The CHAIR. If there is no objection it will be granted.

Mr. LEWIS. Mr. W. H. Savidge was unexpectedly called away this evening upon a telegram, and requested me to ask for leave of absence until Monday morning for him.

The CHAIR. There being no objection, it is so ordered.

JOINT MEETING OF COMMITTEES.

The CHAIR. I would like to ask, in connection with this matter that came up, as to whether the chairmen of the committees on Irrigation and Mines and Mining can get their committees in joint session about 8:00 o'clock tonight.

Mr. CRUTCHER. So far as the committee on Mines and Mining, I will try to have what members are here present at that time.

Mr. CAVANAH. The committee on Agriculture and Irrigation will meet if I can get them together, at the same time with the committee on Mines, at 8.00 o'clock this evening, in the library rooms.

The CHAIR. It is moved and seconded that the convention now adjourn until ten o'clock tomorrow morning. (Carried).

THIRTEENTH DAY.

FRIDAY, *July 19, 1889.*

CONVENTION called to order by the President at 10:00 A. M.

Prayer by Chaplain.

ROLL CALL. Present: Messrs. Ainslie, Allen, Anderson, Andrews, Armstrong, Ballentine, Batten, Beatty, Bevan, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Gray, Hagan, Hammell, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, May-

hew, McConnell, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Sinnott, Shoup, Standrod, Steunenberg, Taylor, Underwood, Whitton, Wilson, Woods, Mr. President.

Absent: Messrs. Blake, Harkness, Harris, Sweet, Robbins, Hendryx, Parker.

Excused: Messrs. Beane, Crook, Glidden, McMahon, Stull, Savidge, Vineyard.

JOURNAL read.

The CHAIR. Are there any corrections of the Journal?

Mr. LEMP. Mr. President, the committee on Finance, I believe Mr. McConnell is chairman of it, and I see in the minutes that Mr. Harkness is first, but I believe Mr. McConnell was appointed first.

The CHAIR. The secretary will correct the record.

Mr. BATTEN. I desire to call attention to a motion in the Journal. It does not appear that the resolution of Mr. McConnell touching the question of privilege raised by the gentleman of Boise was adopted, whereas in fact it was adopted.

The CHAIR. The secretary will correct the Journal accordingly. If there are no further corrections, the Journal of yesterday will be deemed correct.

Presentations of Petitions and Memorials? None. Reports of Standing Committees?

Mr. POE. The committee on Salaries of Public Officials will report.

COMMITTEE REPORT—SALARIES.

SECRETARY reads: Boise City, Idaho, July 19, 1889. Mr. President and Members of the Constitutional Convention of Idaho Territory: Your committee on Salaries of Public Officers respectfully submit the following report. J. W. Poe, Chairman.

The CHAIR. The reports will lie upon the table to be printed. Reports from special committees? None. Final readings? None. Gentlemen, we have finished the regular order of business for the day.

Mr. WILSON. I move that this convention resolve itself into a committee of the Whole for the purpose of considering the general orders of the day. (Seconded and carried).

The CHAIR. Will the gentleman from Custer take the chair?

Mr. SHOUP. I beg to be excused.

The CHAIR. Will the gentleman from Shoshone take the chair?

COMMITTEE OF THE WHOLE.

10:30 A. M.

Mr. MAYHEW in the Chair.

ARTICLE I., SECTION 14.

The CHAIR. Gentlemen, when the committee rose yesterday evening, we had under consideration Sec. 14 of the Bill of Rights.

Mr. STANDROD. I desire to ask leave to withdraw the substitute which was offered by me yesterday. I will state that it was recommended on yesterday afternoon that the two committees on Irrigation and Mining meet in joint committee, and prepare, if possible, some section as a substitute for Sec. 14 of this Bill of Rights. Those committees have met in joint committee, and have a substitute this morning to offer instead of the one offered by me on yesterday; and for that reason I desire to withdraw the substitute offered.

The CHAIR. If there is no objection the substitute may be withdrawn.

Mr. MORGAN. I would like to hear the substitute before the pending substitute is withdrawn.

Mr. STANDROD. I will present it.

SECRETARY reads: "Section 14. The use of lands necesary for the construction of reservoirs, or storage basins for the purpose of irrigation, or for rights of way across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use, for any useful or beneficial purpose or for

drainage, or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use.

"Private property may be taken for a public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."

