaho. There are a great many people in this territory that have been tired of the vassalage under which we have lived for several years, and who have been agitating and talking this matter months and years before bills were introduced in congress, or before the mass meeting that was held at Lewiston. And when the call went out to the people to send their delegates into this convention, it was a call for statehood; it was a call for them to assemble here and establish a state government, and to do everything and take every step that would accomplish that purpose. Not that they might simply meet here and vote upon a constitution to be submitted to the people and carried to congress, and to ask them whether or not they would be willing to admit us with such an organic law. The purpose for which the people sent us here was to form a state

government, and that means something more than the adoption of a constitution. You are no further advanced toward state government when you have adopted that constitution at the polls this fall than you were before we met here in convention. You have done no act that is binding upon the general government, nor have you advanced one step towards gaining their consent that we become a state. The people cannot vote themselves a state; it requires the consent and the action of congress to make us a state, and it is not very important to consider here what the people will do with this constitution, further than to know whether or not they are liable to reject it. But it is all-important to consider what congress will do with our claims when we present them at their doors; and that is the real subject that should be discussed here in considering the propriety of adopting the minority or majority report in this case. We are not sovereigns to say we *will* become a state; we have the right to petition congress that we *may* become a state; that right is guaranteed us by the fundamental law of the land, and that is all that our action amounts to. And I propose for one that that petition shall go up there a full petition for statehood; not a petition that we may at some future time be allowed to become a state, but that we be admitted then and there, as was said by Mr. Sweet. If it is important, if it is desirable that we become a state at all, it is desirable that we become a state at the very earliest possible day; and we are here to consider by what means we may thus become a state. We are not in a position to sit passively by and see other territories standing before congress with a full-fledged government ready to assume the duties of statehood, and when the question comes up there as to pairing off one against another, New Mexico against Wyoming, the territory that stands there best equipped for statehood is the one that will receive the prize at the hands of congress. When these trades and these combinations that are going to be made in reference to this matter—and I speak of these terms both in

respect to honorable and statesmanlike combinations and trades, because it is perfectly honorable for congress to consider it in that way—when these trades are to be made, if Idaho is simply there with her constitution, without any preparation for state government other than that, and Wyoming stands there with a fully equipped state government, the question is, which is to be admitted as an offset to New Mexico, and you will find your sister state of Wyoming will have outstripped you, and you will remain in territorial vassalage until there comes up another possible combination by which they can offset you against some other state that will be of a different political complexion.

Those are the considerations that are going to actuate congress in this matter, and not the little details of the organic law we may adopt. That organic law is in itself not so very different from others that it will be the cause of or subject to very much criticism. When they have glanced their eye over it, those who are learned in the law will very soon see that there is no departure from the general law that we are not authorized to make, and that will be the end of their scanning of that instrument. They will then turn around to their fellow members and say "What are we going to do with these various applicants for statehood, on political grounds? They are all of them here with constitutions that will be satisfactory to us; any one of their constitutions is within the scope of their power to ordain. What are we going to do with them from a political standpoint?" That will be the question. I have not any fear but what we will be able to take care of the purity of the ballot box at the election provided for by this minority report. It provides that no one shall vote save qualified voters. It authorizes those who are to hold the elections to refuse all other votes than those of qualified voters, and if they receive them then we will not count them, and we are the absolute arbiters of that question, acting through the commission that is proposed to be appointed by this body. No

Mormon power or any other power can compel this canvassing board or board of election to receive illegal votes, and I have confidence enough in this convention's judgment in choosing honest and conscientious men to believe that we can absolutely protect the purity of the ballot box under this arrangement. If we cannot protect it in that way, we can never protect it. If we are not able by reason of the machinery that is given us there to carry out this election, then we will never be able to protect ourselves against illegal voters in this territory or in the state of Idaho; because the safeguards that are thrown around the ballot box by that provision are as stringent and easily enforced as those we have incorporated into the organic law, which we say will be the organic law of the state. So I say we come here to form not only a state constitution but a state government; to lay the foundation for it; to make every necessary provision for forming it, and when we do less than that we have done less than our duty to our constituency who sent us here.

The question of the probabilities of our being admitted has been very thoroughly discussed by the gentlemen who have handled this subject before. I desire to say only in addition to what they have said, that it seems to me, that in the minds of many gentlemen this question has resolved itself down to one of policy, as to whether or not it is better to have statehood anyhow, or whether or not if we have statehood we must vote of a certain political complexion. I for one, am in favor of statehood, whether it be republican or democratic. Statehood first; and I am in favor of doing that thing here, and taking such action as will insure statehood first, and let politics and politicians take care of themselves. I know of no combinations, I know of no combination that it is possible for any gentleman to make. I have too much confidence in the common sense of the people of this territory, and of this state to be, to believe that it is possible for any man to hold them in the hollow of his hand, or by any combina-

tion he may make here to dictate their election, either now or at any election that is going to be held. The people think for themselves and act for themselves, and they have a dislike for combinations; and when they see one of them their first impulse is to crush it out, and it is unsafe and unwise from a political standpoint for a gentleman to rely upon these combinations. We are here for statehood, republican statehood if we can get it; if we cannot get it, then statehood with the right to live and a fighting chance to make it republican; and if we get whipped we will yield to you. To be candid with you, talking among Idahoans, we are not entitled to be seated under any rule that has ever been laid down by congress. We have not sufficient population to entitle us to representation in the house of representatives; we have not the assessed valuation of property equal to the county from which I came. But we are claiming statehood because of the peculiar circumstances that surround these frontier countries. We need statehood, and ought to be entitled to it without being compelled to come up to the standard that has been in force against these states lying to the east of us. I said we were not up to the standard of any state that has been admitted. I will qualify that. When the state of Michigan was admitted she fell farther below the requirements than we do today. Michigan was admitted without any enabling act. She found such adventurers in congress and in the executive departments of the governmnt as James Buchanan. These same questions were raised against Michigan that are being raised against us; the same objections, the same objections as to power had been raised against every state that has gone to the national capital with an organized state government, that it was done without authority of law; and yet congress has one after the others seated the members in the house and the senators in the senate, and recognized those governments, and made legal and lawful that which had no warrant of law when it was done. They will not inquire into those details as to the

manner and method by which we arrived at a conclusion; all they want to know is the primary fact: Have you a government; have you a constitution republican in form, not repugnant to the constitution of the United States; is it the will and wish of your people that you be admitted as a state, and have they selected, by a means that is satisfactory to themselves, their representatives? If they have, congress has no further interest in inquiring into it.

John Quincy Adams in discussing the question of the admission of Arkansas that went there without an enabling act, that elected its state officers and presented them to congress for seats—John Quincy Adams in defending the action of that state said: "We will not inquire into the means by which you have done this, or the process by which you have arrived at this conclusion. We only want to know that it is your desire to become a state, expressed by the voice of your people at the ballot box; that you have the necessary population, and a population that in our judgment entitles you to be seated, and that your state government is republican in form." That is all they would inquire into. Now, it seems to me that, leaving out of question all of these considerations as to expediency, whether we can get our vote or not, whether our people will go to the ballot boxes or not and vote unless we do have an election for state officers, or whether or not it will make a bit of difference to them whether there is a campaign fund to carry on this election or not, the principal question is what congress will do, not what our people will do. Our people may vote and ratify this constitution by a unanimous vote; it will still be within the power of congress to reject our application for admission. Something was said in the interest of economy. I never knew a political discussion, either in convention or from the political stump that did not have something in it about economy. It has been suggested that in the interest of economy we should not hold this election. Will it not require the same number of election officers, the same machinery,

the same expenses, to hold an election for the ratification of this constitution as will be required for the election of state officers? What difference will it make? It may be said that this canvassing board will incur some additional expense, etc.; but it will be a trifle, and that board should be provided, even in case the election is for the constitution alone.

Mr. BATTEN. In the days of the Roman arena I believe it was customary for the gladiators to salute the emperor with some expression like this: "We, who are about to die, salute you." It seems to me if we do so foolish an act as to adopt this minority report we are placing ourselves in the attitude of those gladiators when they went before the emperor. We go before congress almost admitting, if we adopt this minority report, that we have not any right to be admitted. I am vitally interested in statehood, but it seems to me if we adopt that minority report providing for this election of state officers, we would be doing that which is suicidal of the very purpose which we seek to accomplish. It has been well said by the gentleman from Latah, Mr. Sweet, that the only authority under which we are acting is that broad constitutional authority, the right of petition. Now, we should restrict that right of petition to what we really are endeavoring to accomplish, namely, admission into the Union, and leave all the details of constructing a state government to follow after we are admitted. It seems to me that is the logical, the rational, the sensible method to take; in other words, not to cumber our right of petition, because that is the only warrant and authority for our act, simply the broad constitutional authority to petition congress. Let us restrict what we are doing to that broad constitutional authority, and not cumber it with and make it top-heavy or burdensome by tacking on a long list of state officers. We have already had precedent enough to show that that is bad policy, in the case of Dakota, and Dakota has wisely reconsidered her former action recently by refusing to elect her

state officers and simply submit her constitution to congress, and see if that document meets with the approval of congress; and then, after that is done, and she is authorized by congress to provide for the machinery of state government, she can then do it. It seems to me the whole burden of the argument, so far as I have heard it, narrows itself down to this: Which of the two courses proposed will best conduce to our admission into the Union; which will further our chances for statehood? Now, in considering that question, it seems to me we can leave out of question, we can divorce ourselves from, keep ourselves entirely aloof from, considerations of party; and yet there have been brought into the discussions something that savors strongly of partisanship. It is not something I think that appeals to our partisanship in the least degree; it is simply a question that appeals to our broad patriotism, and in that light I shall consider it a few moments. I desire simply to repeat what has already been so well said by the gentleman from Nez Perce, Mr. Reid, that if we submit this matter, if we provide for the election of state officers at the very time we submit the constitution for adoption or rejection, we drag into the question other considerations, other matters, that will tend to wean away the public mind from the real question submitted to them, namely, the adoption of the constitution; we imperil the chances of the constitution being adopted by mixing up with it considerations of personal ambition, considerations of whether this democrat or this republican shall be elected, and these considerations will enter all the way through, from the nominating conventions clear through the entire turbulent campaign following nominations, up to the very day of the election. It seems to me this is a very serious matter. That matter of itself is enough almost to imperil the chances of the constitution being adopted by the people, because the strife for office, the angry, bitter, partisan warfare will take such prominence in that contest as almost to becloud and obscure and eclipse the real mat-

ter which we are submitting, namely, the adoption or rejection of the constitution. That, it seems to me, is one of the strongest arguments in favor of the majority report. Another matter—and I can only say that the matter is susceptible of only two small arguments on either side—is as to the policy of it; as to the policy of thus electing officers when we submit the constitution. I think it is a ruinous policy. As I said before, I think it is a policy, which is suicidal of the very object we seek to accomplish. Why? Because if we take a hurried glance over the condition of the parties in this country what do we see? In the national house of representatives the parties stand almost nip and tuck. I was reading a statement of how the parties stand, leaving out of account some six or eight contested districts. The house of representatives 164 republicans and 161 democrats. The senate, as you well know, is almost as closely divided. So that if we hold this election, to use a slang expression, and show our hand in either way, we are doing that which is detrimental and jeopardizes our chances, because, forsooth, if the election goes republican then the democrats have power enough by resorting to the usual filibustering tactics and parliamentary skirmishing to thwart our admission and prevent it; and taking the other condition of things, if it goes democratic the republicans can easily, by their slight majority, prevent our admission. So that, bringing the matter down to a simple question of policy, it would be a ruinous policy, I maintain, for us to adopt the plan suggested by this minority report.

I desire now to notice some of the arguments. I merely urge this to the two strong cardinal arguments in favor of the majority report, that we should in brief simply submit the question of the adoption or rejection of this constitution free from and rid of all other considerations entirely; and if we do that we will do a very wise thing, a thing that is fraught with good policy, and to be most conducive to our admission into the Union; whereas, if we do the contrary, we will do

a most foolish and absurd thing, and might as well write ourselves down asses at once. The gentleman from Latah in his argument, or rather in his address, with all due deference to the gentleman, failed to exhibit to me any real strong argument, though I will admit he presented his case very plausibly and charmingly; he has a very persuasive way of presenting a point, which almost compels us to assent to him whether we will or not. But I failed to see, and I ask any gentleman on this floor if he can point to one good strong reason or well considered argument, which that gentleman advanced in favor of his position. He says that several states have been admitted without enabling acts. Now, it is true there have been several states and he seems to think we are in that same category with those states. I maintain we are not; we are differently circumstanced from most of those states that were admitted without enabling acts. For that reason the same considerations which prompted congress to admit them do not operate in our case. Again, he uses the argument that the people need a little enthusing, but he did not undertake to show how his minority report would tend to enthuse the people at all; on the contrary, I think it would tend to the very reverse; I don't think the adopting of his minority report and providing for the election of officers would tend in any way to enthuse the people in favor of our constitution, because candidates will have their friends, there will be disappointments following heated political strife, and so far from enthusing, those who will be enthused will be the successful ones, and the unsuccessful candidates will have very little enthusiasm to bring upon the constitution. They will go back disgruntled and dissatisfied, and have every reason, every inducement to prompt them to do all they possibly can against the constitution. Even if they should not do anything overt, that is, positive and direct antagonism, their very lukewarmness will be almost sufficient to damn the whole thing. Then counsel, notwithstanding he pushed himself upon

such a high and elevated moral plane of pure patriotism, yet he did manage to bring to bear some little politics in the course of his argument. He seemed to think—in fact he admitted—there was a great deal of politics in the whole question. Now, I take issue with him there; I maintain there is no politics, and I ask every gentleman upon the floor of this convention not to be entrapped and led away by any such cry as that. I maintain it is not a question of politics whatever; it is simply a question as to which of these two reports embodies a plan and mode that will be most conducive to our admission into the Union; that will help us along and further our chances. And I maintain, Mr. President, that anyone who will carefully and considerately and calmly consider the two, must admit the majority report is the best one; because it simply leaves the matter where it ought to be, to the question of adoption or rejection of the constitution.

The gentleman from Latah also laid some little emphasis upon the fact that they have provided a very elaborate machinery for putting into effect the whole question of statehood. I maintain they have put up a very elaborate machinery, so elaborate that I defy almost anyone upon the third or fourth reading to understand fully what it means. They have provided a very complex and complicated machinery, where all that is necessary is something simple and direct and easily understood, and I think with the slight amendment proposed by the gentleman from Boise, Mr. Ainslie, that all that is necessary is provided in Section 6 of the majority report. That simply leaves the present law to be the machinery for carrying it into effect. I do not like this machinery; I have glanced over it hurriedly, and heard it read, but it does not commend itself to me at all. I see something in this returning board that savors very much of a little scheme; I dislike to see it; it may not be so, but still this returning board is not surrounded or hedged about by any penalties or punishments for malfeasance in office. It is proposed

to elect them by this convention. There is nothing at all to provide for their proper discharge of their duties; there are no penalties and punishments provided in case they abuse their trust. It is a cumbersome and complicated machinery all the way through; takes up some five or six pages, and has a lot of verbiage we can well dispense with. I maintain the majority report embodies all that is necessary.

These ideas I have thrown out casually; I am well aware it would be more becoming in me to have nothing to say about this matter, inasmuch as the leaders have expressed themselves so thoroughly and cogently on the subject; but I believe we have come to a critical point in this matter, which if we pass safely will be all right and no question about our admission; and for that reason I could not keep my seat, having some few views I desired to express on this matter, and I ask all gentlemen here present to stand by the majority report; it is not in any sense of the word a party report, and I think we will see our way clear to sail into the grand galaxy of states.

Mr. MAYHEW. I desire to detain the convention not to exceed the limits of five minutes. It is not my purpose on this occasion to make an elaborate argument or speech. I am in favor of adopting the majority report for one reason which I think is paramount to all others given and uttered by those opposed to the majority report, or in its favor. I believe it is best for us, Mr. President, to go to the congress of the United States as they demand. The congress of the United States, so far as my limited reading goes, as to the admission of states into this Union, never have inquired what are the political sentiments of the people of the territory asking for admission. The only question so far as the constitution is concerned, and the only thing that the members of congress, both the senate and the house, expect to consider is this—the constitutions of the different territories when they originally frame them and ask for admission into the Union is this: Is

the constitution you have framed, republican in form and not repugnant to the constitution of the United States? That is the only proposition, as I said before, so far as my limited reading and understanding goes, which the congress of the United States has a right to determine, unless they forget their obligations as senators, and members of the house, and go behind that question to inquire into the political sentiments of the state. The two great political parties, let them be as they may in the territory, ask admission into the states. It is not for congress through the senate or house of representatives to say, "You are republican, we will not admit you." That is to say, "You belong to the republican party, and we will not admit you;" or "A majority of your people are democratic, and therefore we will not admit you." The only question I say that congress desires to know is that we form a constitution republican in form. I admit the fact, so far as the argument is concerned, that we have not a sufficient number of inhabitants in this territory to entitle us to a representative in congress. And I admit the further fact, Mr. President, that the assessed valuation of property, so far as the record is concerned, will not strike congress so very favorably. A territory with less than 150,000 inhabitants, and not possessing $25,000,000 of assessed valuation of property, will not strike congress so strongly as we may imagine. I say if we go before congress without an election of state officers, there is no member of congress and no senator can stop to inquire what is the political complexion of the state of Idaho. If we go there without an election, and with a constitution republican in form, congress will say, "Those people have acted wisely, let them send up a constitution that meets with our approbation, not even mixed up with the political questions of the day. They only ask us to admit the state of Idaho under a republican form of government." Congress will then admit us. There is no representative in congress to make any objection, republican or democrat. Hence, if we go without a

state election, and without these senators, let them be democratic or republican so they cannot object to it, we stand in a better light before congress than we will if we have an election. Therefore, Mr. President, although I have many other reasons, can advance further arguments for the adoption of the majority report, I say for this reason alone, that we go there untrammeled by party lines, without senators, republican or democratic, or a member of the house of representatives, and we will be more apt to be admitted into the Union.

What is the cause of being so anxious to be admitted upon the floor of congress, and into the senate of the United States? Has that anything to do with the framing of this constitution? I think not. Yet, the gentleman who has the honor with myself to represent the same county says we have come here for another purpose besides forming a constitution. We have come here he says to form a state government. That is not the call; that is not the purpose for which the governors of this territory issued their call, and I say again it is not the purpose for which we were sent here from the county of Shoshone. We did not come here, and not a man outside the gentleman himself, even dreamed we were to elect or submit a question as to the election of state officers. If it was, the gentleman is better acquainted with the people of that county than I am as to their political sentiments. I never heard it uttered by a single man, let him be republican or democrat, in the county of Shoshone, that we were going to create a state government, and elect officers. The only purpose before the people there was, as I take it, to frame a constitution for the state of Idaho, and ask for its admission, and not an election of officers. I think an election at this time would be dangerous; for many reasons it would be dangerous, Mr. President, we have no authority, as the gentleman from Latah has well said—that this action is revolutionary. We have no authority from the legislature of this territory for convening, and we have no authority from congress

for convening in this convention, we have no authority from either body, state or territory or United States, for the creation of a constitution. Yet I admit the fact that we may be admitted, and I trust that we shall, and I am in favor of the admission of the territory of Idaho into the Union; and I do not desire, as one of the members of this convention, to have politics mixed up as a part of our admission into the Union. I say it will make no difference to the ambitious gentlemen, either members of this body or citizens of this territory, whether they are made senators and representatives or not this coming year. We will have plenty of time this coming year when congress shall say "You have made a constitution republican in form, and we will admit you under that; we will pass an enabling act, and admit you under that, and authorize you to elect state officers and pay the expenses." We rid our territory of those expenses by so doing, and get into the Union without coming in with any political complication whatever. I am in favor of the adoption of the majority report.

The CHAIR. Gentlemen of the convention, the question is upon the motion to adopt Section 7 of the majority report. Are you ready for the question?

Mr. BEATTY. Mr. President, I ask indulgence of the house more to explain why I shall vote as I shall than for the purpose of making an argument. But, sir, I came here with one object in view. Since I have been here, I have learned incidentally, heard it whispered around, that there are combinations and rings. I want to say for one that if there is anything of that kind, I, for one, have nothing to do with it; I have had but the one object in view from the beginning, and that is to prepare a constitution which shall be submitted to the people, adopted by them, and finally ratified by the congress of the United States. What is the best course to accomplish that end has been my guide in all my actions here, and shall be to the end. Now, I do not know whether I am exactly on top of the fence, or on one side of it; but if I am on one side, I have been

willing all the time to be convinced I am wrong and climb over on the other. I have listened most patiently, sir, to what has been said, and one development has been made here, which is an utter surprise to me, and which more than ever convinces me that the first impression I had as to what was right is still right, and that I will stand by it. It has been conceded here, and I believe by all parties, that we can have no legal election either to submit this constitution to the people or for an election of state officers. That is rather a surprise to me; but I confess that in the midst of other duties I have not taken the time to examine that question. I had supposed, sir, that notwithstanding our action in this convention is not regular, but as has been said by my friend on my right, Mr. Sweet, is revolutionary in its nature—I had supposed that our legislature would have authority to convene and ratify what we had done so far as to submit it to the people, and at least under the forms of law go before the people and have a legal election. But it seems that my impressions upon that question—which I say are mere impressions without any examination—must be erroneous, because no gentleman here has admitted that that can be done. It must be conceded upon all hands that if we have any election for the ratification of this constitution, or the election of state officers, it will be one without the form of law; will be void of law. That is rather appalling to me, that we are going before the people to submit a constitution, and especially to elect state officers without any law or authority for it. Mr. President, I would like to know how we are to prevent anybody from voting; I would like to know how we are to prevent people from being emigrated here from Utah and voting; I would like to know how we can prevent people from Washington territory, and from the uttermost parts of the earth, if needed, from voting. I asked my friend that question; I asked him to point out some mode by which we should have a legal election, for I want none other. Why, his answer

was, "That election should be controlled (as I understood him) by the might of the people of Idaho." In other words, we go out and see that the strongest arms should control this election. Why, sir, do you mean to seal this constitution by a bloody fray? Do you mean that this constitution shall be sealed by the blood of its citizens in a contest over an illegal election? Is that the proposition we go before the people with? Then, if so, I am more than ever opposed to undertaking to hold an election for state officers. When we go before the people to elect state officers or any kind of officers, I want that that election shall be at least legal in form, that we shall have back of us the test oath law; that we shall have back of us the registry law; that we shall have back of us the laws of Idaho territory; but not that we shall go out simply with the law we hold in our own hands, and undertake to enforce that. Why, sir, I can see no end of confusion that will result if we undertake to hold an election that way; and I would like for any gentleman to show me how we can have a peacable or quiet election which will not lead to confusion, and which will not in the end result in the utter defeat of this constitution. If we go before the people for that kind of an election there will be contests, there will be bloody contests, there will be riots and confusion. If we go with that kind of election to congress, what will they say to us upon this question? Will they undertake to ratify our constitution if we go before them and show that we have had an election which was not agreed upon by the people.

Mr. HEYBURN. Has the gentleman read Section 17 of the minority report?

Mr. BEATTY. I have not, except to follow it in the reading; but I do not care what is in that, because it has already been admitted by my friend and by others that there can be no legal election; and if there cannot be, then you cannot by anything we put in this constitution make a legal election.

Mr. SWEET. I would like to ask the gentleman a question.

Mr. BEATTY. Certainly.

Mr. SWEET. I would like to ask you how you are going to prevent Mormons from overwhelming this constitution, except by virtue of moral force and the strength of the people of Idaho?

Mr. BEATTY. Well, if it is true that the legislature cannot meet and authorize an election, then I answer in the language of the gentleman before, that the only way to prevent Mormons from voting is to do it by physical force.

Mr. SWEET. Then let me ask you this question. If you can by an act of the legislature protect the election for the constitution, can you not by an act of the legislature protect the other election also?

Mr. BEATTY. That is just what I claim, Mr. President. I supposed that this could be done, but it seems to be conceded that it cannot be done. As I said before, I have not critically examined that question. I was laboring under the delusion all the time that such a thing could be done; that the legislature might authorize an election, and there are members here who will bear me out as having spoken to that question, of the governor calling the legislature together by consent of the president of the United States for that very purpose; but, as I said, I have not examined that question. I may be wrong in it. If the gentlemen are right, then we must have an election without form of law. Now, let me show you what the Mormons can do. You say we will go in and by main strength prevent them from voting. What is to prevent the Mormon people going off and establishing ballot boxes of their own and voting and have their election certified up? We have no legal officers to certify our election. Those officers we appoint under this schedule are not legal officers; they are without authority of law.

Mr. SWEET. There is a board appointed under this schedule for the counting and canvassing of the votes of the qualified voters of this territory under this present law. Are they obliged to count those Mormon votes?

Mr. BEATTY. I will answer by asking another question. What authority has this board to count any votes? They are simply acting only by virtue of such authority as we give them, and we can give them no authority.

Mr. SWEET. We cannot submit the constitution by any authority. We have just as much to do that as we have to submit the constitution at all.

Mr. BEATTY. I admit that it seems to be conceded we are going to submit this constitution without any authority. It is a haphazard submission to the people.

Mr. SWEET. I would like to ask——

Mr. HOWE. I call the gentleman to order; there are two gentlemen upon the floor speaking at the same time.

The CHAIR. By consent of the gentleman who is entitled to the floor.

Mr. BEATTY. Yes, I always yield to the pleasure of a question from any gentleman, although I have the misfortune when I talk here that gentlemen ask me questions all around—which is a compliment to me, however.

Mr. SWEET. I will not propose any further questions.

Mr. BEATTY. I yield to the questions of the gentleman; I do not wish him to understand that I have any objections whatever. If it is conceded we have no law for this, we cannot by any process prevent those Mormons from voting; if they do not vote at the polls that the gentiles establish, they will vote at their own; if we do not count their votes they can send them on to Washington and have them counted—or at least send them on as a showing. There is another thing in that connection, Mr. President; I would like to know who are going to be candidates for office under such an election as this. And now I want to ask my friend Mr. Sweet a question. I understood him to say the other day that he was ready for anything in sight; now, I want to know candidly, because I may want the pleasure of voting

for him if he will consent to be a candidate for governor under this haphazard——

Mr. SWEET. You have called on me for the wrong office. Almost any other I would be willing to answer to.

Mr. BEATTY. I have been trying to find what office my friend Sweet wants during this whole convention, for I do want to vote for him, but I am beaten at every point.

Mr. MAYHEW. I understood he said the other day that if he could not get one he would take the other.

Mr. BEATTY. Well, laying all jesting aside, I simply must say, without going over the arguments others have adduced—and I have listened patiently and attentively to all that has been said—if it is conceded that the only election we can have is one of this random nature, and that simply physical force must govern, then I am more utterly opposed than ever to attempting to have any election for state officers. There will be no possible end to the confusion. There could not be a legal election; contest after contest would follow; it would be an election without law, and I would like to know where it would end. Now, I want this constitution to be adopted, but I do not believe it depends upon the number of votes that are cast for it. I believe if this constitution is submitted to the people, and a reasonable number of votes cast for it, that is sufficient for the congress of the United States. I do not believe they are going to ask the question whether a large number of people have voted for it or not; I think that is immaterial, and I think the less of a contest we have in the matter the better it will be for us. Gentlemen have alluded to the question of politics in this; as a matter of course there are politics in it, will be when we get to Washington, after we get there and show them whether we are democratic or republican, and those two houses will be governed accordingly. I do not believe it is even necessary to submit this constitution to the people; I believe our delegate in congress can take this consti-

tution and go there and present it and ask congress to ratify it, and let congress authorize us to vote upon this, and also to carry out the rest of the machinery to create the state government. And I believe sir, that is the proper and only mode to pursue; and I do fear if we undertake to go into an election we will only get into confusion, and never will get this constitution ratified by congress, and will remain out of the Union as a state for years to come. I am willing to take my chances on its admission, let it be republican or democratic. If my democratic friends can capture this state, composed of democratic American citizens, I can live under it; but I do not, as a matter of course, want to go into any state that is governed by this church that rules in the southeast part of this territory. I shall cast my vote in favor of the majority report. I do it for the reasons I have stated. I believe in doing so I contribute that much more towards the ratification of this constitution and our early admission into the union of states. (Applause).

Mr. REID. If there are no other remarks, Mr. President, I ask for a vote on it.

Mr. PARKER. Mr. President, there ought not to be any politics in this question of submitting the constitution of the state of Idaho to the people for ratification. And yet we find that presumably honest men on this floor are in favor of making it a partisan fight for the loaves and fishes of office. As I look at it, the question we have to submit to the people is: Do you want statehood under this constitution? If they say no, that ends it. If they say yes, our majority report provides the machinery for the election of those state officers, which gentlemen on the other side of the political fence are in such a hurry to occupy. Mr. President, I am opposed to injecting into this campaign for statehood any other political side issues than those that will not distract the attention of the people from the principles involved in that constitution. The rights of the people, the rights of us, the rights of our descendants

for generations unborn are involved in that Magna Charta of our liberties, which we are here framing. We have in that document conferred unheard of and extraordinary privileges and powers upon the state legislature, and I will say we ought to give the people time to vote directly and distinctly upon that one proposition, whether they are willing to surrender those rights which we, their representatives, have surrendered from them to the state legislature. I say therefore that we ought to submit this constitution as a separate and distinct proposition to the people with no other political side issues. When we leave this convention and go out among them we will find a great diversity of opinion. We will find some opposed to statehood under any circumstances whatsoever. We will find others who are in favor of statehood, but who do not like certain clauses, which we have incorporated into this Magna Charta. We will find others who think there are not enough people. We will find others who are opposed to statehood on the ground that it will increase taxation. Those diversities of opinion it will be our duty to reconcile. I am not alone, Mr. President, in believing that this constitution contains features that are a crime against the rights of humanity. I believe myself that the remedies prescribed in this constitution for the cure are worse than the disease of Mormonism itself; it is the surrender of our legal rights to the legislature practically forever, in order to escape the alleged probability of Mormon domination in the politics of our state. I want this Magna Charter to be considered by the people on its merits alone. There will be plenty of time to elect our state officers and run the gauntlet of popular votes. It has been conceded on this floor this afternoon that there is no great desire existing for statehood among the rank and file of this territory. And I agree to this extent; and that when this constitution goes out to the people on its merits alone, there will be a light vote cast. These gentlemen realize full well that a great number of our citizens can be

led astray by the glittering generalities statehood holds out to them, and led astray by the ambitions of those who have ambitions to serve. When you go to congress with this unanimous vote, after you have voted for your constitution and your state officers, we shall go there with a lie upon our lips, and with false pretenses and hypocrisy in our hearts, because we shall claim to congress that this vote that was cast for our constitution and state officers was cast for this constitution alone, when we know those votes were called out by the clamor of voting for state officers whereby the partisan and political prejudices of the people were aroused. I am opposed to statehood if we have to tell a lie to congress, or gain statehood by going to congress with hypocrisy in our hearts and falsehoods upon our lips.

This convention, Mr. President, seems to labor under the impression that it is a legislative body. The rights of this generation and of generations unborn are involved in the adoption of this Magna Charta. It is not an ordinary legislative enactment that we are framing here, it is a constitution; and we all know how difficult it is to secure the adoption of it, and once adopted how difficult it is to amend it, modify it, or repeal any obnoxious feature of it. In a land like this, Mr. President, where the blessings of liberty and universal intelligence are so widely diffused, I hold to the opinion that it is not safe to fool the people, or attempt to fool them, and I shall vote for this majority report, because I want this constitution to stand upon its own bottom, and not to solicit votes of the people under false or fraudulent pretenses.

Mr. REID. I move the adoption of the section.

Mr. LEWIS. Mr. President, may I speak a word or two? I have heard a good deal about electing officers at the same time that we adopt this constitution. Now, I am from southern Idaho, and the great feature there will be if there will be any bloodshed upon the adoption of the constitution, not upon the officers. Why? Because this is a death-blow to the Mormon church if it is

adopted. And here, and only here, is where the blood will be shed. If we have no law for it, I hope and pray that even the constitution will not be put to a vote there, else I want to emigrate to some other county than a Mormon county, because they will come there by the hundreds and vote for the constitution, and that by force. That is the only fight, I say, there will be in southern Idaho. Not for the officers.

"Question, question."

Mr. SWEET. As I understand it, a motion for a call of the house when a motion is pending is not in order; am I right?

The CHAIR. That is the ruling of the chair.

Mr. SWEET. Well, I have not studied particularly the technical rules, and I do not wish to delay the convention, and yet I would like to have every member present.

Mr. REID. I will call for the yeas and nays.

Mr. SWEET. I would like to have every member here present.

Mr. REID. So would we. The rule really is to call the roll twice on the yeas and nays.

Mr. MAYHEW. I suggest that we call the roll now and see who is absent.

The CHAIR. The secretary will call the roll for the information of the convention.

Mr. VINEYARD. I understood the gentleman from Boise had an amendment he wanted to offer.

Mr. REID. Yes, but that will come afterwards.

Mr. McCONNELL. I call for the yeas and nays on the adoption of this proposition.

The CHAIR. It is desired by some members present that it be ascertained how many are absent; and by general consent the roll will be called.

The secretary thereupon called the roll for the information of the convention.

Mr. REID. I now move the adoption of Section 7 of the majority report, and demand the yeas and nays. (Seconded).

Mr. SWEET. As a substitute therefor I move the adoption of Section 7 in the minority report.

The CHAIR. The question will recur first upon the substitute, Section 7 of the minority report. As your names are called you will answer yea to adopt, nay to not adopt the substitute.

Roll call:

Yeas: Allen, Armstrong, Campbell, Glidden, Hammell, Hampton, Hasbrouck, Heyburn, Howe, Lewis, Maxey, McConnell, Morgan, Moss, Pinkham, Pyeatt, Robbins, Sinnott, Shoup, Sweet, Wilson—21.

Nays: Ainslie, Anderson, Batten, Beane, Beatty, Bevan, Blake, Cavanah, Chaney, Clark, Coston, Crutcher, Gray, Harkness, Harris, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Mayhew, Melder, Myer, Parker, Pefley, Pierce, Reid, Savidge, Standrod, Steunenberg, Stull, Taylor, Underwood, Vineyard, Whitton, Mr. President—38.

And the substitute is lost.

Mr. REID. I would ask the gentleman in charge of the minority report, would he object to voting on the balance of the report as a whole?

Mr. SWEET. Not at all.

Mr. REID. Then I ask unanimous consent to put the balance of the report on its passage by one vote, and I will move that the remainder of the majority report be adopted without reading. And then we will go back to Section 6 and offer the amendment. I suggest this to save time of voting on each proposition separately.

Mr. GRAY. The only objection I have, I am not in accord with the argument of the gentlemen on the floor here today at all in one respect. That is as to how these votes are to be canvassed. If it is a fact as stated here that there is no power given, why should there not be some machinery provided that is not in that majority report?

SECTION 6.

Mr. REID. The motion is to adopt the majority report and then go back to Section 6, and then Mr. Ainslie has an amendment to offer, that these votes be counted like the votes for the delegate to congress,

which will cure the defect pointed out by the gentleman from Latah, and it will then make the bill perfect and the machinery complete in every respect.

The CHAIR. If there are objections it cannot be done.

Mr. GRAY. I do not object to taking up all of it.

Mr. AINSLIE. I will offer the amendment to Section 6 now.

SECRETARY reads: Amend Section 6 as follows: By inserting in line 3 after "1889" the following: "said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections, and abstracts of such returns duly certified shall be transmitted to the board of canvassers now provided by law for canvassing the returns of votes for delegate in congress."

Mr. REID. I ask unanimous consent to consider that amendment now, and I move its adoption. (Seconded).

Vote and carried.

Mr. REID. I now move the adoption of the remainder of the majority report beginning with Section 7, and if it is adopted, if any member desires to go back to it we can take it up then and amend it. I do that to save time.

The CHAIR. Section 7 has already been adopted. It is moved and seconded that the remainder of the majority report beginning with Section 8 be adopted, with the understanding it may be gone back to and perfected in any respect it needs.

Mr. BEATTY. I call attention to the fact—I do not know how Section 7 was adopted; we voted upon the substitute, and that was not carried, and there has been no motion put since.

Mr. REID. I will include Section 7 to save time.

The CHAIR. It is moved and seconded that the remainder of the majority report, beginning with Section 7 be adopted.

Mr. HEYBURN. I call for the yeas and nays.

Mr. MORGAN. I notice on examining this amendment that was submitted by the gentleman from Boise that it does not provide what the canvassing board shall do with these abstracts, but simply states that the abstracts of the votes of the different counties shall be transmitted to the board of canvassers, who canvass the votes for delegate to congress.

Mr. AINSLIE. Well, we have a board of canvassers consisting of the secretary of the territory, the United States marshal and the governor; and they canvass the votes just as they canvass the returns of the votes for the delegate in congress.

Mr. MORGAN. I know that, but the statement I make is that there is no direction for them to do anything with these abstracts, not even to count them and announce the result. If it is not provided in the schedule in any other place, it occurs to me that it ought to be provided for here.

Mr. AINSLIE. It will be necessary only to say how many votes are for the constitution, and how many are against it; and I am not afraid but what the governor will certify the copies to congress. We cannot compel them to do anything.

Mr. MORGAN. If we ask that they will do this, they will undoubtedly do it, but without a request or any direction from the convention, how will they be empowered to act?

The CHAIR. There is one thing strikes my mind, although I have taken no part in this discussion. We are probably rushing this matter a little too fast. It is the sense of the convention not to hold an election this fall, but there is a question raised by Mr. Lewis, and that is whether in the absence of any law that will authorize the governor even to call out the militia or the sheriff to call out a posse, as to whether it is or is

not advisable to ratify or attempt to ratify this constitution by a popular vote at all until congress has seen fit to call that election and give us the safeguards of law. For one, I do not feel like voting on this question today.

Mr. GRAY. If it be in order that we take a little time to think it over, I move that we adjourn until tomorrow morning at nine o'clock.

Cries of "No, no, no."

Mr. REID. I hope if we adjourn now we will assemble tonight. I do not want to rush the matter through. I did it in the interest of saving time, but if any gentleman objects to it, or wants to consider it, I think reasonable time ought to be taken. I take the same view, and have all the time, as the president suggested. It makes no difference about the submission of this constitution to the people. I have always thought when we submitted it there would be disclosed such a small vote it would really damage us at Washington; and I expect to do all I can at that end of the line to help it through, but the committee having unanimously adopted this, I thought it was best to submit it. It is admitted by the gentlemen on the other side that we have no legal power to do this. I think though we can have the board of commissioners, as I stated before, canvass the votes, and that we can hold this election, and we have the power of the county to quell any disturbance, and I think they have a right to meet and exclude men from holding a private election of their own. But if further consideration is needed, I move we take a recess until eight o'clock this evening, with the understanding that we stay in convention until we complete it. This is the last work we have to do except hear the report of the committee on Revision; and if we adjourn now or take a recess I move it be until eight o'clock this evening with the understanding that we dispose of this bill before we adjourn. (Seconded).

Division demanded; rising vote: Yeas 45, nays none.

And the convention went into recess until eight o'clock p. m.

EVENING SESSION.

Convention called to order by the president.

COMPENSATION OF MEMBERS.

Mr. REID. Mr. President, pending the assembling of the members there is a matter I would like to bring before the convention in order that the clerk may have some direction. Some members got in a day or two after the organization and were not sworn in on the first day. The question is whether they shall receive pay from the first day. It is usual in parliamentary bodies, in allowing per diem, that they are paid for the entire session. In order that the clerk may be instructed in the matter I move that the members who got in later than the first day receive pay for the entire session. (Carried).

Mr. REID. I understand the gentleman from Bingham has an amendment to the amendment offered by the gentleman from Boise, which we had better dispose of before we proceed with the bill.

ARTICLE XXI.— SECTION 6.

Mr. MORGAN. I offer the following amendment.

SECRETARY reads: Amend by adding to the amendment of Mr. Ainslie, the following: "The said canvassing board shall canvass the votes so returned and certify and declare the result of said election in the same manner as is required by law for the election of said delegate."

Mr. AINSLIE. I accept the amendment.

Mr. REID. I will accept both amendments to Section 6 for the committee, and I move the adoption of Section 6 with the two amendments.

Mr. HEYBURN. I ask for the reading of the section and the amendments.

SECRETARY reads: Section 6. This constitution shall be submitted for adoption or rejection to a vote of the electors qualified by the laws of this territory to vote at all elections, at an election to be held on the

Tuesday next after the first Monday in November A. D. 1889. At the said election the ballots shall be in the following form:——

Mr. REID. Please read the first and second amendments which come in after the 1889.

SECRETARY continues: —on the Tuesday next after the first Monday in November A. D. 1889. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections, and abstracts of such returns duly certified shall be transmitted to the board of canvassers now provided by law for canvassing the returns of votes for delegate in congress. The said canvassing board shall canvass the votes so returned, and certify and declare the result of said election in the same manner as is required by law for the election of said delegate. At the said election the ballots shall be in the following form: (and continuing according to the printed bill to the end of the section).

The CHAIR. It is moved and seconded that Section 6 with the amendments incorporated in it be adopted. Are you ready for the question?

"Question, question."

Mr. SHOUP. I would like to ask the gentleman having this in charge what is to be done in case the commissioners refuse to order an election?

Mr. REID. In that case, as it was agreed upon virtually today, in the committee who draft the memorial to the people, we will request the citizens or the executive committees of the two parties, democratic and republican, in the several counties, to provide the machinery for the election. That was virtually understood today in the committee. In the event the commissioners should refuse to order this election or appoint registrars and polling lists, then we will in our address ask the two parties to see to it that the polls are

opened by proper officers appointed by the two executive committees in each one of the counties in the territory, so that people will have an opportunity to express their dissent or assent to the constitution that we submit to them.