The CHAIR. If there is no objection, the substitute just read is substituted for the one withdrawn. There was another amendment, you will recollect, also sent up by Mr. Heyburn.

Mr. HEYBURN. Mr. Chairman, the amendment sent up yesterday by myself applies to the portion of the section that is not included in that substitute; as I understand it, that substitute is for the first portion of the section.

Mr. CLAGGETT. The substitute is for the entire section.

The CHAIR. Is the substitute now offered a substitute for the entire section?

Mr. STANDROD. Yes, sir.

The CHAIR. If there is no objection, the substitute offered by the gentleman yesterday, Mr. Standrod, will be withdrawn. What is the pleasure of the committee? It is now necessary to move the adoption of this substitute as the other is withdrawn.

A MEMBER. I move the adoption of the substitute just as read. (Seconded).

The CHAIR. It is moved and seconded that the——

Mr. STANDROD. Mr. Chairman——

Mr. REID. I would like to have the substitute read once more.

SECRETARY reads.

Mr. STANDROD. Mr. Chairman, the objections that have been made against this section in this article

of the Bill of Rights, as well as many other sections, seem to arise from the gentlemen who claim that these sections are in conflict with the Fifth and Sixth Amendments to the Constitution of the United States. And even the lawyers in this convention seem to differ—they are at variance upon this question—and for the benefit of the convention and members here who are not lawyers, and in order to refute the charges made against the committee on yesterday, intimating it was bringing in something that was unheard of and unconstitutional, I have taken some pains to examine authorities upon this question and I desire to read from decisions of the Supreme Court of the United States. I am aware that my time is short in reference to this, and I will have to read only certain clauses of these decisions. I read from the case of Twitchell v. The Commonwealth of Pennsylvania, decided in 7th Wallace, 321. It was a motion for a writ of error, and the court says this:

"It is claimed that the writ should be allowed upon the ground that the indictment, upon which the judgment of the State court was rendered, was framed under a statute of Pennsylvania in disregard of the 5th and 6th Amendments of the Constitution of the United States, and that this statute is especially repugnant to that provision of the 6th Amendment which declares 'that in all criminal prosecutions the accused shall enjoy the right' 'to be informed of the nature and cause of the accusation against him.'

The statute complained of was passed March 30, 1860, and provides that 'in any indictment for murder or manslaughter it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused; but it shall be sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully, and of malice aforethought, kill and murder the deceased; and it shall be sufficient, in any indictment for manslaughter, to charge that the defendant did feloniously kill the deceased.'

"We are by no means prepared to say, that if it were an open question whether the 5th and 6th Amendments of the Constitution apply to the state governments, it would not be our duty to allow the writ applied for and hear argument on the question of repugnancy. We think, indeed, that it would. But the scope and application of these amendments are no longer subjects of discussion here,

"In the case of Barron v. The City of Baltimore, (7 Peters, 243) the whole question was fully considered upon a writ of error to the Court of Appeals of the State of Maryland. The error alleged was, that the state court sustained the action of the defendant under an act of the state legislature, whereby the property of the plaintiff was taken for public use in violation of the 5th Amendment. The court held that its appellate jurisdiction did not extend to the case presented by the writ of error; and Chief Justice Marshall, declaring the unanimous judgment of the court, said:

'The question presented is, we think, of great importance, but not of much difficulty. . . . . The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on the government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and we think necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes."

"And, in conclusion, after a thorough examination of the several amendments which had then (1833) been adopted, he observes:

'These amendments contain no expression indicating an intention to apply them to state governments. This court cannot so apply them.'

"And this judgment has since been frequently reiterated, and always without dissent.

"That they 'were not designed as limits upon the state governments in reference to their own citizens,' but 'exclusively as restrictions upon Federal power,' was declared in Fox v. Ohio, to be 'the only rational and intelligible interpretation which these amendments can have.' And language equally decisive, if less emphatic, may be found in Smith v. The State of Maryland, and Withers v. Buckley and others.

"In the views thus stated and supported we entirely concur. They apply to the sixth as fully as to any other of the amendments."

I also read from Book 15, page 269, (Smith v. Mary-

land). This case arose upon the power of the state of Maryland to enact laws relating to oyster taking on the coast there. It was claimed it was unconstitutional because Congress had the right to enact laws relating to commerce, and it was further upon the question as to whether the warrant issued out of the state court was defective:

"So far as it rests on the constitution of the state, the objection is not examinable here, under the 25th section of the Judiciary Act. If rested on that clause in the Constitution of the United States which prohibits the issuing of a warrant, but on probable cause supported by oath, the answer is, that this restrains the issue of warrants only under the laws of the United States, and has no application to state process."

Further on in the case of Withers v. Buckley, (the same book, page 816) the question arose in regard to an act passed by the legislature of Mississippi regulating and defining the powers of the commissioners of Homochitto River. They say this in conclusion:

"The Act of the Legislature of Mississippi, therefore, is strictly within the legitimate and even essential powers of the state, is in violation of neither the Constitution nor laws of the United States, and presents no conjecture or aspect by which this court would be warranted to supervise or control the decree of the High Court of Errors and Appeals of Mississippi."

In the case of Fox v. The State of Ohio a woman was indicted there under the state criminal law for issuing counterfeit money and was tried and found guilty. (Book 12, page 222):

"It would follow from these views, that if within the power conferred by the clauses of the Constitution above quoted can be drawn the power to punish a private cheat effected by means of a base dollar, that power certainly cannot be deduced from either the common sense or the adjudicated meaning of the language used in the Constitution, or from any apparent or probable conflict which might arise between the federal and state authorities, operating each upon these distinct characters of offense. If any such conflict can be apprehended, it must be from some remote, and obscure, and scarcely comprehensible possibility, which can never constitute an objection to a just and necessary state power. . . . . It has been objected on behalf of the plaintiff in error, that if the states can inflict penalties for the offense of passing base coin, and the federal government should denounce a penalty against the same act, an individual under these separate jurisdictions might be liable to be twice punished for the one and the same crime, and that this would be in violation of

the fifth article of the amendments to the Constitution, declaring that no person shall be subject for the same offense to be twice put in jeopardy life or limb. Conceding for the present that Congress should undertake, and could rightfully undertake, to punish a cheat perpetrated between citizens of a state because an instrument in effecting that cheat was a counterfeited coin of the United States, the force of the objection sought to be deduced from the position assumed is not perceived; for the position is itself without real foundation. The prohibition alluded to as contained in the amendments to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the state governments in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the states, and of their citizens. Such has been the interpretation given to those amendments by this court, in the case of Barron v. The Mayor and City Council of Baltimore (7 Peters, 243); and such, indeed, is the only rational and intelligible interpretation which those amendments can bear, since it is neither probable nor credible that the states should have anxiously insisted to engraft upon the federal Constitution restrictions upon their own authority—restrictions which some of the states regarded as the *sine qua non* of its adoption by them. It is almost certain, that, in the benignant spirit in which the institutions both of the state and federal systems are administered, an offender who should have suffered the penalties denounced by the one would not be subjected a second time to punishment by the other for acts essentially the same, unless, indeed, this might occur in instances of peculiar enormity, or where the public safety demanded extraordinary rigor. But were a contrary course of policy and action either probable or usual, this would by no means justify the conclusion, that offenses falling within the competency of different authorities to restrain or punish them would not properly be subjected to the consequences which these authorities might ordain and affix to their perpetration. The particular offense described in the statute of Ohio, and charged in the indictment against the plaintiff in error, is deemed by this court to be clearly within the rightful power and jurisdiction of the state. So far, then, neither the statute in question, nor the conviction and sentence founded upon it, can be held as violating either the Constitution or any law of the United States made in pursuance thereof."

I just have a short decision that I desire to refer to and then I am through—delivered by Mr. Justice Marshall, found in Book 8, page 674; it is the case referred to in the first decision I read: (Barron v. Mayor).

"The plaintiff in error contends that it comes within that clause in the fifth amendment to the Constitution which inhibits the taking of private property for public use without just compensation. He insists that this amendment, being in favor of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a state, as well as that of the United States. If this proposition be untrue, the court can take no jurisdiction of the cause."

The court goes on further and says:

"Had the people of the several states, or any of them, required changes in their constitutions; had they required additional safeguards to liberty from the apprehended encroachments of their particular governments, their remedy was in their own hands, and would have been applied by themselves. A convention would have been assembled by the discontented state, and the required improvements would have been made by itself. The unwieldy and cumbersome machinery of procuring a recommendation from two-thirds of Congress and the assent of three-fourths of their sister states, could never have occurred to any human being as a mode of doing that which might be effected by the state itself. Had the framers of these amendments intended them to be limitations on the powers of the state governments they would have imitated the framers of the original constitution and have expressed that intention. Had Congress engaged in the extraordinary occupation of improving the constitutions of the several states by affording the people additional protection from the exercise of power by their own governments in matters which concerned themselves alone, they would have declared this purpose in plain and intelligible language.