Mr. GRAY. Mr. President, I would ask, had we better not embody it in this bill; that in the event that they do not act—embody just what the gentleman has stated?

Mr. REID. I would state to the gentleman that in our informal conference this morning on the subjects upon which we are to address the people, it was understood that we were going to put that in the address to the people, and I will state to the gentleman that there is here now on foot a call to go to the two central executive committees of both parties in the territory to meet tomorrow or next day here, and provide machinery for the election in case the commissioners would not act.

Mr. GRAY. That was what my point was, on the adjournment, and as I had understood there was a different plan, I did not draw any amendment.

Mr. REID. I think the chairman did right in not embodying it in the report, because it would not be suitable matter to go to congress, but it would be proper matter to address the people on.

Mr. VINEYARD. I would ask the gentleman from Nez Perce, what are you going to do in the event there is no organization of either the democratic or republican party by committees in some of these counties, for instance, in Bear Lake? There is in Bear Lake, I am informed, no organization.

Mr. REID. We will have to depend on those who represent those counties to look after it. As has been said on all sides, this matter is merely voluntary on the part of the people, and we depend on their patriotism and public spirit to provide for that, to get an expression. We have no legal reasons to enforce it, and we think by appealing to the people, if they take enough

interest in it they will provide the machinery. I therefore move the adoption of the section with the amendments.

It is moved and seconded that the section as amended be adopted. Carried.

Mr. REID. If there is no objection, I would move the adoption of the balance of the report; and if there is objection we can read it by sections. If there is no objection I will ask unanimous consent to put the balance of the report of the majority committee on its passage, and move it be adopted.

Mr. HEYBURN. I call for the yeas and nays.

Mr. REID. I have no objection to that. I demand that for it, and ask that it be put upon its final passage.

Mr. CAVANAH. For the whole article?

Mr. REID. Yes.

Mr. CAVANAH. Well, I have an amendment.

Mr. REID. Very well, I move the adoption of the eighth section.

SECTION 8.

Section 8 was read.

Mr. SHOUP. I move that that section be stricken out.

Mr. HEYBURN. I second the motion.

Mr. SHOUP. If we get an act of congress admitting us, as I stated, that act will provide just what shall be done in regard to holding this election. I think there is no necessity at all for that section.

Mr. GRAY. I will only say this, Mr. President, that we will find that section in every constitution that I have found yet. And supposing they adopt our constitution as it is, they need not put in any provision whatever in the enabling act. That is, if our constitution goes there, as it is proposed by this majority report, we are admitted as a state. Then the machinery is all ready to carry on the business without any enabling act whatever. The constitution itself provides the means by which to carry on this matter. "Immediately upon the

admission of the territory as a state, the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation," etc. They may call the legislature together;—"shall issue a proclamation, which shall be published, and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people of all state, district, county, township and other officers, created by this constitution." I don't know what better we want. We understand that, and if the constitution passes this passes with it, and we think we have all the machinery we are required to have.

Mr. REID. I would say in addition to what has been said by the gentleman from Ada, that we, ourselves, fix how this election shall be held, and do not leave it to congress to do so. In other words, as the gentleman has stated—and he drew this bill, and it is well drawn, covers all the points and answers an objection I heard in the argument this evening that there ought to be an enabling act; no enabling act is required—if our work meets the approval of congress, all they have to do is to say so, and they have in the instrument itself the necessary machinery. If the governor refuses to act and the secretary of the territory refuses, the president of our convention can call it, and have it without any intervention of congress. The only question will be whether they will accept our work, and we have been assured by the powers that be that if we do this work, and it is not repugnant to the provisions of the constitution of the United States, it will be accepted. Nay, more, three gentlemen who will have a great deal to do with adopting this constitution—our visiting statesman—have assured us in positive terms that they will see that it goes through, and Mr. Cox, a distinguished gentleman of New York has also added his testimony to the effect that we shall be admitted if our work is perfect, if it has been done by master builders, all they will say is,

"well done, good and faithful servants," and with our own machinery that we have provided we will hold an election. I hope it will not be stricken out.

Mr. SHOUP. This section provides: (Reading the same portion as quoted above.) Now, if we are admitted into the Union in December this election will come in the winter, under the provisions of this section as I understand it. That will practically disfranchise one-half of the voters of this territory, especially the mining class. I think this whole thing should be left to congress to provide for that act.

Mr. GRAY. Amend that as to the time.

Mr. REID. When congress meets on the 4th of December, the first month will be taken up in the discussion of rules as already indicated by Mr. Thomas B. Reed, who will probably be the speaker, from Maine. They will discuss those rules a month, because they are going to amend them so that a minority cannot hinder and prevent legislation. Committees will hardly be appointed before the first of January. Our delegate will achieve one of the greatest exploits possible if he gets this bill enacted before May or June. Yes, it will be an herculean task, and he will be congratulated as the most successful legislator that ever went from west of the Rocky Mountains—I know he will do all he can—but he thinks he can get it through by March or April; I hope he will get it through by June. If so, we will have our election in July or August. The committees will hardly consider it by January or February, so that our election will come in the summer or early next fall, at the time it will suit us best, when the snow will be melted and travel pleasant. I hope it will not be stricken out.

Mr. MAYHEW. I desire to say that it is pretty hard to tell what congress is going to do about this matter. We go there as supplicants, asking to be admitted. I am in favor of the majority report just as it stands being adopted by the convention. If congress should simply admit us upon this constitution, without

passing any law or any enabling act in behalf of the people of this territory, then we can go on as this constitution provides. But if congress should do so by way of saying that the election shall take place as provided in our constitution, and in addition to that give us some aid from a pecuniary point of view to carry out this election and the adoption of this constitution, it would provide the machinery; but if they do not do it, then the machinery already provided in this constitution is sufficient if they approve of our right to be admitted into the Union.

Vote and motion to strike out lost.

Moved and seconded that Section 8 be adopted. Carried.

SECTION 9.

Section 9 read, and it is moved and seconded that it be adopted. Carried.

SECTION 10.

Section 10 read, and it is moved and seconded that it be adopted. Carried.

SECTION 11.

Section 11 was read.

Mr. WILSON. I ask unanimous consent that the word "township" be stricken out, and "precinct" be inserted in lieu thereof.

Mr. REID. I accept the amendment; and I move the adoption of the section as amended.

Mr. HEYBURN. I would like to have the amendment reported.

Mr. WILSON. We have no such political subdivision as township; it is precinct.

Mr. HEYBURN. I would like to know what canvassing board has to do with canvassing the returns of precinct officers in the county. There is no present law, and never has been any law in the history of any government by which a canvassing board of the state can-

vasses the returns of precinct offices in the county.

Mr. REID. Section 11 does not provide anything for the canvassing board of the state.

Mr. MAYHEW. I don't think the gentleman has read the section very carefully.

Mr. HEYBURN. I think I have. Mr. President, I notice here that in the sections we have just passed by unanimous vote, except one or two, in section 10 they provide that the president of this convention shall be one of the canvassing board of state officers. I would like to know what authority this convention has to create a canvassing board for state offices.

Mr. REID. We have no authority; but when congress of the United States sheds over this its sanction, then we will have some legal authority to make it.

Mr. HEYBURN. I took that position this afternoon, but the convention did not agree with me.

Mr. AINSLIE. Question.

Mr. HEYBURN. I suppose the gentleman is in a hurry for the question, but I propose to make what remarks I want to in this convention. As I say, I took that position this afternoon, and gentlemen did not agree with me. But I suppose there has a change come over the spirit of their dreams, and they have changed their minds on that subject.

Mr. MAYHEW. I think the gentleman is mistaken.

"Question, question."

The question was put by the chair. All voting in the affirmative except Mr. Heyburn who voted "No."

And Section 11 was adopted.

SECTION 12.

Section 12 was read and it is moved and seconded that it be adopted. Carried.

SECTION 13.

Section 13 was read, and it was moved and seconded that it be adopted. Carried.

SECTION 14.

Section 14 was read, and it is moved and seconded that it be adopted. Carried.

Mr. MORGAN. I would like to inquire of the gentleman that has this in charge if this is the same election as provided for by Section 8, and if not, if we are to have two general elections the same year.

Mr. REID. No sir, this is the election for United States senators. The other is the election for state offices at the general election.

SECTION 15.

Section 15 read, and it is moved and seconded that it be adopted. Carried.

SECTION 16.

Section 16 read, and it was moved and seconded that it be adopted. Carried.

SECTION 17.

Section 17 read, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I would like to inquire of the gentleman having charge of this bill, whether according to his ideas the state, if it becomes a state, in the interval between the admission of the state and the meeting of the legislature could use the seal of the territory in the supreme court of the state.

Mr. REID. I don't think it could; but this is literally copied from the constitution of Dakota.[1] I did not prepare the bill, but it was adopted in that way, and that seems to be the language of all those territories in the transition state, and I do not see any other way to remedy it. The truth is, I don't think in the transition state the seal could be used at all; it would be a territorial seal until it became a state, and after it became a state we would have to have a state seal. But this is the language all four territories now in process of incubation into states are using.

1—Art. 20, Sec. 7, Const. North Dakota, 1889.

Mr. HEYBURN. We have refused in this convention to accept the wisdom of the territory of Dakota, and I think in this instance we may follow that rule without being inconsistent. This provides, "Until otherwise provided by law the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts respectively, of the state." I would like to know how the seal of the supreme court of the territory can be the seal of the supreme court of the state.

Mr. REID. Well, it is this: the gentleman is well aware from his legal mind that you can declare a nail-head or a button or a ten-cent piece or a dime to be a seal, if you wish to, and it would be legal if the law declared it, and it received the sanction of congress, and I presume several states put it in their constitution in the same way, and following in their steps we have adopted it as a convenience. It makes no difference whether it says "State of Idaho" or "Territory of Idaho." But if the state law says you shall adopt a seal with the words "Territory of Idaho" on it, it is just as good as if you adopted the seal on the half-dollar or any other seal. All it requires is sanction of law. The law says is shall be an imprint or seal. If the gentleman has any amendment to suggest on the method that has been adopted by the other constitution makers, the committee will adopt it at once, or if he does not suggest any method and thinks this is not necessary, and would like to have it stricken out, it will not be resisted.

Mr. HEYBURN. I move to strike out section 16, and leave the state to select its own seal.

Mr. GRAY. Who is going to select it?

Mr. REID. That is it. I wanted to see the predicament the gentleman will put us in, having a supreme court without any seal. How would the supreme court certify its papers? We would leave the supreme court with no seal.

Mr. MAYHEW. Well, I don't propose that the gentleman shall put us in any such position. If he wants

to get in such a position himself let him get there.

Mr. GRAY. I feel a good deal that way.

Mr. MAYHEW. Why, certainly; if he wants to get in that position, it makes no difference.

Mr. HEYBURN. If we strike out this section I will offer an amendment to provide for a seal for the state of Idaho. I have suggested to some members of the convention that it was a part of the business of the schedule committee or some committee to provide for a coat-of-arms and seal for the state of Idaho, and this section should have provided for it. The state of Idaho should have a seal or a coat-of-arms provided for it by the schedule committee, or by some committee appointed specially for that purpose. It is not proper that we should adopt in this constitution the seal of the territory of Idaho, because we are to become a state. Our seal bears the coat-of-arms of the territory. It would be easy enough for the committee to say that the seal of the state of Idaho should bear the coat-of-arms formerly adopted by the Territory of Idaho.

The CHAIR. The chair will have to remind gentlemen that you have violated the rules this evening until patience has ceased to be a virtue in the matter of speaking so often. Instead of speaking twice, both gentlemen from Shoshone have spoken three times.

Mr. REID. Do I understand the chair to hold that the person having the bill in charge is violating the rule?

The CHAIR. The gentleman having the bill in charge is Mr. Gray.

Mr. REID. I beg pardon, the gentleman specially requested me to take this bill in charge.

Mr. HEYBURN. Mr. President, I withdraw all objections I have made.

Mr. Reid. I move the adoption of the section. (Carried.)

SECTION 18.

Section 18 read, and it is moved and seconded that section 18 be adopted.

Mr. GRAY. Mr. President, I see one omission in that. In the second line, "Proceedings of the probate court," I would ask to interline after the word "county" the words "State of Idaho."

Mr. REID. That may be done by unanimous consent.

Mr. BEATTY. What county of the state will it be then?

Mr. GRAY. The probate court of the state. It goes from the probate court of the territory to the probate court of the state.

Mr. REID. It strikes me that is supplied as it is.

Section 18 was adopted.

SECTION 19.

Section 19 read, and it is moved and seconded that it be adopted.

The CHAIR. The chair would like to inquire of the gentleman from Custer, Mr. Shoup, as to whether this section is or is not a copy of that which was read for the information of the convention the other day on his request.

Mr. SHOUP. I have not a copy of the enabling act before me.

Mr. HEYBURN. I have it here, if the gentleman desires it.

The CHAIR. My impression is it is not an exact copy, and for that reason I desire to call the attention of the convention to it.

Mr. HEYBURN. I will send it to the clerk, if the convention desires to have it.

The CHAIR. If you will be kind enough to do so, Mr. Heyburn.

GOVERNOR'S INVITATION.

Governor SHOUP. Mr. President, as there seems to be nothing before the house just now I desire to offer a resolution.

SECRETARY reads: "To the President and Mem-

bers of the Constitutional Convention: Gentlemen: It has become apparent that your labors are nearing the end, and that before this time tomorrow many of you will be enroute for your homes, and as I have an important measure to submit to you for your consideration, I do most respectfully request that when you adjourn, you adjourn to meet as my guests in the dining hall of the Overland Hotel at ten o'clock this evening.

Mr. REID. I move that that invitation be accepted.

Vote and carried.

Mr. REID. I now move that the thanks of this convention be tendered to the governor for his kind invitation by a rising vote.

Carried unanimously.

The CHAIR. The secretary will please read the section which was sent up.

SECRETARY reads: "Section 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government"[1]——

Mr. HEYBURN. Mr. President, I think that covers the question. I move that this section 19 be referred back to the committee to report an ordinance in conformity with the act of congress.

Mr. REID. I move to amend by adopting that portion of the act just read that applies to public land, and I move that that section when made to conform to the spirit and language of this section, to the language of this act, be adopted as a substitute for section 19.

The CHAIR. The chair will state for the information of the gentleman from Nez Perce, that he will see there are quite a number of things besides the question of public lands. In the judgment of the chair I do not think they form any part of the constitution which we have adopted.

Mr. REID. We have provided for religious tolerance and public schools and lands, except Indian lands.

1—From Enabling Act of Feb. 22, 1889, for North and South Dakota, Montana and Washington. 25 Stat. at Large 676; 7 Fed. Stat. Ann. 121.

We have done it in this article on Schedule; but taking the constitution as an entirety, and the Bill of Rights, every subject mentioned in that act has been provided for except public lands, and they are provided for (except Indian lands), and I think the point is well taken by the gentleman from Shoshone, that we should do this. With the aid of the gentleman I can draw this section if it is adopted so as to conform to and carry out the requirements of congress.

SECTION 14.

Mr. McCONNELL. I would like to call the attention of the gentleman who has this bill in charge to the fact that section 14 is not in conformity with United States law. We have adopted the section, and I think it will be necessary to go back over it.

Mr. REID. What is the trouble?

Mr. McCONNELL. Congress prescribes the manner in which senators and representatives shall be elected, and this is in direct conflict. The difference is that congress prescribes that at a certain day after the convening of the legislature the houses shall go into conventions respectively, and not joint convention; and here it requires a majority vote to elect United States Senator, and the United States law does not so require.

Mr. BEATTY. To save time I move we take a recess of fifteen minutes to allow time to prepare that section.

Mr. REID. I hope the motion will not prevail.

Mr. BEATTY. My object in making the motion is to get this to the committee on Engrossment tonight and have it ready to incorporate in the constitution in the morning.

Mr. REID. Well, draw the section and let it go as a part of the bill, and the understanding is that the gentlemen will change it so that the verbiage will conform to the act.

Mr. BEATTY. Who will adopt it then?

The CHAIR. The chair hears no second to the motion for recess.

Mr. SHOUP. In regard to this question of election of United States senator, the provision is this: "The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years, and each senator shall have one vote."

Mr. McCONNELL. The United States law clearly defines the method in which United States senators shall be chosen.[1] The legislature of the state shall at twelve o'clock meridian the second Tuesday after they are convened, ballot in their respective houses for United States senator. If they elect a United States senator by that ballot, they shall go into joint convention and declare the result of that ballot valid. If not, they shall continue to ballot until they do elect if it requires the entire session, and it does not require a majority vote to elect a United States senator, according to United States law. A majority of the members there voting; a majority of the members in each house being present, is all it requires. There will be in our legislature fifty-four votes, is it not? Twenty-eight members may elect a United States senator. Nineteen votes, under United States law, can elect a United States senator in our legislature.

Mr. SHOUP. Isn't that state law?

Mr. McCONNELL. That is United States law, which will be laid upon the desks of every member of the legislature, if the secretary of state does his duty, before you commence voting for United States senator.

Mr. REID. Section 3, Article 1 of the United States constitution says: "The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years; and each senator shall have one vote." Section 4. "The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make, or alter such regulations." We

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1—14 Stat. at Large, 243; 2 Fed. Stat. Ann. 210.

have no legislature, and in this constitution we are prescribing time and place and method, and if congress adopts this it will be all right; if they do not adopt it we will amend it and do as congress says. So, upon that it will be all right, and I make the point of order that the section has been passed and adopted and cannot be amended without reconsidering the vote.

Mr. McCONNELL. I am well aware of the fact. I called the attention of the gentleman to this because I thought they had overlooked it. I perhaps have had as much experience, while I am no lawyer, as any gentleman on this floor in regard to the manner in which United States senators are elected, and I quote this to you as the law. If you intend to go on and enact law, which is contrary to the law of the United States, you do it under my protest. And if gentlemen will not——

The CHAIR. This discussion so far as United States senator is concerned is out of order. The chair would suggest, however, that if congress has, pursuant to the power conferred upon it, fixed a method of electing United States senators, after having spent so long a time to get everything right, it seems to me it would be perilous for our convention to depart from it, and that we should have our schedule conform to the statutes of the United States.

Mr. REID. The chairman of this committee adopted the very language of the Dakota constitution,[1] upon which Dakota is now admitted into the Union. Congress has passed upon and approved its constitution.

Mr. MAYHEW. I think not.

The CHAIR. No, I do not so understand it. It has passed an enabling act, and Dakota is getting up its constitution now.

Mr. MAYHEW. The fact is, Mr. President, so far as the election of United States senators is concerned, congress does not interfere so long as they are elected regularly and legally. They do not attempt to interfere

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1—Compare Sec. 17, Art. on Schedule, North Dakota Const. (1889).

with it. If you will observe, in the discussions had a great many years in the admission of the different states, they only inquired into the legality and regularity with which they were elected. I think that if the senators of this state, when it becomes a state, should be elected and have the certificate of the presiding officer, and that of the governor attested by the secretary of state, that is all congress would desire. I do not understand that the legislature shall meet every day at twelve o'clock and ballot during that time, and then adjourn for the next day. So far as the election of senators is concerned, they can do other business if they vote in the meantime; but they can meet in joint convention, or elect by the house. The general rule, so far as my knowledge goes, and that is simply from reading of the election of United States senators, in some places they elect them by joint convention, and in other places they take a separate vote in the two houses and then meet in joint convention and declare their vote. It requires a majority of both houses of the legislature to elect a senator. The gentleman seems to be shaking his gory locks at me on that proposition; I want to say this: Suppose the house should consist of twenty-four members, and thirteen members should vote for senator in the house; and the senate should consist of eighteen members, and ten of them should vote for United States senator. Now, that senator is elected. All they have to do is to meet in joint session to declare their vote jointly. But they can vote separately; they do not have to go into joint session to elect a senator, although some states do it and some do not. But if there is a law of the United States going to that effect, we had better comply with the law of the United States; but I don't know any. The gentleman says he can furnish the law in the morning in that respect.

Mr. McCONNELL. If the convention will take a recess ten minutes, I will furnish it then.

Mr. MAYHEW. I move we take a recess for ten minutes. (Seconded.)

The CHAIR. The suggestion of the chair was made in the interest of conformity. My impression is, that under the power conferred upon congress they established a method of electing United States senators some years ago by statute, and if that is so it would seem to me that it would be advisable, inasmuch as we have no enabling act, and are going simply as petitioners, that we ought not to lay a straw in the way by having a difference between our constitution and the statute of the United States. That is my idea I had in suggesting this other matter.