"But it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments.

"In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in Congress, and adopted by

the states. These amendments contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them.

"We are of opinion that the provision in the fifth amendment to the Constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the states."

Is my time up?

The CHAIR. No, you have two minutes.

Mr. STANDROD. Now I desire to add that this question is absolutely settled. There certainly can arise no dispute over this question if gentlemen here will undertake to examine the authorities and the settled lay of the land. The section we now present before this convention is a section, while it guards to a certain extent the taking of private property, declares in those instances that we all admit and agree are necessary—that in those instances and in those alone private property shall be taken for public use; and it defines what a public use is. It certainly will not be contended that this convention has not the power—that the state has not the power to prescribe or define what a public use is, and that it is not in conflict with the Constitution of the United States. We have made this definition in this section in order to settle this question and prevent wrangling over it in the courts, because when these questions come up the first opposition we meet with is that it is unconstitutional, it is not a public use, and the court must say what a public use is. Now in order to settle that question and prevent wrangling over it we define what it is, limiting it of course all the way along to those interests that we all see exist in this arid country. And there is nothing in it, it seems to me that is objectionable to any man here that is interested in the welfare and the development of this state. I submit, Mr. Chairman, that the objection that the gentleman raised yesterday that it was in conflict with the amendments or with the Constitution of the United

States certainly should be settled by the decisions I have just read, and if these gentlemen will take the time to examine they will find they are squarely in point, or as the expression goes, are "on all fours," and entirely put that question to rest.

Mr. HEYBURN. Mr. Chairman, I desire to ask that I may take the bill for the purpose of considering the amendment proposed. I agree with the gentleman who has just addressed the convention that it is within the power of the convention to adopt such a provision as this, but we must be careful that we do not limit it to a particular class of uses to the exclusion of others. It struck me in the reading of it by the clerk—I may have been mistaken, not having the bill before me—that it discriminates to some extent in favor of agriculture in this first clause, and I have prepared an amendment which I will send up as soon as I am through with my remarks. (Reading from copy of Mr. Standrod's substitute): "The use of lands necessary for the construction of reservoirs or storage basins for the purpose of irrigation or for rights of way across such lands for the construction"—now I would suggest striking out the word "such" so that it will read: "The right of way across any lands for the construction of canals, ditches, flumes or pipes to convey water," because that would mean all such lands as are referred to in the first portion of this proposed amendment, and in mining operations it is necessary also to construct ditches and flumes across lands for the purpose of conveying water, for the purpose of power and the business of mining in many ways, and it struck me that was limited to the use of agricultural lands to the exclusion of mining. I will proceed: "Across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use;" that is, that would be across agricultural lands because they are referred to. "For any useful or beneficial purpose or for drainage, or for the drainage of mines or for the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts,

hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state." That would not seem to permit the construction of canals across mining lands or lands other than agricultural, because there is nothing in these subordinate provisions that pertain to the construction of ditches. There is no mention among the mining uses. I will send up an amendment that I think will cover that; to amend by striking out the word "such" in the fourth line; then also in regard to this clause that "private property may be taken for a public use, but not until a just compensation to be ascertained in the manner prescribed by law shall be paid therefor." I think that should be amended by adding the words, "or deposited in court under such conditions as the court may prescribe," because as it stands now, that in effect would take away the party's right of appeal, and I think this, with these amendments, will cover the interests of mining.

The CHAIR. Is the amendment offered by the gentleman from Shoshone supported?

Mr. CLAGGETT. Mr. Chairman, the substitute which has been offered by the committee on Bill of Rights—speaking for Mr. Standrod—has been very carefully considered by three of the standing committees of this convention, constituting almost a majority of the convention. We got the members together, and those members have considered this matter. Not all of them on the committee on Bill of Rights, but all of them on the two committees on Mines and Mining and on Irrigation. The language which is here reported has been very carefully considered; it covers in my judgment every conceivable interest which should be mentioned in the constitution, and I trust that in a matter of this kind we will not undertake to mutilate it by words which are not necessary, or through adopting the special ideas as to phraseology of any gentleman upon the floor. I read again: "The use of lands necessary." Those are

the "such lands" as are referred to all through the section. "Such lands as are necessary" to be taken for these special purposes. "The use of lands necessary for the construction of reservoirs or storage basins for the purpose of irrigation;" that is, to cover the case of utilizing the large surplus flow of water in the spring, and where the state or large companies or corporations or individuals may desire to build reservoirs or storage basins above the place where water is to be used for irrigating purposes. I read again: "The use of lands necessary for the construction of reservoirs, or storage basins for the purpose of irrigation or for rights of way across such lands;" that is, such lands as are necessary for this purpose. "For the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose or for drainage."

Mr. REID. Will the gentleman allow me now to ask whether under that clause: "for any useful or beneficial purpose," you can do that for any other purpose except irrigating and mining?

Mr. CLAGGETT. Certainly; it was intended to cover all cases which are now recognized by law.

Mr. REID. Then as I understand the proposition, its effect is that private property can be taken for any purpose whatever, just so that it is considered useful or beneficial.

Mr. CLAGGETT. No sir, if the gentleman will wait until I get through. "The construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, or for drainage;" that is, a right of way across lands for the purpose of draining swamps or anything of that sort, "or for the drainage of mines or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or any other necessary means for their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, it is hereby declared to be a

public use. Private property may be taken for a public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."

Mr. Chairman and gentlemen of the convention, we have got rid, I hope, of the bugbear which embarrassed us yesterday in regard to the limitations upon our action here. The fact of the matter is that we old timers have lived so long in these territories that we have practically forgotten the tremendous power of a state government. We have been in leading strings so long that now when we represent the people of the state, subject to their ratification of this constitution which we are preparing, when the people of this state is a sovereign power, armed with all the powers which the state of New York or any other state has, we are met here on yesterday by these ideas which prevailed and which belong to the territorial condition, and which have no reference whatever to our condition as a state. A state possesses the power of eminent domain; a state is a sovereign with the exception of such limitations as are contained in the Constitution of the United States and the national character of the few prohibitions which are specifically there laid upon state action. With these exceptions and limitations the state is a sovereign power, which is possessed of the same degree of power as the most despotic nation on this earth. It may take the private lands of individuals for public use without compensation; that is the original theory of the law of eminent domain. We are inquiring here, not whether we would not have the power to do it, but we are inquiring here to what extent will we exercise this power, and what limitations will we put upon this action of the state. And the resolution which has been reported provides that the uses of lands for these necessary purposes are hereby declared to be public uses, and as such may be condemned in the manner provided by law. That is the substance of it. Are we going to create a state government here and act on the theory that we are nothing but a corporate body, deriving all

the powers we have from a legislative act? I apprehend not. Will my friend from Nez Perce say, for instance, that where it is necessary to subject private lands to uses of this kind, necessary to subject them to the purpose of building reservoirs and irrigating large sections of country, or building storage basins, that it is not a public use in the very nature of things? Will my friend from Nez Perce go so far as to say that the use of facilities for mining and the complete development of mining property is not a public use? Will he go so far as to say that the power to preserve the welfare of the inhabitants of the state by subjecting private property on the payment of compensation to public use, is not a public use, or any other use which is necessary for the complete development of the material resources of the state? I apprehend not.

Now, Mr. Chairman, every one of these provisions is taken in substance or in spirit from three sources: One is the theory which was adopted by the constitution of the state of California,[1] and which was reported with reference to the use of water by the report of the entire committee. The other was taken with regard to mines from the act of Congress, providing that in the absence of legislation by Congress the local legislature may provide rules for the regulating of mines, involving easements and all other means necessary to their complete development.[2] The language was almost copied. And the third source of information drawn on here is from the oldest territorial statute passed some twenty-three years ago, and under which we have been operating very beneficially, but our friends have never discovered the existence of this statute.[3]

---

[1]—Sec. 1, Art. 14, Cal. Const. 1879.

[2]—Sec. 5, 14 U. S. Stat. at Large, p 252.

[3]—Possibly referring to Sec. 2 of an act passed in 1864, regarding location of quartz claims; 1st Terr. Sess. Laws, p. 577. But see also the early Nevada statute, entitled; "Condemnation of Property for Mining Purposes," enacted Mar. 3, 1866; Sess. Laws 1866, p. 196; Comp. Laws of Nevada, 1873, Sec. 120. Mr. Claggett was living in Nevada at the time that statute was passed.