Mr. REID. I think the suggestion of the chair is well taken, but the bill itself affords no foundation for the objections raised. If the chair will listen to it: "The governor elect of the state, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the legislature of the state at the seat of government, on a day to be named in said proclamation, and which shall not be less than thirty nor more than sixty days after the date of such proclamation." Now, observe this: "Within ten days after the organization of the legislature, both houses of the legislature shall then and there proceed to elect in joint convention, two senators of the United States for the state of Idaho. At said election the two persons who shall receive the majority of all the votes cast by said senators and representatives, shall be elected as such United States senators, and shall be so declared by the presiding officers of said joint session." (Section 14) Now, if there is any law in the United States that does not require them to be elected by joint houses of the legislature, and that the person getting the majority is not elected, then I will agree that I know nothing about law or legislation either. We shall in joint session elect two senators, and the man who receives the majority shall be senator. The machinery is provided by statute. We have put the statutes into the constitution. It is presumed the legislature will follow the methods of congress, as to the machinery and the detail; but we here observe the general principle; that

is, it shall be in joint convention, and within ten days after they meet. Give ten days to organize, and then they shall meet. Now, suppose congress approves that. There is nothing in the constitution in conflict with the principle enunciated here. If congress appproves it, of course they will come back and elect under the revised statutes which prescribe all this detail, that they shall return from day to day. We do not care to re-enact laws.

Mr. MORGAN. I am inclined to think the gentleman from Latah is correct with reference to this matter. While I do not wish to retard the adoption of this article, I think it would be well for us to learn, if we can before we adopt this, whether it is in conflict with United States law or not. If we adjourn until tomorrow morning, and let the committee examine this matter——

Mr. REID. May I ask the gentleman a question?

Mr. MORGAN. Certainly.

Mr. REID. Suppose it were provided that the legislature should elect them in joint convention; wouldn't they have the power to do it?

Mr. MORGAN. I think, as suggested by the president of the convention, we ought to know what the United States law is upon this subject.

Mr. REID. I will ask the gentleman another question. Does not the legislature of South Carolina pursue an entirely different method?

Mr. MORGAN. I do not know a thing about the legislature of South Carolina—I do know a little something about it, of course; but however that may be——

Mr. REID. Then the point I make is, if the gentleman does not know, he ought not to found his objections on presumptions and charge the committee with ignorance in framing the statute, when the gentleman who framed it followed a statute sanctioned by congress.

Mr. MORGAN. I understand the gentleman himself not to assert that he knows that is not the law. He

has not stated that he knows anything about this law that has been spoken about by the gentleman from Latah; and if he certainly does not know that it is not the law, then I think we ought to learn what the law is. We are none of us too old to learn.

Mr. REID. I have not stated that I do not know what the law is at all. The gentleman may be right; and yet there is no conflict in this clause at all, because I know the law says they shall be elected by joint session.

Mr. MORGAN. I do not choose to keep up a running fire between the gentleman and myself. All I say is, I think it would be wise and judicious to know what the law is before we adopt this section, and if it is exactly as the gentleman states we are all right. If it is not as he states, I think we are wrong.

Mr. GRAY. In less time than we have been talking here—the books are right downstairs in the library here, the statutes are—we could have determined it.

Mr. BEATTY. Mr. President, as there is nothing before the house I presume we are simply talking to hear ourselves talk. And I am very much gratified to find there are so many gentlemen here interested in the office of United States senator. One of the fears I have had was that we would have no candidates for senator to elect. I now think we will have candidates for that office when it comes, and I am very much obliged to my friend from Latah for bringing the matter up.

(By common consent the subject under discussion was temporarily abandoned for the purpose of looking up the law on the subject, and other proceedings followed.)

SECTION 19.

Mr. HEYBURN. Mr. President, I offer the following substitute for Section 19.

SECRETARY reads: "It is ordained by the State of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall

ever be molested in person or property on account of his or her mode of religious worship; and the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits held or owned by any Indians or Indian tribes, and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said state of Idaho shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the state on the lands or property therein, belonging to, or which may hereafter be purchased by the United States or reserved for its use. And the debts and liabilities of this Territory shall be assumed and paid by the state of Idaho."

Mr. BEATTY. I move its adoption.

The CHAIR. I suggest to the gentleman from Shoshone that the words "irrevocable without the consent of the United States and the people of the state of Idaho" ought to be included.

Mr. HEYBURN. I intended to add at the conclusion of the section that this ordinance should be irrevocable without the consent of the United States. There was a running discussion on at the time, and I inadvertently omitted them. I intended to add that to that ordinance. Section 20 here is not definite enough.

Mr. GRAY. This says that this ordinance shall be irrevocable without the consent of the United States and the people of the state of Idaho.

Mr. HEYBURN. I can arrange that by just striking out section 20 and moving that it be a part of this ordinance. Make section 20 a part of this ordinance and that will cover it.

The CHAIR. It is moved and seconded that the

substitute offered by the gentleman from Shoshone for section 19 be adopted. (Carried.)

The CHAIR. The question now recurs upon the motion of the gentleman from Shoshone to strike out Section 20 and add Section 20 to the end of Section 19 just adopted as the substitute. (Carried.) The clerk will make the necessary change.

PROPOSED SECTION 20.

Mr. CAVANAH. Now, Mr. President, as there is no Section 20, I offer this:

SECRETARY reads: Section 20. No member of this constitutional convention shall be eligible to the office of United States senator, or any state or district office in the state of Idaho for two years next after the adoption of this constitution." (Laughter and applause.)

Mr. MAYHEW. I second that motion.

Mr. CAVANAH. I hope this convention will not laugh that down.

Mr. REID. I demand the yeas and nays.

Mr. CAVANAH. Well, I demand the yeas and nays.

Mr. GRAY. There is no danger, after the people see this work here, they will not get into office for ten years.

The CHAIR. It is moved and seconded that Section 20 as contained in the amendment sent up by the gentleman from Elmore be adopted.

Mr. HEYBURN. I ask that it be read.

The secretary rereads the proposed section.

Mr. MAYHEW. I desire to offer an amendment to that section, that the gentleman offering it shall not be eligible to the office of President of the United States. (Seconded.)

Mr. CAVANAH. I call for the yeas and nays on that.

Mr. Mayhew. I insist on my amendment.

Mr. McCONNELL. Mr. President, is that an additional section? I move that it be laid on the table, and on that I call for the yeas and nays.

Mr. REID. I second the call.

Mr. MAYHEW. I want to know if that embraces my amendment as to the President of the United States. If it does, I shall vote Yea; if not I shall vote Nay. I vote No.

The CHAIR. On the motion to lay on the table the additional section offered by the gentleman from Elmore the vote is yeas 35, nays 24.

Mr. SHOUP. I move that that motion be expunged from the record. (Seconded.)

Mr. CAVANAH. Before the vote is taken I wish to state my object in offering that section. The members here seemed to take it all in fun. We have such a thing in our statutes now. I suppose you all know it. There are a great many here have been accused of trying to be future senators. I don't believe a word of it. (Laughter) I wish to go before the public, and have this whole convention go before the public, as disinterested constitution makers, nonpartisan, as we came into it.

Mr. REID. I move the adoption of Section 21.

It is moved and seconded that the motion for the adoption of the proposed Section 20, and the proceedings had thereon be expunged from the journal proceedings. (Carried.)

SECTION 20.

Section 21 (20) was read. Moved and seconded that it be adopted. Carried.

SECTION 14.

Mr. REID. Mr. President, I ask unanimous consent to return to Section 14 and insert in line 6 in lieu of "in joint convention" the words "as prescribed in the statutes of the United States," or the words "as provided by law," which covers the objections of the gentleman from Latah and the gentleman from Bingham. It will read then, "the legislature shall then and there proceed to elect, as provided by law." I move to strike out the

words "in joint convention," and insert "as prescribed by law," after the word "elect" in line 6.

Mr. MAYHEW. I would like to have some information. That would allude particularly to the statutes of the United States.

Mr. REID. Yes, I have examined the statutes, and it answers the objections made by the gentleman.

Motion to amend Section 14 carried.

Mr. REID. I now move the adoption of the article as amended.

Mr. McCONNELL. I suggest that it will be necessary to change the verbiage of that. Where do you insert that?

Mr. REID. In line 6.

Mr. McCONNELL. Then the words "at said election the two persons who shall receive the majority of all the votes cast by said senators and representatives shall be elected as such United States senators, and shall be so declared by the presiding officers of said joint session," should be stricken out.

Mr. REID. They should not, because the statute shows that they have been elected in both houses; they shall go into joint session and declare them elected.

Mr. McCONNELL. It says further that the majority of the members of both houses being present and voting.

Mr. REID. The election is presumed to have been held as provided by law. If it has been held according to law, they meet in joint session and declare the result. I move the adoption of the article as amended.

ARTICLE XXI. ADOPTED.

Mr. HEYBURN. I call for the yeas and nays.

Roll call:

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Harris, Hays, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Standrod,

Steunenberg, Stull, Taylor, Underwood, Vineyard, Whitton, Mr. President—53.

Nays: Hasbrouck, Heyburn, McConnell, Pinkham, Sweet, Wilson—6.

The CHAIR. The article is adopted and referred to the committee on Revision for enrollment in the constitution.

Mr. REID. I ask unanimous consent that the bill may be considered as engrossed and go to the committee on Enrollment. There are but two changes in it, and the printed copy is correct.

The CHAIR. Unanimous consent is asked that the article just adopted be considered engrossed and passed to the committee on Enrollment. Is there any objection to this order being made? There is no objection, and the order will be so made.

Mr. MAYHEW. I move we adjourn until nine o'clock tomorrow morning.

REPORT ON FEDERAL RELATIONS.

Mr. HEYBURN. The committee on Federal Relations has not yet I think reported to the convention. The rules provide for this committee to report all memorials addressed to the several governmental heads of departments. There are several memorials and resolutions adopted by this convention, and there should be some report as to whether or not those matters have been forwarded, or any provision made to forward them to the general government.

Mr. MAYHEW. I have no objections to that at all, Mr. President; but I would like to have a call from the chairman of that committee to see whether there is any preparation made for a report of the committee.

Mr. HEYBURN. I would like to have a report from that committee at some time tonight or tomorrow morning. In order to bring the matter before the convention properly, I move that the committee on Federal Relations report to this convention at nine o'clock tomorrow morning.

Mr. AINSLIE. I think we ought to meet at one o'clock tomorrow, so that the committee on Address can have it ready to report to the convention tomorrow.

The question on the motion to require the committee on Federal Relations to report tomorrow morning was put by the chair. Carried.

The CHAIR. The question now recurs on the motion of the gentleman from Shoshone, (MAYHEW) to adjourn until ten o'clock tomorrow.

Mr. AINSLIE. I move an amendment, Mr. President, by saying one o'clock tomorrow. (Seconded).

Mr. MAYHEW. That will come in conflict with the motion just now prevailing, that this committee report tomorrow morning at nine o'clock. And now you make a motion that we adjourn until one o'clock. Can't we make it ten o'clock and receive the report of that committee and then adjourn until one o'clock?

The CHAIR. The motion was to report to the convention on assembling tomorrow.

READING OF CONSTITUTION.

Mr. BEATTY. I don't suppose the convention proposes to adjourn without hearing this constitution read. As chairman of the committee on Revision I do not want them to adjourn until they hear it read publicly; and if we meet at one o'clock tomorrow, we won't get away tomorrow night. It will take an hour at least to read that constitution, and the committee hopes to be ready by tomorrow morning so that it can be read. As chairman of that committee I will say very plainly that I don't want it left to this committee to say whether it is right or not. I want it read before the open convention, to hear and compare it as it is read, and I shall insist on that being done.

Mr. AINSLIE. I will withdraw the motion. I guess the committee on Address can make their report when they please next week.

Mr. ALLEN. The committee on Printing would

like to ask if the report of the committee on Address is to be printed.

The CHAIR. That was to be printed in connection with the constitution.

Mr. HEYBURN. I move we adjourn until tomorrow morning at nine o'clock. (Carried).

Convention adjourned until nine o'clock A. M., August 6th, 1889.

TWENTY-EIGHTH DAY.

August 6, 1889, 9:00 o'Clock A. M.

Convention called to order by the president.

Prayer by the chaplain.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Batten, Beane, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McMahon, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Stull, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Brigham, Crook, Hagan, Hendryx, McConnell, Poe, Pritchard, Salisbury, Woods.

The journal was read and approved.

REPORTS OF STANDING COMMITTEES—WAYS AND MEANS.

Mr. HASBROUCK. The committee on Ways and Means desires to report.

SECRETARY reads: Mr. President, your committee has had under consideration, and carefully examined the accompanying bills for articles furnished and services performed to carry on the business of the constitutional convention, and recommend that certificates be issued to the parties for the amounts, namely:

To James A. Pinney & Co.	$479.65
Jacob Diehl	8.00

Statesman Printing Co. 738.66

Hasbrouck, Chairman.

Mr. HASBROUCK. Mr. President, your committee on Ways and Means ask for further time in regard to the matter that was referred to them on yesterday. They have not had time yet to consider it. That was in regard to fixing the price to be paid to certain attaches of the convention so that they might receive a net sum. That matter is not yet determined. I would like to say further that it will be well if there are any parties who may have bills for other articles than those contained in our report, to be furnished the convention, or for any services they may perform, that they bring them forward, as the convention will probably adjourn today, and I presume they ought to be audited.

The CHAIR. If there is no objection the committee on Ways and Means will have further time to report. There is none and it is so ordered.

Mr. MORGAN. I move that the report be adopted and the secretary directed to issue certificates to the parties. (Vote and carried).

ARTICLE XXI.— SCHEDULE.

Mr. BEATTY. Mr. President, at the end of the schedule which will be the end of the constitution, there is nothing to show the date at which the constitution will be signed and executed by the proper officers. I ask permission of the convention to add this inscription, which will meet the same purpose: "Done in open convention, at Boise City, in the Territory of Idaho, this ——— day of August, in the year of our Lord one thousand eight hundred and eighty-nine."

The CHAIR. The chairman of the committee on Enrollment and Revision asks unanimous consent to add the words just read to the end of the constitution. Is there any objection? If not, it will be so ordered.

Mr. HEYBURN. Is there anything before the convention?

The CHAIR. Yes, there is one thing. On yesterday the convention adopted a resolution instructing the committee on Federal Relations to report on coming in of the convention today.

Mr. SWEET. Mr. President, the committee will have its report presently.

DISTRIBUTION OF COPIES OF CONSTITUTION.

Mr. HEYBURN. I made a motion yesterday with reference to printing certain copies of the constitution. I move that the secretary be requested to forward to the address of each member of this convention twenty-five copies of the constitution, and that the remaining copies printed shall be sent by him to the recorders of the various counties to be by them distributed to the citizens of the territory who may apply for them.

Governor SHOUP. Mr. President, I have a telegram, which I believe will gratify the convention to have read.

The CHAIR. His excellency the governor, presents the following telegram:

SECRETARY reads: Salt Lake. Governor Shoup. Boise. Salt Lake gone gentile by fifty-one majority. (Tremendous applause).

Mr. ALLEN. I move that this convention send its congratulations to the people of Salt Lake. (Carried).

The CHAIR. It is moved that the secretary be instructed to send to the address of each member of this convention twenty-five copies of the constitution when printed, and that the remaining copies be distributed in accordance with the gentleman's motion. (Carried).

RESOLUTION TO EXPUNGE.

Mr. PEFLEY. Mr. President, if there is no other business before the convention, in the early part of this session, there was a resolution introduced to expunge certain words from the journal. I would like to have it brought up now.

The CHAIR. The gentleman from Ada requests

that the matter of expunging the resolution offered some time ago by the gentleman from Elmore, Mr. Cavanah, be now considered. Is there any objection to its consideration at this time?

Mr. BEATTY. I object, Mr. President, for the reason that I have something more important to present to the convention.

The CHAIR. Does the gentleman give way?

Mr. PEFLEY. I move that the resolution be taken up and considered now. I have been waiting until we got through with the business.

Mr. BEATTY. I will state in opposition to that, that the convention is not through with business, and I presume it expects to hear this constitution read before the members sign it. The committee is now ready to report all except the last two articles, and the clerk is at work on those and will have them finished by noon. I propose to make a motion that the convention now take up the constitution and read it as far as prepared, in order to save time to the members. I therefore make the motion that the convention proceed to the reading of the constitution as far as prepared, and send it up to the clerk's desk.

The CHAIR. Was the motion of the gentleman from Ada seconded?

Mr. PEFLEY. Yes, it was seconded.

The CHAIR. Ordinarily speaking, the work of the committee on Enrollment and Revision would take precedence, but the chair is inclined to rule that this is a question of privilege of the gentleman from Ada.

Mr. BEATTY. I do not object to withdrawing my motion if we do not get into a discussion to last two or three hours. I do not care to hear any lengthy discussion on it; otherwise I would claim the privilege that this committee has of reporting at all times.

The CHAIR. The question is on the motion made by the gentleman from Ada. (Vote). The nays seem to have it; the nays have it. The motion is lost. The chairman of the committee on Revision and Enrollment

presents the final report of that committee, embracing the enrolled copy.

Mr. BEATTY. Not the final report, Mr. President, but the report as far as accepted, which includes all except the report on Schedule and——

Mr. MAYHEW. I understand also, there is another committee to report; the committee on Federal Relations.

The CHAIR. The chair understood that the chairman of the committee on Revision and Enrollment was making his final report of the constitution as enrolled.

Mr. BEATTY. Yes, as far as enrolled.

The CHAIR. Gentlemen, what is your pleasure with reference to this report?

Mr. VINEYARD. I move that the secretary proceed to read the constitution.

The CHAIR. If there is no objection it will be so ordered.

READING OF THE CONSTITUTION.

The secretary thereupon proceeded to read the enrolled constitution.

MEMORIAL TO CONGRESS.

Mr. AINSLIE. Mr. President, I would like to have unanimous consent to have the reading of the constitution suspended while I present a memorial to congress which I will read, and I ask that the memorial be considered at once if suitable, so that it can be adopted and enrolled.

The memorial was read.

Mr. HOWE. I move the adoption of the memorial. (Seconded).

Mr. AINSLIE. My idea is that it should come at the end of the constitution, before the members sign the constitution, showing that the members adopted the constitution. We have nothing in our document there showing that we request admission; and I believe it is always customary to present it to the house.

The CHAIR. Wouldn't it be more proper for it to be in front of the constitution?

Mr. BEATTY. I was going to say, that I think in all constitutions I have examined that that memorial goes as a separate article, but not embodied in the constitution.

Mr. AINSLIE. It can accompany the constitution and be signed by the members, and signed as well as the constitution, but it is no part of the constitution.

Mr. BEATTY. But if you put it before the signatures of the members it will be a part of the constitution.

Mr. AINSLIE. Oh no; signed separately; accompanies it as a letter.

The CHAIR. In other words, it is a form of presentation of this constitution, asking for its adoption.

The question was stated by the chair, and upon voting therefor it was adopted and referred to the committee on Revision and Enrollment.

The secretary resumed the reading of the constitution.

Mr. SWEET. I move a call of the house, and insist upon it.

Put to vote and lost.

Mr. BEATTY. I move that we take a recess until two o'clock.

Mr. HEYBURN. I would ask how much more there is of the constitution left to read.

The SECRETARY. There is about one-third of it left.

Mr. HEYBURN. I hope we will not adjourn; I would like to have this read, because there is a great deal to do yet.

PRINTING OF CONSTITUTION.

Mr. ALLEN. Mr. President, the committee on Printing desires instructions in regard to printing 5,000 copies of the constitution. The committee has ascertained that the cost will be about $650 gross, or

adopting the usual discount, $450 net. We ask what arrangement the committee shall make for the printing of it. The secretary of state informs me that he has no authority to pay for it. I also desire on behalf of the committee to state further, that all matters referred to them by the convention have been passed on, and accounts filed with the committee on Ways and Means.

The CHAIR. The report of the committee on Printing will be received.

AUDITING OF BILLS.

Mr. WILSON. I have a motion, which I think will cover that point. I move that a committee of three be appointed whose duty it shall be to audit and allow for and in behalf of this convention such bills and accounts for printing the stationery, and transcribing the records as may accrue subsequent to the date of adjournment; and the certificate of such committee signed by its chairman and countersigned by its secretary shall be sufficient evidence that such debt was authorized by and contracted for this convention.

Mr. HEYBURN. I move to amend that, that the committee on Ways and Means be that committee.

Mr. WILSON. I will accept that amendment. I make the motion for the reason that after the convention adjourns there is nobody to authorize the bills of the stenographers and the bills of the printer. And I make provision for these bills, and if any member knows of any other bills necessary to incur, they had better be included. I will accept the amendment that the committee on Ways and Means of which Mr. Hasbrouck is chairman, be authorized to act.

Mr. SHOUP. Mr. President, I am a member of the committee on Ways and Means, and I expect to leave today, and I think someone should be substituted in my place who resides here, and I suggest Mr. Gray of Ada.

The CHAIR. The gentleman from Custer suggests

that Mr. Gray of Ada be substituted in his place on the committee on Ways and Means. If there is no objection, it will be so ordered.

Mr. BEATTY. I think we had an order of business before us, and we were interrupted. We were right in the midst of it, and were interrupted for the introduction of other motions. Now, I want to suggest, these members are going away, many of them we cannot hold later than the train tonight, and I am anxious to get this constitution in shape and have them sign it before we go, and let the few who do remain attend to the miscellaneous business afterwards. There is only one more article, which the clerk will finish in half an hour, and then we can sign it. This is the order of business, and I make the point of order now, that we by motion took this matter up, and have no right to stop until this matter is disposed of.