Now, I do not think that the amendment offered by Mr. Heyburn with regard to the court has anything to do with it. The committees who have considered this matter have suggested this substitute which has simply defined and declared—or rather has simply declared what shall be considered public uses, and then the machinery for the execution of any public use is left entirely to the legislature. Now let me illustrate; I may run over my time a minute.

The CHAIR. No, sir, you have a few minutes left.

Mr. REID. I ask unanimous consent that the gentleman may finish his argument. I think the matter should be discussed fully.

Mr. CLAGGETT. Now, the great trouble——

Mr. MORGAN. One of the principal purposes of this section is to permit private property to be taken for individual use, and yet that is not expressed anywhere in the section. Do you think it is sufficiently expressed?

Mr. CLAGGETT. It is not intended for any such purposes whatever. It is intended to be taken for public use, but the sovereign power of the state declares what shall be considered public uses, extending to everything which is necessary to the complete development of the material resources of the state or the preservation of the welfare of its inhabitants. Now let us see. We very frequently get into trouble by not carrying a proposition in our minds far enough. Let me inquire for a moment as to what this talk means about taking private property for public use. Let me ask my friend from Bingham whether he will not admit that if the legislature of the state should undertake to grant a right of way across private lands for the purpose of constructing a railroad, would not that be subjected to a public use?

Mr. MORGAN. Yes.

Mr. CLAGGETT. Why? Do you not take from the farmer over which that right of way is granted the use of these lands and give it to a private corporation?

Mr. HAGAN. No.

Mr. CLAGGETT. I beg your pardon, you do. You give the use to the private corporation, to the railroad company. Why do you do it, and yet you call it a public use? Why? Because it is necessary that it shall be subjected to the uses of a private corporation in order that the public may be benefited thereby. That is the point.

Mr. REID. Will the gentleman allow me to ask him what becomes of the right of eminent domain?

The CHAIR. The gentleman has been talking ten minutes.

Mr. REID. I ask unanimous consent that he be allowed to proceed.

Mr. CLAGGETT. My friend from Kootenai says no. I reiterate my statement that it does. The corporate authorities, in the case I have supposed, are treated as the agents of the state, in declaring a public use through the agents of the state, who proceed to apply it to the greatest interest of the people under the laws provided for that purpose, not of declaring it a public use, but of condemning it for public purposes. That is the theory, but as a matter of fact the lands of the private citizen—the use of the lands, not the lands themselves, for the lands continue the property of the farmer in the case I have put; the use of the lands is taken away from the farmer so far as the use of them would interfere in any way with the use of the railroad corporation in them, and transferred to the corporation itself. Now I ask, does not that meet all this talk with regard to the question of taking private property for private use? In other words, there is only one way in which you can take private property for public use; I do not except that where the state itself has proceeded to build its own railroads, and then the state itself would own the right of way instead of the corporation owning it. Now if that is true with reference to railroad corporations—I have taken this for the purpose of illustration because all concede that—what is the

difference between that and the case which was put here with regard to these other matters? Here is a farmer who has a piece of land; it is necessary that a reservoir should be built upon that land. Therefore a corporation, I will say a water company, a corporation is organized for the purpose of constructing a large reservoir or canal, and that corporation under the same power as is here given to a railroad company for a right of way, comes in and subjects the land of private persons to this easement or servitude called a use, and although taken for public purposes, for the public benefit, it is practically turned over and transferred to the corporation, and I say the proposition cannot be successfully denied. Now what is the test as to what is a public use? I am not now speaking of that by legislative enactment, but the test in the very nature of the thing. Why is it a public use to take a man's land and give the use of it to a railroad corporation for transporting passengers? Is it because of the man's wealth? Not at all. Is it because all men may ride on it as they choose? Not at all. It is because thereby the public interests will be provided for and the public benefit secured; that is the legal principle that underlies the whole question of public use, and will anyone say that the subjection of a piece of land for the right of way of a railroad company for one public purpose, or for the purpose of public benefit, is of any higher degree of benefit than it would be to subject the land to the easements provided for here, for the purpose of irrigating a large section of the state, and enabling hundreds of thousands and millions of people to live while there are now one to the square mile? It is absolutely necessary that these public interests should be guarded, provided for, and the declaration made that they are for public uses.