The CHAIR. A motion was made to take a recess, and upon that motion these matters came up.

Mr. AINSLIE. The motion for recess was withdrawn.

The CHAIR. Yes, the point of order is well taken. The secretary will proceed with the reading.

The CHAIR. (Interrupting the reading) Gentlemen of the convention, if these gentlemen, after voting to stay here and go on, all then march off to get their dinners, I think it is about time to stop.

Mr. BEATTY. They have not gone to get their dinners; they have a little entertainment out in the adjoining room.

The CHAIR. If that is so, they ought to be here looking after this business.

Mr. MORGAN. I move that we take a recess until half past twelve. (Seconded).

RECESS.

READING OF CONSTITUTION RESUMED.

After recess the convention was called to order by the president at 12:35 p. m., and the reading of the

enrolled copy of the constitution resumed. The reading was concluded at 3:00 o'clock.

Mr. BEATTY. Mr. President, I move that we adopt the constitution as now read.

Mr. HEYBURN. I second the motion.

The CHAIR. Gentlemen, it is moved and seconded that the constitution as a whole be now adopted.

Mr. REID. Mr. President, in order to have a full house, I move a call of the house. (Seconded, vote and carried).

The SECRETARY called the roll, to which fifty-one members responded present.

ADOPTION OF CONSTITUTION.

The CHAIR. The secretary will now call the roll on the final adoption of the constitution as a whole.

Roll call:

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Blake, Campbell, Cavanah, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge Sinnott, Shoup, Standrod, Steunenberg, Stull, Taylor, Vineyard, Whitton, Wilson, Mr. President—51.

The CHAIR. The vote on the adoption of the constitution as a whole stands: Yeas 51; nays none. The constitution as a whole is adopted.

Mr. REID. I would move in order to expedite the matters that the members now begin to sign the constitution, beginning with the president, and then in alphabetical order.

Mr. BEATTY. Before that, I have the report of the committee on Memorial.

The CHAIR. Before that, gentlemen, the chair desires to offer a resolution which may be overlooked.

RESOLUTION.

Whereas,. The Boise City National Bank has offered to advance seventy-five per cent of the par value of the certificates

of indebtedness authorized by the convention, thereby relieving the convention of much uncertainty as to its ability to conclude its labors; and

Whereas, In making this advance said bank has assumed the risk of suffering a severe loss in the future unless such risk shall be prevented by the action of the members in appropriating money to pay the expenses of the convention; therefore

Resolved, That the members and attaches of the convention hereby express their high appreciation of the said bank, and will use all proper means to prevent any loss accruing to it thereby.

Mr. HEYBURN. I move the adoption of that resolution. (Unanimously carried).

Mr. REID. I would ask that the chair call the gentleman from Bingham to the chair a moment, as I desire to offer a resolution personal to the president.

Mr. MORGAN in the chair.

RESOLUTION.

Mr. REID. Mr. President, I offer the following resolution:

SECRETARY reads: "*Resolved,* That the thanks of this convention are hereby tendered to the Honorable William H. Claggett for his uniform courtesy, fidelity and impartiality in discharging his duties as president of this convention.

Mr. REID. I move the adoption of the resolution. (Unanimously adopted).

RESOLUTION.

Mr. AINSLIE. Mr. President, I have a resolution.

SECRETARY reads: *Resolved,* That the thanks of this convention be, and hereby are tendered to his excellency Governor George L. Shoup, Honorable E. J. Curtis, secretary of the territory, Honorable James A. Wickersham, comptroller, and Honorable James A. Pinney, mayor, and the citizens of Boise, the ladies in particular, for the generous hospitality and kindness extended to us during the session of this convention.

Moved and seconded that the resolution be adopted. Carried.

RESOLUTION.

SECRETARY reads: *Resolved,* That the thanks of this convention be tendered to Charles H. Reed, secretary, Miss Carrie Sweet, assistant secretary, Howard French, sergeant at arms, P. P. Canavan, door-keeper, and to all the clerks, officers, pages and attaches of this convention for the faithful discharge by them of their respective duties, and the attention and courtesy shown by them to this convention.

Carried.

Mr. ALLEN. I have a resolution to present.

RESOLUTION.

SECRETARY reads:

Resolved, That this convention on concluding its labors sends greetings and congratulations to the constitutional conventions of Washington, Montana and North and South Dakota, of the progress the people of the entire northwest are making towards early statehood. To this end Idaho has agreed to forever prohibit bigamy, polygamy, and other crimes of the Mormon theocracy within its borders, and is now prepared to present itself at the doors of congress simultaneously with our sister territories, and ask for admission to the union of states. Believing this action is fully warranted by the circumstances and by the resources and population sufficient to sustain state government, we trust, by a united and common cause that an era of unexampled prosperity and development may follow. We also ask for your friendly assistance and co-operation in obtaining freedom from territorial dependence.

Resolution adopted.

RESOLUTION.

Mr. LAMOREAUX. I move a vote of thanks to Honorable Fred T. Dubois for his attendance and interest during the proceedings of the convention. (Carried).

Mr. WILSON. I call up the motion I made pending the reading of the constitution which was laid over on a point or order.

AUDITING OF BILLS.

SECRETARY reads: I move that a committee of three be appointed, whose duty it shall be to audit and allow for and on behalf of this committee such bills and accounts for printing the constitution and transscribing the record as may accrue subsequent to the date of adjournment, and the certificate of such committee signed by its chairman, and countersigned by its secretary shall be sufficient evidence that such debt was authorized by and contracted for this convention.

Mr. WILSON. That was amended, making such committee the Ways and Means committee, by Mr. Heyburn, which I accepted.

Moved and seconded that the same be adopted. Carried.

Mr. HARRIS. I ask leave to take my departure for home, and being one of the members of the Ways and Means committee, I ask that Mr. Coston be placed on the committee in my stead.

The CHAIR. If there are no objections it will be so ordered.

Mr. BEATTY. I move that we proceed to read and adopt this memorial reported by the committee on Enrollment.

Mr. HASBROUCK. Before that is done the Ways and Means committee desires to make a report.

COMPENSATION OF ATTACHES.

SECRETARY reads:

Mr. President, your committee on Ways and Means, having had under consideration the matter referred to them on yesterday in relation to the compensation of the stenographers and attaches of this convention, beg leave to report: That the cashier of the Boise City National Bank states that he will pay seventy-five cents on the dollar for the certificates issued by order of this convention, and that is the most favorable offer your committee has received. Therefore your committee recommend that the following named officers and attaches receive certificates at the rates hereinafter set forth, to-wit: With thirty-three and one-third per cent added:

Secretary, per day	$ 8.00
Assistant Secretary, per day	5.00
Sergeant at arms, per day	6.00
Door keeper, per day	5.00
Chaplain, per day	5.00
Engrossing clerks, per day	5.00
Pages, per day	3.00
Stenographers, per day	10.00

That the enrolling clerk receive a certificate for the sum of $55 on the same basis.

Moved and seconded that the report be adopted. Carried.

The SECRETARY thereupon read the memorial.

SIGNING OF CONSTITUTION.

Mr. REID. I now renew my motion that the members proceed to sign the constitution, the president signing first, and as the members' names are called that they shall go forward to the desk, and sign the constitution and the memorial.

The CHAIR. The memorial has not been adopted yet.

Mr. REID. It was adopted this morning in order to be enrolled.

The CHAIR. If there is no objection, the motion of the gentleman from Nez Perce will be adopted. As your names are called you will please come forward and sign the constitution and memorial.

Mr. SHOUP. Mr. President, there are several members of this convention absent, who will probably come here, and desire to sign this constitution hereafter; so, I think, a space should be left for their names so they will sign alphabetically when they come. I will make that as a motion.

The CHAIR. It is moved and seconded that in signing the constitution and memorial, that as the roll is called whenever a name is reached and a delegate is not present, a blank space be left for his signature in case he should desire to sign it at some future time.

Mr. WILSON. I don't think that ought to be done.

I think a blank space might be left at the end for those signatures, but not in the body of it. There are some members of the convention who went away and expressed the intention of not coming back and signing the constitution this convention would adopt. Therefore I don't think it would be wise to leave a space for their names for all time. Leave a space at the end of all the signatures so that they can sign afterwards, and I amend the motion to that effect. (Seconded. Carried).

Mr. PINKHAM. I was requested by Colonel Ballentine when he left the city to sign his name to the constitution when it was finished. I wish to ask the chair for instruction in that matter as to whether I would have the right to do so, he having made the request of me before he left.

The CHAIR. The gentleman from Alturas would not have the right without leave of the convention. Is there any objection to this request being granted? There is no objection, and it is so ordered.

Other similar requests began to be made.

Mr. REID. Mr. President, I do not care to object, but I think this is an irregular proceeding to have the constitution signed by proxy. I think these gentlemen will be in the city tonight. However, I do not object.

The CHAIR. If the gentleman make no objection it will be so ordered.

RESOLUTION.

Mr. AINSLIE. I offer a resolution.

Resolved, That the chairmen of the republican and democratic territorial central committees respectively be requested to call their committees together at as early a date as practicable after the adjournment of this convention for the purpose of taking action looking to the placing before the people properly the benefits to be derived through the adoption of the constitution, and to take the necessary steps to raise funds sufficient to defray the expense attending the campaign and canvass prior to the election.

Resolution adopted.

The CHAIR. Mr. Pefley desires to address an inquiry to the convention.

Cries of "Object, object, object."

Mr. MORGAN. I hope he will have an opportunity of asking the question.

Mr. PEFLEY. With reference to signing the constitution. Mr. President, I always think—(Confusion).

Mr. HEYBURN. I call for order.

Mr. PEFLEY. I always think consistency is a jewel highly prized, and inasmuch as there are sections in there that I could not endorse when they passed as sections or articles, I cannot now conscientiously sign the constitution and therefore ask to be excused.

Mr. CAVANAH. I move that no one shall receive any compensation unless he signs the constitution. If any man objects to signing this constitution, he deserves no pay.

A MEMBER. They do not.

Mr. PEFLEY. Mr. President——

Cries of "Object, object."

The CHAIR. Gentlemen, preserve order. The chair rules that the motion of the gentleman from Elmore is out of order. This convention was called for the purpose of considering a constitution, and it is framed from beginning to end. Gentlemen can receive their pay for their services, whether or not they sign.

Mr. PEFLEY. I wish to say a word in explanation, I have not asked any pay from this convention yet, and merely to receive it I would not vote. I came here with the express purpose, not expecting to get any pay, and I suppose every man in this convention came here in the same way. I do not ask any pay, and I would not have it, and the gentleman can save his motion.

At 4:10 p. m. the signing of the constitution was completed.

The CHAIR. Gentlemen of the convention, you will please be seated.

Mr. BATTEN. Mr. President, I desire to offer a resolution.

SECRETARY reads: *Resolved,* That a copy of this constitution be forwarded to the congress of the United States, attested by the seal of the territory, and certified by the secretary of the territory.

Mr. SWEET. I think perhaps the report of the committee on Federal Relations which seems to have been forgotten until today would govern that.

REPORT OF FEDERAL RELATIONS COMMITTEE—RESOLUTIONS.

Mr. HEYBURN. I ask for the report of the committee on Federal Relations.

SECRETARY reads:

Mr. President, your committee on Federal Relations offer the following resolutions and recommend their adoption by the convention.

Resolved, That the secretary of this convention is hereby instructed to forward to the president of the United States a copy of the resolutions referred to, (relative to the lead industry of Idaho), duly certified, and that the secretary carry this resolution into effect immediately upon the adjournment of this convention.

Resolved, That Hon. Fred T. Dubois, delegate in congress be, and he is hereby requested to present the constitution adopted by this convention to the congress of the United States (in the event the said constitution is first ratified by the people of Idaho), and that said delegate be requested to urge the said ratification of this constitution by congress, and the early admission of Idaho into the union of states.

Resolved, That Delegate Dubois is hereby requested to further the work of securing the ratification of the constitution adopted by this convention by presenting to the committee or committees of congress, having the matter in charge, such representatives of Idaho as may desire to be heard in its favor.

Resolution adopted.

The CHAIR. What is your pleasure, gentlemen?

Mr. REID. If there is no other business to come before the convention, I move that the convention now adjourn *sine die.*

Mr. HEYBURN. I hope the gentleman will just withhold that motion a moment.

The CHAIR. Before the motion is put I will sug-

gest to the gentleman from Nez Perce as to whether the day's proceedings should not be read and approved.

Mr. REID. That would be in order, but I suppose it is not prepared yet.

Mr. HEYBURN. I would ask for information, if the constitution has been enrolled, put together, and properly signed as a complete document.

The CHAIR. The chair is informed by the secretary that it is finally signed, but it has not been put together yet.

Mr. BEATTY. Mr. President, I left this last article by itself for convenience of signing. All the secretary has to do, (the holes are punched) is to run the cord through and tie it.

Mr. HEYBURN. I ask that the constitution be put together now before we adjourn, and that the seal be put on it, and the document completely closed up.

It was so ordered.

Mr. VINEYARD. Mr. President, I see that the committee on Federal Relations has reported. I did not see any mention in that report as to whether or not the boundaries established by this convention conflict with any federal rule of the United States, territorial or state. I think it is the province of that committee to make such a report upon that subject. I will inquire of the chairman of the committee, whether the boundaries established by the territory or the state of Idaho will conflict with any of the territories or states of the United States.

Mr. SWEET. I will state, Mr. President, that the only conflict I think we are in danger of is the boundary lines of the new Irish Republic, and until then I think we will be safe.

APPROVAL OF MINUTES.

Mr. AINSLIE. I move that the minutes of the journal today be approved, subject to any such little corrections as may be required by the president of the convention and the committee on Revision.

The question was stated by the chair.

Mr. HEYBURN. I would like to have included, if the journal is approved, that it may appear on the journal, and I move now, that the constitution as adopted be filed with the secretary of the territory, who is here present, so that it may appear on the journal as filed of this date, and the seal of the territory attached to it.

Motion as amended as to the approval of the minutes seconded and carried.

Mr. BEATTY. I have left with the secretary the engrossed copy of the constitution. I suppose that should also accompany the enrolled copy.

Mr. HEYBURN. I include that in the motion.

DEPOSITED WITH SECRETARY OF THE TERRITORY.

The CHAIR. It is moved and seconded that the enrolled and engrossed copies of the constitution be placed in the hands of the secretary of the territory to be deposited with the archives of the territory.

Mr. AINSLIE. And that the stenographers' notes and the journal of the convention also be deposited there.

Mr. HEYBURN. I will accept the amendment.

The motion as amended was then voted upon and carried.

The CHAIR. What is your further pleasure?

FINAL ADJOURNMENT.

Mr. REID. I move the convention now adjourn *sine die.* (Motion seconded. Carried).

APPENDICES

APPENDIX A.

THE CONSTITUTION[1] AS FINALLY ENGROSSED AND ADOPTED.

PREAMBLE.

We, the people of the state of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

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.

SEC. 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.

SEC. 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.

SEC. 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, 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,

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[1]—The punctuation of this copy of the constitution is that of the engrossed original.

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 or pay tithes, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the state, and the legislature shall provide by law for the punishment of such crimes.

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.

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.

SEC. 7. 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 misdemeanors 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.

SEC. 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury; or on 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 district court in the manner provided by law, *And provided further,* That after a charge has been ignored by a grand jury, no person shall be held to answer, or for trial therefor, upon information of the public prosecutor.

SEC. 9. Every person may freely speak, write and publish, on all subjects, being responsible for the abuse of that liberty.

SEC. 10. The people shall have the right to assemble in a peacable manner, to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

SEC. 11. The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.

SEC. 12. The military shall be subordinate to the civil power, and no soldier in time of peace shall be quartered in any house without the consent of its owner, nor in time of war, except in the manner prescribed by law.

SEC. 13. In all criminal prosecutions, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel.

No person shall be twice put in jeopardy for the same offense; 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.

SEC. 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 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 public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.

SEC. 15. There shall be no imprisonment for debt in this state, except in cases of fraud.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

SEC. 17. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause shown, by affidavit, particularly describing the place to be searched and the person or thing to be seized.

SEC. 18. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay or prejudice.

SEC. 19. No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

SEC. 20. No property qualification shall ever be required for

any person to vote or hold office, except in school elections or elections creating indebtedness.

SEC. 21. This enumeration of rights shall not be construed to impair or deny other rights retained by the people.

ARTICLE II.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of this state are divided into three distinct departments; the legislative, executive, and judicial, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislature of the State of Idaho."

SEC. 2. The senate shall consist of eighteen members, and the house of representatives of thirty-six members. The legislature may increase the number of senators and representatives *Provided*, 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.

SEC. 3. The senators and representatives shall be elected for the term of two years, from and after the first day of December next following the general election.

SEC. 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; *Provided*, Each county shall be entitled to one representative.

SEC. 5. A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such districts.

SEC. 6. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States,

and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

SEC. 7. Senators and representatives in all cases, except for treason, felony, or breach of the peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same, and shall not be liable to any civil process during the session of the legislature, nor during the ten days next before the commencement thereof; nor shall a member, for words uttered in debate in either house, be questioned in any other place.

SEC. 8. 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.

SEC. 9. Each house when assembled, shall choose its own officers; judge of the election, qualifications and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.

SEC. 10. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as such house may provide. A quorum being in attendance, if either house fail to effect an organization within the first four days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said four days until an organization shall have been effected.

SEC. 11. Each house may, for good cause shown, with the concurrence of two-thirds of all the members, expel a member.

SEC. 12. The business of each house, and of the committee of the whole shall be transacted openly and not in secret session.

SEC. 13. Each house shall keep a journal of its proceedings; and the yeas and nays of the members of either house on any question shall at the request of any three members present, be entered on the journal.

SEC. 14. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

SEC. 15. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have

been read on three several days, in each house, previous to the final vote thereon. *Provided,* In case of urgency, two-thirds of the house where such bill may be pending, may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills, they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present.

SEC. 16. Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

SEC. 17. Every act or joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

SEC. 18. 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.

SEC. 19. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and constables.

For the punishment of crimes and misdemeanors.

Regulating the practice of the courts of justice.

Providing for a change of venue in civil or criminal actions.

Granting divorces.

Changing the names of persons or places.

Authorizing the laying out, opening, altering, maintaining, working on, or vacating, roads, highways, streets, alleys, town plats, parks, cemeteries, or any public grounds not owned by the state.

Summoning and impanneling grand and trial juries, and providing for their compensation.

Regulating county and township business, or the election of county and township officers.

For the assessment and collection of taxes.

Providing for and conducting elections, or designating the place of voting.

Affecting estates of deceased persons, minors or other persons under legal disabilities.

Extending the time for collection of taxes.

Giving effect to invalid deeds, leases or other instruments.

Refunding money paid into the state treasury.

Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any person or corporation in this state, or any municipal corporation therein.

Declaring any person of age, or authorizing any minor to sell, lease or encumber his or her property.

Legalizing, as against the state, the unauthorized or invalid act of any officer.

Exempting property from taxation.

Changing county seats, unless the law authorizing the change, shall require that two-thirds of the legal votes cast at a general or special election, shall designate the place to which the county seat shall be changed; *Provided,* That the power to pass a special law shall cease, as long as the legislature shall provide for such change by general law; *Provided further,* That no special law shall be passed for any one county oftener than once in six years.

Restoring to citizenship persons convicted of infamous crimes.

Regulating the interest on money.

Authorizing the creation, extension or impairing of liens.

Chartering or licensing ferries, bridges or roads.

Remitting fines, penalties or forfeitures.

Providing for the management of common schools.

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.

Changing the law of descent or succession.

Authorizing the adoption or legitimization of children.

For limitation of civil or criminal actions.

Creating any corporation.

Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed.

SEC. 20. The legislature shall not authorize any lottery or gift enterprise, under any pretense or for any purpose whatever.

SEC. 21. All bills or joint resolutions passed shall be signed by the presiding officers of the respective houses.

SEC. 22. No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

SEC. 23. 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, except the presiding officers, in the aggregate, three hundred dollars for per diem allowances for any one session; and shall receive each the sum of ten cents per mile each way, by the usual traveled route.

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 case of the

first session of the legislature. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the legislature shall each, in virtue of his office, receive an additional compensation equal to one-half his per diem allowance as a member; *Provided* that whenever any member of the legislature shall travel on a free pass in coming to or returning from a session of the legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member.

SEC. 24. The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The legislature should further all wise and well directed efforts for the promotion of temperance and morality.

SEC. 25. The members of the legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of Idaho, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the best of my ability." And such oath may be administered by the governor, secretary of state, or judge of the supreme court, or presiding officer of either house.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive department shall consist of a governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction, each of whom shall hold his office for two years, beginning on the first Monday in January next after his election, except as otherwise provided in this constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this constitution and as may be prescribed by law.

SEC. 2. The officers named in section one of this article shall be elected by the qualified electors of the state at the time and places of voting for members of the legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislature at its next regular session, shall forthwith, by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section

one shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

SEC. 3. No person shall be eligible to the office of governor or lieutenant-governor, unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, state auditor, superintendent of public instruction, or state treasurer, unless he shall have attained the age of twenty-five years; nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described, each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election.

SEC. 4. The governor shall be commander-in-chief of the military forces of the state, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

SEC. 5. The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed.

SEC. 6. The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the senate, a vacancy occurs in any state or district 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. If the office of a justice of the supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction, shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

SEC. 7. The governor, secretary of state, and attorney general shall constitute a board to be known as the board of pardons. Said board or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board

and the manner in which application shall be made, and regulate proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for, shall have been given by publication in some newspaper of general circulation, at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason, the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the legislature, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon, or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto.

SEC. 8. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall, at the commencement of each session, and from time to time, by message, give to the legislature, information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislature a statement, with vouchers, of the expenditures of all moneys belonging to the state and paid out by him. He shall

also, at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the state.

SEC. 9. The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the senate in extraordinary session for the transaction of executive business.

SEC. 10. Every bill passed by the legislature, shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections, to the house in which it originated, which house shall enter the objections at large upon its journals and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present in that house, it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor to the legislature within five days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the legislature shall, by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of state within ten days after such adjournment (Sundays excepted) or become a law.

SEC. 11. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void, unless enacted in the manner following; if the legislature be in session, he shall within five days, transmit to the house within which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

SEC. 12. In case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime, of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the

residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

SEC. 13. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed.

SEC. 14. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of treason, felony or other infamous crime, or disqualification from any cause, of both governor and lieutenant-governor, the duties of the governor shall devolve upon the president of the senate pro tempore, until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

SEC. 15. There shall be a seal of this state, which shall be kept by the secretary of state, and used by him officially, and shall be called, "The great seal of the state of Idaho." The seal of the territory of Idaho as now used shall be the seal of the state until otherwise provided by law.

SEC. 16. All grants and permissions shall be in the name and by the authority of the state of Idaho, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

SEC. 17. An account shall be kept by the officers of the executive department and of all public institutions of the state of all moneys received by them severally, from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislature, make full and complete reports of their official transactions, to the governor, who shall transmit the same to the legislature.

SEC. 18. The governor, secretary of state, and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prison as may be prescribed by law. They shall also constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the state, except salaries and compensation of officers fixed by law, shall be passed

upon by the legislature without first having been considered and acted upon by said board.

SEC. 19. The governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, shall, quarterly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this constitution, is fixed as follows: Governor, three thousand dollars per annum; secretary of state, one thousand eight hundred dollars per annum; state auditor, one thousand eight hundred dollars per annum; state treasurer, one thousand dollars per annum; attorney general, two thousand dollars per annum; and superintendent of public instruction, one thousand five hundred dollars per annum. The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the sessions of the legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

No officer named in this section shall receive, for the performance of any official duty, any fee for his own use; but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. The legislature may by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase, shall effect the salaries of the officers then in office during their term; *Provided, however*, The legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant-governor, secretary of state, attorney general, and superintendent of public instruction, while traveling within the state in the performance of official duty.

ARTICLE V.

JUDICIAL DEPARTMENT.

SECTION 1. The distinctions between actions at law and suits in equity, and the forms of all such actions, and suits, are hereby prohibited; and there shall be in this state but one form of action for the enforcement or protection of private rights, or the redress of private wrongs; which shall be denominated a civil action; and every action prosecuted by the people of the state as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action.

Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

SEC. 2. The judicial power of the state shall be vested in a

court for the trial of impeachments, a supreme court, district courts, probate courts, courts of justices of the peace, and such other courts, inferior to the supreme court, as may be established by law, for any incorporated city or town.

SEC. 3. The court for the trial of impeachments shall be the senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to hold office in this state; but the party shall be liable to indictment and punishment according to law.

SEC. 4. The house of representatives solely, shall have the power of impeachment. No person shall be convicted without the concurrence of two-thirds of the senators elected. When the governor is impeached, the chief justice shall preside.

SEC. 5. Treason against the state shall consist only, in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder, shall work corruption of blood or forfeiture of estate.

SEC. 6. The supreme court shall consist of three justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. The justices of the supreme court shall be elected by the electors of the state at large. The terms of office of the justices of the supreme court, except as in this article otherwise provided, shall be six years. The justices of the supreme court shall, immediately after the first election under this constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the justices of the supreme court, who shall, for that purpose, assemble at the seat of government, and they shall cause the result thereof to be certified to by the secretary of state, and filed in his office. The justice having the shortest term to serve, not holding his office by appointment, or election to fill a vacancy, shall be the chief justice, and shall preside at all terms of the supreme court; and, in case of his absence, the justice, having in like manner the next shortest term to serve, shall preside in his stead.

SEC. 7. No justice of the supreme court shall be eligible to any other office of trust or profit, under the laws of this state during the term for which he was elected.

SEC. 8. At least four terms of the supreme court shall be held annually; two terms at the seat of state government, and two terms at the city of Lewiston, in Nez Perce county. In case of epidemic, pestilence, or destruction of court houses, the justices may hold the terms of the supreme court provided by this

section, at other convenient places, to be fixed by a majority of said justices. After six years, the legislature may alter the provisions of this section.

SEC. 9. The supreme court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof. The supreme court shall also have original jurisdiction to issue writs of mandamus, *certiorari*, prohibition, and habeas corpus; and all writs necessary or proper to the complete exercise of its appellate jurisdiction.

SEC. 10. The supreme court shall have original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the legislature for its action.

SEC. 11. The state shall be divided into five judicial districts, for each of which a judge shall be chosen by the qualified electors thereof, whose term of office shall be four years. And there shall be held a district court, in each county, at least twice in each year, to continue for such time in each county, as may be prescribed by law. But the legislature may reduce or increase the number of districts, district judges and district attorneys. This section shall not be construed to prevent the holding of special terms under such regulations as may be provided by law.

SEC. 12. Every judge of the district court shall reside in the district for which he is elected. A judge of any district court may hold a district court in any county at the request of the judge of the district court thereof, and, upon the request of the governor, it shall be his duty to do so; but a cause in the district court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause.

SEC. 13. The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government; but the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the supreme court, so far as the same may be done without conflict with this constitution.

SEC. 14. The legislature may provide for the establishment of special courts, for the trial of misdemeanors, in incorporated cities and towns, where the same may be necessary.

SEC. 15. The clerk of the supreme court shall be appointed by the court, and shall hold his office during the pleasure of the court. He shall receive such compensation for his services as may be provided by law.

SEC. 16. A clerk of the district court for each county shall

be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the legislature, and shall hold his office for the term of four years.

SEC. 17. The salary of the justices of the supreme court, until otherwise provided by the legislature, shall be three thousand dollars each per annum, and the salary of the judges of the district court until otherwise provided by the legislature shall be three thousand dollars each per annum, and no justice of the supreme court, or judge of the district court, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination, thirty days prior to the taking and subscribing such oath.

SEC. 18. A district attorney shall be elected for each judicial district by the qualified electors thereof, who shall hold office for the term of four years, and perform such duties as may be prescribed by law. He shall be a practicing attorney at law, and a resident and elector of the district. He shall receive as compensation for his services, twenty-five hundred dollars per annum.

SEC. 19. All vacancies occurring in the offices provided for by this article of the constitution shall be filled as provided by law.

SEC. 20. The district court shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.

SEC. 21. The probate courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, and appointment of guardians; also, jurisdiction to hear and determine all civil cases wherein the debt or damage claimed, does not exceed the sum of five hundred dollars, exclusive of interest and concurrent jurisdiction with justices of the peace in criminal cases.

SEC. 22. In each county of this state there shall be elected justices of the peace as prescribed by law. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of three hundred dollars exclusive of interest, nor where the boundaries or title to any real property shall be called in question.

SEC. 23. No person shall be eligible to the office of district judge unless he be learned in the law, thirty years of age, and a citizen of the United States, and shall have resided in the state or territory at least two years next preceding his election, nor unless he shall have been at the time of his election, an elector in the judicial district for which he is elected.

SEC. 24. Until otherwise provided by law, the judicial dis-

tricts shall be five in number, and constituted of the following counties, viz: First district, Shoshone and Kootenai. Second district, Latah, Nez Perce and Idaho. Third district, Washington, Ada, Boise, and Owyhee. Fourth district, Cassia, Elmore, Logan, and Alturas. Fifth district, Bear Lake, Bingham, Oneida, Lemhi, and Custer.

SEC. 25. The judges of the district courts shall, on or before the first day of July in each year, report in writing to the justices of the supreme court, such defects or omissions in the laws as their knowledge and experience may suggest, and the justices of the supreme court shall, on or before the first day of December of each year, report in writing to the governor, to be by him transmitted to the legislature, together with his message, such defects and omissions in the constitution and laws as they may find to exist.

SEC. 26. All laws relating to courts shall be general and of uniform operation throughout the state, and the organized judicial powers, proceedings and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

SEC. 27. The legislature may by law diminish or increase the compensation of any or all of the following officers, to-wit: Governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney general, superintendent of public instruction, commissioner of immigration and labor, justices of the supreme court and judges of the district courts and district attorneys; but no diminution or increase shall effect the compensation of the officer then in office during his term, *Provided, however*, That the legislature may provide for the payment of actual and necessary expenses of the governor, secretary of state, attorney general and superintendent of public instruction incurred while in performance of official duty.

ARTICLE VI.

SUFFRAGE AND ELECTIONS.

SECTION 1. All elections by the people must be by ballot. 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.

SEC. 2. Except as in this article otherwise provided, every male 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 offers to vote, thirty days, next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the legislature,

women who have the qualifications prescribed in this article, may continue to hold such school offices and vote at such school elections, as provided by the laws of Idaho territory.

SEC. 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing, or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who at the time of such election is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who in any manner teaches, advises, counsels, aids or encourages any person to enter into bigamy, polygamy, or such patriarchal, 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, encourages or aids any person to enter into bigamy, polygamy or such patriarchal or plural 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; 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.

SEC. 4. 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.

SEC. 5. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this state, or of the United States, nor while engaged in the navigation of the waters of this state or of the United States, nor while a student of any institution of learning, nor while kept at any alms-house or other asylum at the public expense.

ARTICLE VII.

FINANCE AND REVENUE.

SECTION 1. The fiscal year shall commence on the second Monday of January in each year, unless otherwise provided by law.

SEC. 2. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax, (both upon natural persons and upon corporations, other than municipal, doing business in this state); also a per capita tax. *Provided,* The legislature may exempt a limited amount of improvements upon land, from taxation.

SEC. 3. The word "property" as herein used shall be defined and classified by law.

SEC. 4. The property of the United States, the state, counties, towns, cities and other municipal corporations and public libraries shall be exempt from taxation.

SEC. 5. All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal, *Provided,* That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the State, *Provided, further,* That duplicate taxation of property for the same purpose during the same year, is hereby prohibited.

SEC. 6. The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

SEC. 7. All taxes levied for state purposes shall be paid into the state treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes.

SEC. 8. The power to tax corporations or corporate property, both real and personal, shall never be relinquished or suspended, and all corporations in this state or doing business therein, shall be subject to taxation for state, county, school, municipal, and other purposes, on real and personal property owned or used by them, and not by this constitution exempted from taxation within the territorial limits of the authority levying the tax.

SEC. 9. The rate of taxation of real and personal property for state purposes, shall never exceed ten (10) mills on each dollar of assessed valuation; and if the taxable property in the state shall amount to fifty million (50,000,000) dollars the rate shall not exceed five (5) mills on each dollar of valuation; and

whenever the taxable property in the state shall amount to one hundred million (100,000,000) dollars, the rate shall not exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million (300,000,000) dollars the rate shall never thereafter exceed one and one-half (1½) mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

SEC. 10. The making of profit, directly or indirectly, out of state, county, city, town, township or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

SEC. 11. No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the state, during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in Section nine (9) of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures, to suppress insurrection, defend the state, or assist in defending the United States in time of war.

SEC. 12. There shall be a state board of equalization, consisting of the governor, secretary of state, attorney general, state auditor, and state treasurer, whose duties shall be prescribed by law. The board of county commissioners for the several counties of the state, shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county, under such rules and regulations as shall be prescribed by law.

SEC. 13. No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

SEC. 14. No money shall be drawn from the county treasuries except upon the warrant of a duly authorized officer, in such manner and form as shall be prescribed by the legislature.

SEC. 15. The legislature shall provide by law, such a system of county finance, as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that whenever any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners, in addition to other taxes provided by law, shall levy a special tax not to exceed

ten (10) mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax, all warrants issued before such levy, shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund.

SEC. 16. The legislature shall pass all laws necessary to carry out the provisions of this article.

ARTICLE VIII.

PUBLIC INDEBTEDNESS AND SUBSIDIES.

SECTION 1. 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 centum upon the assessed value of the taxable property in the state, except in case of war, to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due; and also for the payment and discharge of the principal of such debt or liability, within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by the authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people. The legislature may, at any time after the approval of such law, by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

SEC. 2. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, municipality or corporation; nor shall the state directly or indirectly, become a stockholder in any association or corporation.

SEC. 3. 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 of the qualified electors thereof voting at an election to be held for that purpose, nor 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 for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void. *Provided,* That this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state.

SEC. 4. No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

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.

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.

SEC. 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.

SEC. 4. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or

may hereafter be granted to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; and all other grants, gifts, devises, or bequests made to the state for general educational purposes.

SEC. 5. 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 or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, 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.

SEC. 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. 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.

SEC. 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.

SEC. 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 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 (10) 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 all state 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 one hundred and sixty (160) acres to any one individual, company or corporation.

SEC. 9. The legislature may require by law, that every child of sufficient mental and physical ability, shall attend the public school throughout the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means.

SEC. 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 thereto 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. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.

SEC. 11. The permanent educational funds, other than funds arising from the disposition of university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state, or on state or United States 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.

ARTICLE X.

PUBLIC INSTITUTIONS.

SECTION 1. Educational, reformatory, and penal institutions,

and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law.

SEC. 2. The seat of government of the state of Idaho shall be located at Boise City for twenty years from the admission of the state, after which time the legislature may provide for its relocation by submitting the question to a vote of the electors of the state at some general election.

SEC. 3. The legislature may submit the question of the location of the seat of government to the qualified voters of the state at the general election, then next ensuing and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said legislature shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors of the state at the next general election.

SEC. 4. All property and institutions of the territory, shall, upon the adoption of the constitution, become the property and institutions of the state of Idaho.

SEC. 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.

SEC. 6. There shall be appointed by the governor, three directors of the asylum 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. The directors shall have the appointment of the medical superintendent who shall appoint the assistants with the approval of the directors.

SEC. 7. The legislature for sanitary reasons may cause the removal to more suitable localities of any of the institutions mentioned in section one of this article.

ARTICLE XI.

CORPORATIONS—PUBLIC AND PRIVATE.

SEC. 1. All existing charters or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the

time of the adoption of this constitution, shall thereafter have no validity.

SEC. 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal, or reformatory corporations as are or may be, under the control of the state; but the legislature shall provide by general law for the organization of corporations hereafter to be created; *Provided,* That any such general law shall be subject to future repeal or alteration by the legislature.

SEC. 3. The legislature may provide by law for altering, revoking or annulling, any charter of incorporation, existing and revokable at the time of the adoption of this constitution, in such manner, however, that no injustice shall be done to the incorporators.

SEC. 4. 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 as there are directors or managers to be elected, 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.

SEC. 5. 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 the power to regulate and control by law, the rate 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. Every railroad company shall have the right with its road, to intersect, connect with, or cross any other railroad, under such regulations as may be prescribed by law, and upon making due compensation.

SEC. 6. All individuals, associations, and corporations, similarly situated, shall have equal rights to have persons or property transported on and over any railroad, transportation, or express route in this state, except that preference may be given to perishable property. No undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class, by any railroad, or transportation, or express company, between persons or places within this state;

but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad, or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers, to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association, or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

SEC. 7. No corporation other than municipal corporations in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form.

SEC. 8. The right of eminent domain shall never be abridged, nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

SEC. 9. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons, holding a majority of the stock, first obtained at a meeting, held after at least thirty days' notice given in pursuance of law.

SEC. 10. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served; and no company or corporation formed under the laws of any other country, state or territory, shall have or be allowed to exercise or enjoy, within this state, any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state.

SEC. 11. No street, or other railroad, shall be constructed within any city, town, or incorporated village, without the consent of the local authorities having the control of the street or

highway proposed to be occupied by such street or other railroad.

SEC. 12. The legislature shall pass no law for the benefit of a railroad, or other corporation, or any individual, or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past.

SEC. 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislature shall by general law of uniform operation, provide reasonable regulations to give full effect to this section.

SEC. 14. If any railroad, telegraph, express, or other corporation, organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, express or other corporation, organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise, as if said consolidation had not taken place.

SEC. 15. The legislature shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 16. The term "corporation" as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.

SEC. 17. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholders be individually liable in any amount over or above the amount of stock owned by him.

SEC. 18. That no incorporated company or any association of persons or stock company, in the state of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people; and that the legislature be required to pass laws for the enforcement thereof, by adequate

penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

ARTICLE XII.

CORPORATIONS—MUNICIPAL.

SECTION 1. The legislature shall provide by general laws for the incorporation, organization and classification of the cities and towns in proportion to the population, which laws may be altered, amended or repealed by the general laws. Cities and towns heretofore incorporated, may become organized under such general laws, whenever a majority of the electors at a general election, shall so determine, under such provisions therefor as may be made by the legislature.

SEC. 2. Any county, or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

SEC. 3. The state shall never assume the debts of any county, town or other municipal corporation, unless such debts shall have been created to repel invasion, suppress insurrection or defend the state in war.

SEC. 4. No county, town, city or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association; *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 to the whole amount so invested.

ARTICLE XIII.

IMMIGRATION AND LABOR.

SECTION 1. There shall be established a bureau of immigration, labor and statistics, which shall be under the charge of a commissioner of immigration, labor and statistics, who shall be appointed by the governor, by and with the consent of the senate. The commissioner shall hold his office for two years, and until his successor shall have been appointed and qualified, unless sooner removed. The commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor and the earnings of laboring men and women, and the means of promoting their material, social, intellectual and moral

prosperity. The commissioner shall annually make a report in writing to the governor of the state of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the bureau.

SEC. 2. Not more than eight (8) hours' actual work shall constitute a lawful day's work on all state and municipal works.

SEC. 3. All labor of convicts confined in the state's prison, shall be done within the prison grounds, except where the work is done on public works under the direct control of the state.

SEC. 4. The employment of children under the age of fourteen (14) years in underground mines is prohibited.

SEC. 5. No person, not a citizen of the United States or who has not declared his intention to become such, shall be employed upon, or in connection with, any state or municipal works.

SEC. 6. The legislature shall provide by proper legislation for giving to mechanics, laborers and material men an adequate lien on the subject matter of their labor.

SEC. 7. The legislature may establish boards of arbitration whose duty it shall be to hear and determine all differences and controversies between laborers and their employers which may be submitted to them in writing by all the parties. Such boards of arbitration shall possess all the powers and authority in respect to administering oaths, subpœnaing witnesses, and compelling their attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on justices of the peace.

SEC. 8. The commissioner of immigration, labor and statistics, shall perform such duties and receive such compensation, as may be prescribed by law.

ARTICLE XIV.

MILITIA.

SECTION 1. All able-bodied male persons residents of this state, between the ages of eighteen and forty-five years, shall be enrolled in the militia and perform such military duty, as may be required by law; but no person having conscientious scruples against bearing arms, shall be compelled to perform such duty in time of peace. Every person claiming such exemption from service, shall, in lieu thereof, pay into the school fund of the county of which he may be a resident, an equivalent in money; the amount and manner of payment to be fixed by law.

SEC. 2. The legislature shall provide by law for the enrollment, equipment and discipline of the militia, to conform as nearly as practicable to the regulations for the government of the armies of the United States, and pass such laws to promote

volunteer organizations, as may afford them effectual encouragement.

SEC. 3. All militia officers shall be commissioned by the governor, the manner of their selection to be provided by law, and may hold their commissions for such period of time as the legislature may provide.

SEC. 4. All military records, banners, and relics of the state, except when in lawful use, shall be preserved in the office of the adjutant general, as an enduring memorial of the patriotism and valor of the soldiers of Idaho; and it shall be the duty of the legislature to provide by law for the safe-keeping of the same.

SEC. 5. All 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.

SEC. 6. No armed police force, or detective agency, or armed body of men, shall ever be brought into this state for the suppression of domestic violence, except upon the application of the legislature, or the executive, when the legislature cannot be convened.

ARTICLE XV.

WATER RIGHTS.

SECTION 1. The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulation and control of the state in the manner prescribed by law.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city, or town, or water district, or the inhabitants thereof, is a franchise, and can not be exercised except by authority of, and in the manner prescribed by law.

SEC. 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall, (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose. And those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district, those

using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in Section 14 of Article I of this constitution.

SEC. 4. Whenever any waters have been, or shall be appropriated, or used, for agricultural purposes, under a sale, rental or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters, so dedicated, shall have once been sold, rented or distributed to any person who has settled upon, or improved land for agricultural purposes, with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns shall not thereafter without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.

SEC. 5. Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental or distribution thereof, as in the last preceding section of this article, provided, as among such persons, priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used, and times of use, as the legislature, having due regard, both to such priority of right, and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

SEC. 6. The legislature shall provide by law, the manner in which reasonable maximum rates may be established to be charged for the use of water, sold, rented, or distributed, for any useful or beneficial purpose.

ARTICLE XVI.

LIVE STOCK.

SECTION 1. The legislature shall pass all necessary laws to provide for the protection of live stock against the introduction or spread of pleuro-pneumonia, glanders, splenetic or Texas fever and other infectious or contagious diseases. The legislature may also establish a system of quarantine or inspection and such

other regulations as may be necessary for the protection of stock owners and most coducive to the stock interest within this state.

ARTICLE XVII.

STATE BOUNDARIES.

SECTION 1. The name of this state is Idaho, and its boundaries are as follows: Beginning at a point in the middle channel of the Snake river, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east, along that parallel to the thirty-ninth degree of longitude west of Washington; thence south, along that degree of longitude to the crest of the Bitter Root mountains; thence southward along the crest of the Bitter Root mountains till its intersection with the Rocky Mountains; thence southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west, along that parallel, to the eastern boundary of the state of Oregon; thence north, along that boundary, to the place of beginning.

ARTICLE XVIII.

COUNTY ORGANIZATION.

SECTION 1. The several counties of the territory of Idaho, as they now exist, are hereby recognized as legal subdivisions of this state.

SEC. 2. No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six years; except as provided by existing laws; no person shall vote at any county seat election, who has not resided in the county six months, and in the precinct ninety days.

SEC. 3. No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division, *Provided* that this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed. When any part of a county

is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

SEC. 4. No new county shall be established which shall reduce any county to an area of less than four hundred square miles; nor shall a new county be formed containing an area of less than four hundred square miles.

SEC. 5. The legislature shall establish, subject to the provisions of this article, a system of county governments which shall be uniform throughout the state; and by general laws shall provide for township or precinct organizations.

SEC. 6. The legislature, by general and uniform laws, shall provide for the election biennially, in each of the several counties of the state, of county commissioners, a sheriff, county treasurer, who is ex-officio public administrator, probate judge, who is ex-officio county superintendent of public instruction, county assessor, who is ex-officio tax collector, a coroner, and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws, shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder, and clerk of the district court, shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require; said deputies and clerical assistance to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected.

SEC. 7. The officers provided by section six (6) of this article shall receive annually, as compensation for their services as follows: Sheriff, not more than four thousand dollars, and not less than one thousand dollars, together with such mileage as may be prescribed by law. Clerk of the district court, who is ex-officio auditor and recorder, not more than three thousand dollars, and not less than five hundred dollars; probate judge, who is ex-officio county superintendent of public instruction, not more than two thousand dollars and not less than five hundred dollars; county assessor, who is ex-officio tax collector, not more than three thousand dollars, and not less than five hundred dollars;

county treasurer, who is ex-officio public administrator, not more than one thousand dollars, and not less than three hundred dollars; coroner, not more than five hundred dollars; county surveyor, not more than one thousand dollars; county commissioners, such per diem and mileage as may be prescribed by law; and justices of the peace and constables, such fees as may be prescribed by law.

SEC. 8. The compensation provided in section seven (7) for the officers therein mentioned, shall be paid by fees or commissions, or both, as prescribed by law. All fees and commissions received by such officers in excess of the maximum compensation per annum provided for each in section seven (7) of this article, shall be paid to the county treasurer, for the use and benefit of the county. In case the fees received in any one year by any one of such officers, shall not amount to the minimum compensation per annum therein provided, he shall be paid by the county, a sum sufficient to make his aggregate annual compensation equal to such minimum compensation.

SEC. 9. The neglect or refusal of any officer named in this article, to account for and pay into the county treasury any money received as fees or compensation, in excess of the maximum amount allowed to such officer by the provisions of this article, within forty days after the receipt of the same, shall be a felony, and the grade of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense.

SEC. 10. The board of county commissioners shall consist of three members whose term of office shall be two years.

SEC. 11. County, township, and precinct officers shall perform such duties as shall be prescribed by law.

ARTICLE XIX.

APPORTIONMENT.

SECTION 1. Until otherwise provided by law, the apportionment of the two houses of the legislature shall be as follows:

The first senatorial district shall consist of the county of Shoshone, and shall elect two senators.

The second shall consist of the counties of Kootenai and Latah, and shall elect one senator.

The third shall consist of the counties of Nez Perce and Idaho, and shall elect one senator.

The fourth shall consist of the counties of Nez Perce and Latah, and shall elect one senator.

The fifth shall consist of the county of Latah, and shall elect one senator.

The sixth shall consist of the county of Boise, and shall elect one senator.

The seventh shall consist of the county of Custer, and shall elect one senator.

The eighth shall consist of the county of Lemhi, and shall elect one senator.

The ninth shall consist of the county of Logan, and shall elect one senator.

The tenth shall consist of the county of Bingham, and shall elect one senator.

The eleventh shall consist of the counties of Bear Lake, Oneida and Bingham, and shall elect one senator.

The twelfth shall consist of the counties of Owyhee and Cassia, and shall elect one senator.

The thirteenth shall consist of the county of Elmore, and shall elect one senator.

The fourteenth shall consist of the county of Alturas, and shall elect one senator.

The fifteenth shall consist of the county of Ada, and shall elect two senators.

The sixteenth shall consist of the county of Washington, and shall elect one senator.

SEC. 2. The several counties shall elect the following members of the house of representatives:

The county of Ada, three members.
The counties of Ada and Elmore, one member.
The county of Alturas, two members.
The county of Boise, two members.
The county of Bear Lake, one member.
The county of Bingham, three members.
The county of Cassia, one member.
The county of Custer, two members.
The county of Elmore, one member.
The county of Idaho, one member.
The counties of Idaho and Nez Perce, one member.
The county of Kootenai, one member.
The county of Latah, two members.
The counties of Kootenai and Latah, one member.
The county of Logan, two members.
The county of Lemhi, two members.
The county of Nez Perce, one member.
The county of Oneida, one member.
The county of Owyhee, one member.
The county of Shoshone, four members.
The county of Washington, two members.
The counties of Bingham, Logan and Alturas, one member.

ARTICLE XX.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislature, and, if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state, at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election in not less than one newspaper of general circulation, published in each county; and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

SEC. 2. If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

SEC. 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election, for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members, not less than double the number of the most numerous branch of the legislature.

SEC. 4. Any constitution adopted by such convention, shall have no validity until it has been submitted to, and adopted by, the people.

ARTICLE XXI.

SCHEDULE AND ORDINANCE.

SECTION 1. That no inconvenience may arise from a change of the territorial government to a permanent state government, it is declared that all writs, actions, prosecutions, claims, liabilities, and obligations against the territory of Idaho, of whatsoever nature and rights of individuals, and of bodies corporate, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the territory of Idaho, shall be as valid as if issued in the name of the state.

SEC. 2. All laws now in force in the territory of Idaho, which

are not repugnant to this constitution, shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

SEC. 3. All fines, penalties, forfeitures, and escheats accruing to the territory of Idaho, shall accrue to the use of the state.

SEC. 4. All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to and may be prosecuted in the name of the state; and all bonds, obligations, or other undertaking executed by this territory, or to any other officer in his official capacity, shall pass over to the proper state authority, and to their successors in office for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen or which may arise before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

SEC. 5. All officers, civil and military, now holding their offices and appointments in this territory under the authority of the United States, or under the authority of this territory, shall continue to hold and exercise their respective offices and appointments until suspended under this constitution.

SEC. 6. This constitution shall be submitted for adoption or rejection, to a vote of the electors, qualified by the laws of this territory to vote at all elections at an election to be held on the Tuesday after the first Monday in November, A. D. 1889. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general election and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections, and abstracts of such returns duly certified, shall be transmitted to the board of canvassers now provided by law for canvassing the returns of votes for delegate in congress. The said canvassing board shall canvass the votes so returned, and certify and declare the result of said election in the same manner, as is required by law for the election of said delegate.

At the said election, the ballots shall be in the following form: For the constitution: Yes. No.

And as a heading to each of said ballots shall be printed on each ballot, the following instructions to voters:

All persons who desire to vote for the constitution, or any of the articles submitted to a separate vote, may erase the word "no."

All persons who desire to vote against the constitution, or

against any article submitted separately, may erase the word "yes."

Any person may have printed or written on his ballot only the words, "For the constitution," or "Against the constitution," and such ballots shall be counted for or against the constitution accordingly.

SEC. 7. This constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

SEC. 8. Immediately upon the admission of the territory as a state, the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation, which shall be published, and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people of all state, district, county, township, and other officers, created and made elective by this constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation, nor more than ninety days after the admission of the territory as a state.

SEC. 9. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given, in the manner and for the length of time provided by the laws of the territory in cases of general elections for delegate to congress, and county and other officers. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns thereof shall be made and canvassed in the same manner, and by the same authority as provided in cases of such general election; but returns for all state and district officers and members of the legislature, shall be made to the canvassing board hereinafter provided for.

SEC. 10. The governor, secretary, controller, and attorney general of the territory, and the president of this convention, or a majority of them, shall constitute a board of canvassers to canvass the vote at such elections for all state and district officers and members of the legislature. The said board shall assemble at the seat of government of the territory on the thirtieth day after the date of such election (or on the following day if such day fall on Sunday) and proceed to canvass the votes for all state and district officers and members of the legislature, in the manner provided by the laws of the territory for convassing the vote for delegates to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the terri-

tory, an abstract certified by them, of the number of votes cast for each person for each of said offices, and the total number of votes cast in each county.

SEC. 11. The canvassing boards of the several counties shall issue certificates of election to the several persons found by them to have been elected to the several county and precinct offices.

SEC. 12. All officers elected at such election, shall, within thirty days after they have been declared elected, take the oath required by this constitution, and give the same bond required by the law of the territory to be given in case of like officers of the territory, district or county, and shall thereupon enter upon the duties of their respective offices; but the legislature may require by law all such officers to give other or further bonds as a condition of their continuance in office.

SEC. 13. All officers elected at said election, shall hold their offices until the legislature shall provide by law in accordance with this constitution, for the election of their successors, and until such successors shall be elected and qualified.

SEC. 14. The governor-elect of the state, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the legislature of the state at the seat of government, on a day to be named in said proclamation, and which shall not be less than thirty nor more than sixty days after the date of such proclamation. Within ten days after the organization of the legislature, both houses of the legislature shall then and there proceed to elect, as provided by law, two senators of the United States for the state of Idaho. At said election, the two persons who shall receive the majority of all the votes cast by said senators and representatives, shall be elected as such United States senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the senate and house, shall issue a certificate to each of said senators, certifying his election, which certificates shall also be signed by the governor and attested by the secretary of state.

SEC. 15. The legislature shall pass all necessary laws to carry into effect the provisions of this constitution.

SEC. 16. Whenever any two of the judges of the supreme court of the state, elected under the provisions of this constitution, shall have qualified in their offices, the causes then pending in the supreme court of the territory, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the state; and until so superceded, the supreme court of the territory and the judges thereof shall continue, with like powers and jurisdiction, as if this constitution had not been adopted. Whenever the judge of the district court

of any district elected under the provisions of this constitution shall have qualified in office, the several causes then pending in the district court of the territory within any county in such district, and the records, papers, and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the state for such county; and until the district courts of this territory shall be superceded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the territory.

SEC. 17. Until otherwise provided by law the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts, respectively, of the state.

SEC. 18. Whenever this constitution shall go into effect, the books, records, and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the probate court of the same county of the state, and the said probate court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said probate court might have done as if this constitution had not been adopted.

SEC. 19. It is ordained by the state of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship. And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States, residing without the said state of Idaho, shall never be taxed at a higher rate than the lands belonging to the residents thereof. That no taxes shall be imposed by the state on the lands or property therein, belonging to, or which may hereafter be purchased by the United States, or reserved for its use. And the debts and liabilities of this territory shall be assumed and paid by the state of Idaho. That this ordinance shall be irrevocable, without the consent of the United States and the people of the state of Idaho.

SEC. 20. That in behalf of the people of Idaho we, in convention assembled, do adopt the constitution of the United States.

Done in open convention at Boise City, in the territory of Idaho, this sixth day of August, in the year of our Lord, one thousand eight hundred and eighty-nine.

WM. H. CLAGETT,
President,
GEO. AINSLIE,
W. C. B. ALLEN,
ROB'T. ANDERSON,
H. ARMSTRONG,
ORLANDO B. BATTEN,
FRANK W. BEANE,
JAS. H. BEATTY,
J. W. BALLENTINE,
A. D. BEVAN,
HENRY B. BLAKE,
FREDERICK CAMPBELL,
FRANK P. CAVANAH,
A. S. CHANEY,
CHAS. A. CLARK,
I. N. COSTON,
JAS. I. CRUTCHER,
STEPHEN S. GLIDDEN,
JOHN S. GRAY,
WM. W. HAMMELL,
H. S. HAMPTON,
H. O. HARKNESS,
FRANK HARRIS,
SOL. HASBROUCK,
C. M. HAYS,
W. B. HEYBURN,
JOHN HOGAN,
J. M. HOWE,
E. S. JEWELL,
G. W. KING,
H. B. KINPORT,
JAS. W. LAMOREAUX,
JOHN LEWIS,
WM. C. MAXEY,
A. E. MAYHEW,
W. J. McCONNELL,
HENRY MELDER,
JOHN H. MYER,
JOHN T. MORGAN,
A. B. MOSS,
AARON F. PARKER,
A. J. PIERCE,
A. J. PINKHAM,
J. W. POE,
THOS. PYEATT,
JAS. W. REID
W. D. ROBBINS,
WM. H. SAVIDGE,
AUG. M. SINNOTT,
JAMES M. SHOUP,
DREW W. STANDROD,
FRANK STEUNENBERG,
HOMER STULL,
WILLIS SWEET,
SAM F. TAYLOR,
J. L. UNDERWOOD,
LYCURGUS VINEYARD,
J. S. WHITTON,
EDGAR WILSON,
W. W. WOODS,
JOHN LEMP,
N. I. ANDREWS,
J. W. BRIGHAM,
SAMUEL J. PRITCHARD,

APPENDIX B.

ADDRESS TO THE PEOPLE OF IDAHO.

BOISE CITY, AUGUST 6, 1889.

To the People of Idaho:

The convention convened at Boise City on July 4, 1889, to frame a constitution for the state of Idaho, has completed its labors.

The constitution so framed will be submitted to you for approval or rejection on November 5, 1889.

Before adjournment, the convention by resolution appointed the undersigned as a committee to lay before you the reasons why the constitution should be adopted, and this duty we now fulfill.

DISADVANTAGES OF A TERRITORIAL GOVERNMENT.

The territorial system of government under which we have lived for the past twenty-six years is in direct conflict with the spirit of republican and democratic institutions.

We have no voice in the selection of the most important officers who administer our local affairs; no voice in the enactment of laws by congress to which we must yield obedience; and no voice in the election of the chief magistrate of the republic, who appoints the principal officers, by whom the executive and judicial affairs of our territory are administered.

We are held in a state of political vassalage, similar in many respects to that in which the American colonies were held by Great Britain.

Governments are instituted for the purpose of securing to all men their natural and inalienable right to life, liberty and the pursuit of happiness, and all rightful governments derive their just powers from the consent of the governed.

Taxation without representation, among all people who love freedom, has ever been held a valid complaint against the governing power.

While a territory, congress, in which we have no vote or other adequate representation, can at any time annul any act passed by our legislature, and under a present law of congress

placing limitations and restrictions upon the power of the Territorial legislature, no great public work or improvement in the interest of the people, no matter how necessary it may be to the development of our mineral or agricultural resources, can be inaugurated or carried out.

Under the congressional alien land act, no alien can own or hold lands in the territory, and this prohibition shuts the door to the influx and investment of millions of foreign capital in our mines containing precious and useful metals, thus retarding and almost paralyzing the development of our unlimited resources, and depriving labor of its most encouraging and inviting fields of employment.

Our school lands lie unoccupied, returning no revenue for the education of our children, and are not open to purchase by those seeking homes among us, thus retarding immigration, and that great increase of population to which our natural resources and unexampled healthfulness of climate entitle us.

A territory can not have a settled public policy. The fact that congress may at any time annul its legislation on any matter of purely local concern prevents active co-operation by the people on those higher planes of public life which result in the establishment of a permanent state policy.

The abuse of the veto power of alien governors who in the past have been, and who in the future again may be sent among us, is one of which we have had more than one example of sad experience by which the people have been discouraged.

The most intolerable evil, however, under which we have lived for the past twenty-five years, has been the changing and shifting character of our judicial decisions, by which we have been deprived of the inestimable benefit of judicial precedents as a safeguard to our rights of person and property.

Scarcely has one judge, sent to us from abroad, obtained even a slight insight into the laws and customs of the territory, before another coming in his room has undone the work of his predecessor, and this chronic condition of change has left all of our business and property interests in a constant state of doubt and uncertainty.

To make confusion worse confounded, we have been denied an appeal from these raw and inexperienced decisions to an independent supreme court, under the territorial system of having the judge below review his own judgments on appeal, while the small judicial force of the territory (unable or incompetent to perform the duties devolving upon it) causes our calendars to be overburdened with causes, and such justice as we at last obtain to be delayed until litigants are ruined.

To meet this great want of the people, the constitution has provided a Judicial Department, ample, but not too great to

promptly decide all questions of controversy and secure a revision of all decisions by an independent supreme court.

Although the expense of this department is large, it is no greater than our necessities compel, and in the prompt determination of all causes, the people will find that their burdens, direct and indirect, will be greatly lessened.

STATEHOOD WILL SAVE ANNUALLY $55,290 TO THE TAXPAYERS OF IDAHO.

Some objection has been urged against statehood on the ground that the cost of government will be greatly increased.

In framing the constitution the convention has kept this objection constantly in mind, and it affords us great satisfaction to announce to the taxpayers of Idaho that the aggregate cost of the state and county governments under the proposed constitution will be $55,290 less annually than under the present territorial government.

This result is reached by the following statement of the cost of the new state government, to-wit:

Annual expense of Executive Department	$20,220
Annual expense of Judiciary Department	38,220
Annual expense of Legislative Department	15,110
Annual expense of Insane Asylum	20,000
Annual expense of Penitentiary	23,075
Annual interest on all outstanding bonds	10,200
Annual expense of State University	11,000
All other annual expenses	300
Total annual cost of State Government under the proposed constitution	$138,125
Total annual cost of present territorial government to the taxpayers of Idaho	84,365
Increase of cost of state government	$53,760

By changing the system of county government now in vogue to that proposed by the constitution, by which officers are to be paid fees instead of salaries, there will be saved annually to the counties of the state the following amounts, to-wit:

Salaries of Sheriffs	$ 36,000
Salaries of Auditors and Recorders	15,000
Salaries of Probate Judges	10,260
Salaries of County District Attorneys	34,200
Salaries of County Superintendents of Public Instruction	7,020

Salaries of Clerks of District Courts	6,570
Total annual saving in county government under the constitution	109,050
Increase of cost of state over territorial government	53,760
Total net saving annually to the tax-payers by adopting the state and county government proposed by the constitution	$ 55,290

In addition to the above in many instances the fees of officers will amount annually to a sum greater than the maximum compensation allowed them.

This excess will go into the county treasury for the benefit of the tax-payers. It is believed that in few instances will any minimum compensation have to be made up. Thus it will be seen that the state and county governments under the proposed constitution will cost the taxpayers $55,290 per annum less than the present territorial and county governments.

DIMINUTION OF SCHOOL TAXES TO BE OBTAINED BY STATEHOOD.

The school lands which will belong to the new state of Idaho will consist of Section 16 and 36 of every township, and 500,000 acres granted under Section 2378 of the Revised Statutes of the United States, all of which in round numbers will amount to over 3,340,000 acres, and at $10 per acre are valued at $33,400,000.

Of these the constitution provides that no more than 25 sections, or 16,000 acres, shall be sold annually. In ten years there would be sold 160,000 acres. Estimated at the minimum price of $10 per acre, the total sum realized by the sale of this land in ten years will be $1,600,000. This sum should certainly yield six (6) per cent net, which would give an annual income of $96,000. Besides this revenue, the lands thus sold are immediately subject to taxation, and the revenue obtained from these lands in the way of taxes will decrease the general annual levies.

As the school tax constitutes a large part of the expense of government, and as the revenue derived from school lands will enable the legislature in a short time to reduce the school levies to almost nothing, it is easy to see that your taxes will be greatly reduced, in this respect, by a state government.

With statehood there will be available other public lands as follows:

	ACRES
University grant	46,000
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

The proceeds from the sales of these lands will provide all necessary buildings for the respective purposes mentioned, and eventually furnish a sufficient income for their maintenance. Until statehood is secured all these public lands are unavailable for the purpose of relieving taxation and furnishing homes for settlers.

CHARACTER OF THE CONSTITUTION.

The convention that framed the constitution was in no sense a partisan one. In its organization both political parties were represented by delegates from every county. Strong republican counties sent minorities of democratic, and democratic counties minorities of republican delegates. This happy combination of political forces was reflected in the spirit which at every stage of its deliberations animated the convention.

Every material, industrial and professional interest was represented in its membership, and it was wholly free from all outside influences.

The business and tax-paying portion of our people was especially prominent and watchful of every interest of vital concern.

We believe that the constitution finally adopted is in an eminent degree a conservatively progressive one. The powers conferred upon the legislature are commensurate with the needs of the state, while the restrictions placed upon legislative action are such as experience in other states has shown to be wholesome or necessary. A careful perusal of its provisions will, we think, satisfy any candid mind, that a state government administered in harmony with its spirit and intent, will cause an immediate and wonderful increase in population, and in the wealth and happiness of the people.

For a quarter of a century the pioneers of Idaho have been patiently laying the foundations of the future state. They have at all times upheld the power and dignity of the nation. Those who emigrated hither in the first flush of early manhood, are now gray with age, and surrounded by their children and grand-children.

They have partly redeemed the wilderness which they found, and by their heroic sacrifices paved the way for the higher civilization upon which they are entering. They remember with inexpressible tenderness their old homes in the east, and long to be again restored to the full rights of citizenship under the constitution of the United States.

To accomplish this end we respectfully invite you to give the constitution submitted herewith a candid consideration, and ratify the same by your suffrages.

WM. H. CLAGETT, Shoshone County.
A. J. PINKHAM, Alturas County.
CHAS. M. HAYS, Owyhee County.
WM. J. MCCONNELL, Latah County.
HENRY ARMSTRONG, Logan County.
GEO. AINSLIE, Boise County.
JAS. W. REID, Nez Perce County.
S. F. TAYLOR, Bingham County.
CHAS. A. CLARK, Ada County.
FRANK P. CAVANAH, Elmore County.

APPENDIX C.

MITCHELL AND PLATT ADMISSION BILLS.[1]

S. 3708.

IN THE SENATE OF THE UNITED STATES.

December 13, 1888.

Mr. Mitchell introduced the following bill; which was read twice and referred to the Committee on Territories.

February 27, 1889.

Reported by Mr. Platt, with an amendment, viz: Strike out all after the enacting clause and insert the part printed in italics.

A BILL.

To provide for the formation and admission into the Union of the State of Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the inhabitants of the Territory of Idaho are hereby authorized to form for themselves a state government, with the name of the State of Idaho.

SEC. 2. That the said state shall consist of all the territory embraced within the said territory described as follows: Beginning at the intersection of the thirty-ninth meridian with the boundary line between the United States and the British possessions, it follows said meridian south until it reaches the summit of the Bitter Root Mountains; thence southeastward along the crest of the Bitter Root Range and the continental divide until it intersects the meridian of thirty-four degrees of longitude; thence southward on this meridian to the forty-second parallel of latitude; thence west on this parallel of latitude to its intersection with a meridian drawn through the mouth of

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[1]—Never enacted by congress, but inserted here on account of frequent references in the proceedings to these bills.

the Owyhee River; north on this meridian to the mouth of the Owyhee River; thence down the mid channel of the Snake River to the mouth of the Clearwater; and thence north on the meridian which passes through the mouth of the Clearwater to the boundary line between the United States and the British possessions; and east on said boundary line to the place of beginning.

SEC. 3. That in order to the formation of such state government the qualified electors resident within said boundaries are hereby authorized, after due proclamation by the governor of Idaho Territory, and in conformity to the laws of said Territory relative to the election of a delegate to Congress and the election of members of the legislative assembly thereof, as nearly as practicable, and in so far as they may be applicable, and under such rules and regulations, and at such time and places as said governor may prescribe, to elect as many delegates, possessing the qualifications of such electors within the present limits of said Territory, as there are members of said legislative assembly, also two delegates at large in each county organized at the time of the issuing of the said proclamation, and also fifteen such delegates in the Territory at large: Provided, That no election shall be called to be held under this section previous to the fifth day of November, anno Domini eighteen hundred and eighty-nine.

SEC. 4. That said Delegates shall meet in convention in the city of Boise, in said Territory, at such time as said governor may designate in his said proclamation, and, when organized, shall declare, on behalf of the people of the Territory embraced within said boundaries, that they adopt the Constitution of the United States; and thereupon said convention is hereby authorized to form a constitution and State government for said Territory so bounded and described as aforesaid: Provided, nevertheless, That such constitution shall be republican in form and make no distinction in civil and political rights on account of sex, race, or color, except as to Indians not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence: Provided further, That such convention shall provide by an ordinance that the inhabitants of the Territory embraced within said boundaries do agree and declare that they forever disclaim all right and title to the unappropriated public lands and the lands the Indian title to which has not been extinguished by the United States lying therein, and that the same shall be and remain at the sole and entire disposition of the United States; that all grants and patents heretofore made by the United States to settlers and purchasers of school lands therein are confirmed by the State and the people thereof, and that other lands, to be selected as hereinafter provided, are accepted by the State in lieu thereof; that

the lands belonging to the citizens of the United States residing without said State shall never be taxed higher than the lands belonging to the residents thereof; that no tax shall be imposed by the State on land or property therein belonging to the United States, any Indian tribe, or Indian sustaining tribal relations, or which may hereafter be purchased by the United States, and that any navigable waters within said State shall be and remain public highways, free to all citizens of the United States.

SEC. 5. That said convention, having formed such constitution as provided in this act, shall provide by ordinance for submitting the same to the people of said State for their ratification or rejection, at an election to be held at such time and place and under such regulations as said convention may prescribe.

SEC. 6. That at the election last aforesaid the legal voters of said new State shall vote directly for or against such proposed constitution, and the returns thereof shall be made to the Governor of Idaho Territory, who, with the secretary and chief justice thereof and the president of said convention, or any three of them, shall canvass the same, and if any majority of the legal votes so cast in said proposed State shall be for said constitution, said governor shall certify the same to the President of the United States, together with a copy of said constitution and ordinance. That on receipt of such certification of the votes so cast at said election showing the adoption of said constitution by the people of said State as aforesaid and a copy of said constitution and ordinances, the President of the United States, if said constitution and ordinances shall conform to the requirements of this act, shall issue his proclamation declaring the State admitted into the Union, and thereupon the said State shall be admitted into the Union upon an equal footing with the original States, without any further action on the part of Congress.

SEC. 7. That until the next general census said State shall be entitled to one representative in Congress.

SEC. 8. That such representative, and the Governor, and other officers that may be provided for in the constitution of said state, shall be elected on a day to be fixed by said constitutional convention, and which may be the same as the one fixed for the submission of the proposed constitution to the people for ratification or rejection as aforesaid, and that until said State officers are selected and qualified the Territorial officers shall continue to discharge the duties of their respective offices.

SEC. 9. That from and after the admission of said State into the Union in pursuance of this act, the laws of the United States not locally inapplicable shall have the same force and effect within the said State as elsewhere within the United States

and said State shall constitute one judicial district and be called the district of Idaho; that for said district a district judge, a marshal, and a district attorney of the United States shall be appointed by the President, by and with the advice and consent of the Senate, with the same rights, powers and duties as provided by law for similar officers in the other districts, except as herein otherwise provided; that said district of Idaho shall be attached to and constitute a part of the ninth judicial circuit; and a term of the circuit court and district court for said district shall be held at the seat of government in the said State on the first Tuesdays in January and June of each year, and one grand jury and one petit jury only shall be summoned and serve in both of said courts.

SEC. 10. That the circuit and district courts for the district of Idaho, and the judges thereof, respectively, shall possess the same powers and jurisdictions and perform the same duties possessed and required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations.

SEC. 11. That the district judge appointed for the district of Idaho shall receive as his compensation the sum of three thousand five hundred dollars per annum, payable in four equal installments, on the first days of January, April, July and October of each year.

SEC. 12. That the marshal, district attorney and clerk of the circuit and district courts of said district of Idaho, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation allowed by law in the State of Oregon to other similar officers and persons performing similar duties.

SEC. 13. That all cases of writ of error or appeal heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of the Territory of Idaho, or that hereafter may be lawfully prosecuted from either of said courts, may be heard and determined by said Supreme Court of the United States; and where the same arose within the limits of said State, the mandate of execution or of further proceeding shall be directed by the Supreme Court of the United States to the circuit or district court herein provided for, or to the supreme court of said state, as the nature of the case may require; and each of said last mentioned courts shall be the successor of the supreme court of said Territory as to all such cases, with full power to proceed with the same and to award mesne or final process therein; and that from all judg-

ments and decrees of the supreme court of said territory, rendered prior to the admission of said state, the parties to such judgments and decrees shall have the same right to prosecute writs of error and appeals to the Supreme Court of the United States as they shall have had prior to such admission; and as to all such cases arising within the limits of said State, the like subsequent proceedings shall be had therein as aforesaid.

SEC. 14. That in respect to all cases, proceedings, and matters pending in the supreme or district courts of the Territory of Idaho, at the time of the admission of said State into the Union, arising within the limits of said State, whereof the circuit or district court by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and all files, records, indictments and proceedings relating thereto shall be transferred to said circuit and district courts, respectively, and the same shall be proceeded with therein in due course of law: *Provided, however,* That in all civil actions, causes and proceedings in which the United States is not a party, such transfer shall not be made except upon the written request of one of the parties to such action or proceeding filed in the proper court.

SEC. 15. That the legislature provided for in said constitution shall have the power to provide by an act to that effect, for the transfer of all actions, cases, proceedings and matters pending in the supreme or district courts of the Territory of Idaho, at the time of the admission of said State into the Union, arising within the limits of said State, and not included within the provisions of the foregoing section, to such courts as shall be established under the constitution to be thus formed; and no indictment, action, or proceeding shall abate by reason of any change in the courts, but the same shall be transferred to and proceeded with in the State courts according to the laws thereof.

SEC. 16. That Sections 16 and 36 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 of 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, other lands equivalent in quantity thereto, in legal subdivisions of not less than forty acres, to be selected within said State as the constitution and legislature thereof may provide, with the approval of the Secretary of the Interior, are

hereby granted to said State, when admitted, for school purposes.

SEC. 17. That the grant of five hundred thousand acres of unappropriated lands of the United States made to said State, on its admission, by the provisions of section twenty-three hundred and seventy-eight of the Revised Statutes of the United States, may be used for school purposes; and said land shall be selected within said State as provided in the preceding section of this act.

SEC. 18. That one hundred other sections of the unappropriated non-mineral public lands of the United States within said State, to be so selected as aforesaid, are hereby likewise granted to said State for the use and support of an agricultural college and for the promotion of industrial science therein.

SEC. 19. That eighty other sections of such lands, to be selected as aforesaid, are hereby likewise granted to said State for the erection and maintenance of suitable public buildings at the seat of government thereof when permanently located, for legislative, executive, and judicial purposes.

SEC. 20. That twenty-five other sections of such lands, to be selected as aforesaid, are hereby likewise granted to said State for the erection of a State penitentiary therein.

SEC. 21. That twenty other sections of such land, to be selected as aforesaid, are hereby likewise granted to said State for the erection of an asylum for the insane therein.

SEC. 22. That the lands granted to the Territory of Idaho by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Idaho and Wyoming for university purposes," so far as the same have been selected and located in said territory, shall, under the provisions and limitations of said act, be vested in the proposed State of Idaho: *Provided,* That none of said lands shall be sold for less than eight dollars per acre. And such portions of said lands as have been selected and located within the bounds of the Territory of Idaho shall be vested in said State of Idaho, subject also to the limitations of said act of February eighteenth, eighteen hundred and eighty-one. And there is hereby granted to said State of Idaho so much of the public lands in said State selected under said act of February eighteenth, eighteen hundred and eighty-one, as will give the full amount of seventy-two entire sections, all of which shall be held and used in accordance with the provisions of the act aforesaid.

SEC. 23. That twenty-five percentum of the net proceeds of the sales of public lands lying within said State shall be paid to said State for school purposes.

SEC. 24. That the lands granted by the preceding section of this act shall not be sold for less than eight dollars per

acre, and the proceeds of those granted for school purposes as well as all moneys paid to said State under the provisions of the preceding section, shall constitute a permanent fund, the interest only of which shall be expended for the support of the public schools therein. But any of said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than fifteen years in quantities not exceeding one section to any one person or company.

SEC. 25. That to enable the said State of Idaho to assist in the construction of ditches, dams, flumes, and other works for the reclamation of lands within the State that will not produce an agricultural crop without artificial irrigation, six million acres of said lands are hereby granted to the said State: *Provided*, That said lands shall be selected within six years after the admission of the State: *Provided further*, That the said lands hereby granted shall only be disposed of by the said State after their reclamation, or on such terms as will insure their reclamation, and the said State shall not part with its title to any tract of said lands until the reclamation of such tract is complete. Said lands shall be selected under such rules and regulations as may be prescribed by the Secretary of the Interior, conforming as near as may be to the laws now in force for the selection of swamp lands under the act of Congress granting swamp lands to the several States, approved the twenty-eighth of September, eighteen hundred and fifty, and act amendatory thereto.

SEC. 26. That all mineral lands shall be excepted from the operation of any grants of this act, and the lands selected under this act shall not be taken in tracts containing less than one quarter-section: *Provided*, That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, and as contiguous as may be to each, shall be granted to said State for its use, said lands to be selected by the governor of said State within two years after the admission of the State, and when so selected to be used and disposed of on such terms, conditions, and regulations as the legislature shall direct.

SEC. 27. That the Secretary of the Treasury shall ascertain and audit the expenses incident to the formation of said constitution and the submission of the same to the people of said proposed State, including such compensation to the officers and members of said convention as is allowed to the officers and members of the Territorial legislature; and the sum of thirty-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the payment thereof: *Provided*, That any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States. *That the inhabitants of all that part of the area of the United*

States now constituting the Territory of Idaho, as at present described may become the State of Idaho, as hereinafter provided.

SEC. 2. *That all persons who are qualified by the laws of said Territory to vote for representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form a convention in said proposed State; and the qualifications for delegates to such convention shall be such as by the laws of said Territory persons are required to possess to be eligible to the legislative assembly thereof; and the aforesaid delegates to form said convention shall be apportioned within the limits of the proposed State in such districts as may be established as herein provided, in proportion to the population in each of said districts, as near as may be, to be ascertained at the time of making said apportionment by the persons hereinafter authorized to make the same, upon the basis of the votes cast for Delegate to Congress at the last general election, in each of which districts the number of delegates apportioned to such district shall be elected. That said apportionment shall be made by the governor, the chief justice, and the secretary of said Territory; and the governor of said Territory shall, by proclamation, order an election of the delegates aforesaid to be held on the second Monday in July, eighteen hundred and eighty-nine, which proclamation shall be issued on the first Monday in June, eighteen hundred and eighty-nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said Territory regulating elections therein for Delegate to Congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said convention shall be fifty-five, and all persons resident in said proposed State who are qualified voters of said Territory, as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said convention may prescribe, not in conflict with this act, upon the ratification or rejection of the constitution.*

SEC. 3. *That the delegates to the convention elected as provided in this act shall meet at the seat of government of said Territory on the first Monday in September, eighteen hundred and eighty nine, and, after organization, shall declare, on behalf of the people of said proposed State, that they adopt the Constitution of the United States; whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color except as to Indians*

not taxed, and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinances irrevocable without the consent of the United States and the people of said State,

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to the citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, nor in the ordinances herein provided for, shall preclude the said State from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territory shall be assumed and paid by said State.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said State and free from sectarian control.

SEC. 4. *That if the proposed State shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the Territory shall issue his proclamation reconvening the delegates elected to the convntion which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to*

amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

SEC. 5. *That the constitutional convention shall provide in like manner for submitting the constitution formed by it to the people of said proposed State, for ratification or rejection, at an election to be held in said proposed State on the rst Tuesday in November, eighteen hundred and eighty-nine. At the election provided for in this section the qualified voters of said proposed State shall vote directly for or against the proposed constitution and for or against any articles or proposition separately submitted. The returns of said election shall be made to the secretary of said Territory, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the President of the United States, together with a statement of the votes cast thereon ana upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances.*

SEC. 6. *That until the next general census, or until otherwise provided by law, said State shall be entitled to one Representative in the House of Representatives of the United States, and the Representative to the Fifty-first Congress, together with the governor and other officers provided for in said constitution, may be elected on the same day of the election for the ratification or rejection of the constitution; and until said State officers are elected and qualified under the provisions of such constitution and the State is admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in the said Territory.*

SEC. 7. *That upon the admission of said State into the Union, sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter-section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be*

subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of, the public domain.

SEC. 8. *That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But such lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such lands shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.*

SEC. 9. *That upon the admission of said State into the Union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said State, to be selected and located in legal subdivisions as provided in section seven of this act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State, for legislative, executive, and judicial purposes.*

SEC. 10. *That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.*

SEC. 11. *That the lands granted to the Territory of Idaho by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the State of Idaho if such State is admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two section to said State, and any portion of said lands that may not have been selected by said Territory of Idaho may be selected by the said State; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said State and the income thereof be used exclusively for university purposes. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said State,*

and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university.

SEC. 12. *That the penitentiary at Boise City, Idaho, and all lands connected therewith and set apart and reserved therefor and unexpended appropriations of money therefor, are hereby granted to the State of Idaho.*

SEC. 13. *That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to said State for the use and support of an agricultural college in said State as provided in the acts of Congress making donations of land for such purposes.*

SEC. 14. *That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the State of Idaho, and in lieu of any claim or demand by the said State, under the act of September twenty-eighth, eighteen hundred and fty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the State of Idaho, and in lieu of any grant of saline lands to said State, the following grants of land are hereby made, to-wit:*

To the State of Idaho: For the establishment and maintenance of a scientific school, one hundred thousand acres; for State normal schools, one hundred thousand acres; for State charitable, educational, penal, and reformatory institutions, three hundred thousand acres. None of the lands granted by this act shall be sold for less than ten dollars per acre.

SEC. 15. *That the State of Idaho shall not be entitled to any further or other grants of land for any purposes than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislature of the State may provide.*

SEC. 16. *That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or any portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State, in lieu thereof for the use and the benefit of the common schools of said State.*

SEC. 17. *That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropri-*

ated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects.

SEC. 18. *That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to said Territory for defraying the expenses of said convention and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the Treasury of the United States.*

SEC. 19. *That the said State, when admitted as aforesaid, shall constitute a judicial district, the name thereof to be the same as the name of the State; and the circuit and district courts therefor shall be held at the capital of the State for the time being; and the said district shall, for judicial purposes, until otherwise provided, be attached to the ninth judicial district. There shall be appointed for said district one district judge, one United States attorney, and one United States marshal. The judge of said district shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said State. The regular terms of said courts shall be held in said district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for said district, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district courts of said district, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully posessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Oregon.*

SEC. 20. *That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United*

States upon any record from the supreme court of said Territory, or that may hereafter lawfully be prosecuted upon any record from said courts, may be heard and determined by said Supreme Court of the United States. And the mandate of execution or further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the said State from or to the Supreme Court of such State, as the nature of the case may require. And the circuit, district and State courts, herein named, shall, respectively, be the successors of the supreme court of the Territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the Supreme Court of the Territory mentioned in this act, in any case arising within the limits of the proposed State prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said State into the Union.

SEC. 21. *That in respect to all cases, proceedings and matters now pending in the supreme or district courts of the said Territory at the time of the admission into the Union of the State of Idaho and arising within the limits of such State, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other cases, proceedings, and matters pending in the supreme or district courts of the said Territory at the time of the admission of such Territory into the Union, arising within the limits of said proposed State, the courts established by such State shall, respectively, be the successors of said supreme and district Territorial courts; and all files, records, indictments, and proceedings relating to any such cases shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of the State shall be pending, in any Territorial court in said Territory shall abate by the admission of such State into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district, or State court, as the case may be: Provided, however, That in all civil actions, causes and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon written re-*

quest of one of the parties to such action or proceeding led in the proper court; and in the absence of such request, such cases shall be proceeded with in the proper State courts.

SEC. 22. *That the constitutional convention may, by ordinance, provide for the election of officers for full State government, including members of the legislature and Representative in the Fifty-first Congress; but said State government shall remain in abeyance until the constitution framed by said convention and ratified by the people shall have been approved and said State admitted into the Union by Congress. In case the constitution of said proposed State shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two Senators of the United States; and the governor and secretary of state of such proposed State shall certify the election of the Senators and Representative in the manner required by law, and when such State is admitted into the Union, the Senators and Representative shall be entitled to be admitted to seats in Congress, and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State government formed in pursuance of said constitution as provided by the constitutional convention, shall proceed to exercise all the functions of said State officers; and all laws in force made by said Territory, at the time of its admission into the Union, shall be in force in said State, except as modified or changed by this act or by the constitution of the State.*

SEC. 23. *That all acts or parts of acts in conflict with the provisions of this act, whether passed by a legislature of said Territory or by Congress, are hereby repealed.*

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