Mr. Chairman, in conclusion I simply want to say this, that nowhere here in this provision is there a taking of any private property for anybody's private benefit. It is simply the subjection of private property to public control, in the interest and for the purpose of promoting

the development of the state and securing the welfare of its people; that is all.

Mr. BEATTY. I would like to ask the gentleman a question before he takes his seat. I would like to ask if under the provisions of that amendment one farmer can run his irrigating ditch across another farmer's land?

Mr. MORGAN. By making compensation he can.

Mr. CLAGGETT. That depends entirely with regard to what the legislature may say. If it does not take action the power is not conferred; if the legislature leaves it out, he cannot. The machinery of the whole thing is left to the legislature.

Mr. BEATTY. Then under the provision as there made, that power you do not concede is granted?

Mr. CLAGGETT. I concede that the power of the state is granted to subject all the lands of the state that may be necessary to those uses, to the uses which are contemplated in this provision; that is all. Not of itself, —it does not exercise itself, but I am not one of those who say that we should put in our constitution the broad declaration to the effect that private property can only be taken for public uses and and then stop there. Then in case the legislature proposes to subject it to any use which prior to the adoption of the constitution had not been considered a public use, you would have the question raised in the courts of the unconstitutionality of the statute, because it would be claimed that that was not a public use but a private one. That is the point, and if you do not put such a provision as this in the constitution, you will be hung up by the holidays, so far as the complete development of all the resources of this state is concerned. Under the old constitution of the state of California they had that provision, prohibiting the taking of private property for anything except public uses, and what was the result? We saw how the monopolies grew up, until in 1879, when the new constitution was adopted, which has been most ungraciously referred to by two distinguished gentlemen on this floor,

for the purpose of creating prejudice against it, as the sand-lot constitution, the people then for the first time got an opportunity to pass upon this question, and the first thing they did was to provide—I will read from Section 1 here, Article 14. Now bear in mind the state had never done anything of this kind before. The use of water was never esteemed a public use in California but a matter to be subjected to private ownership and control alone, and nobody could interfere with it because it had become a vested right; but the constitution went on and provided: (reading) "The use of all waters now appropriated, or that may be hereafter appropriated, for sale, rental or distribution, is hereby declared to be a public use, and subject to the regulation and control of the state." Why was not the question raised there then, if the sovereign power of California had not the power to pass any such provision? Nevertheless they did it. They took the use of the waters in their state and declared that that use was a public one with them, that no man might use the water at all for any purpose except in the manner provided by the authority of the laws of the state. And yet when we come in here and present this substitute for all these absolutely necessary uses, and provide that only such lands as are necessary to carry out these uses shall be subjected to that use, we are met by such objections as are raised here.

Mr. REID. Mr. President, I offer the following amendment——

The CHAIR. As I understand, the amendment offered by the gentleman from Shoshone was seconded.

Mr. HEYBURN. I understood it was seconded at the time.

Mr. REID. Well, I will second it now, if no one else has.

The CHAIR. Now what is the nature of this amendment of the gentleman from Nez Perce?

SECRETARY reads: Strike out the words "for any useful or beneficial purpose or"

Mr. MORGAN. Mr. Heyburn's amendment is in order.

Mr. REID. Mine is an amendment to the original substitute. I take it that both amendments are before the committee for consideration. He has offered it to one part of the section and I offer it to another.

The CHAIR. The amendments do not conflict at all, but they will be put in their order.

Mr. REID. Well, his comes first.

The CHAIR. Is the amendment proposed by Mr. Reid supported?

Mr. MORGAN. I will second it.

Mr. REID. I do not wish to take up the time of this convention by talking too much, but the constitution of the United States is my political Bible, and I do not proposed to be sneered at, as the distinguished gentleman seemed disposed to do with those of us who have taken a position on the other side of these constitutional questions, and I do not suppose the charges against the profession I represent and to which I have the honor to belong, that may create prejudice among laymen here, will deter us from standing up here for constitutional principles. The gentleman says we have lived so long out here that we have forgotten the powers—that most of us have forgotten the powers of a state constitution. I take it from the radical changes he has made, that he has forgotten too some parts of the Constitution of the United States, which is above all these state constitutions, and I find other gentlemen here who have been just as long engaged in the same business—we may be tenderfeet so far as our legal knowledge of this principle is concerned—but I find here, standing with me, the conservative gentleman from Shoshone, his colleague, and the other conservative gentleman from Shoshone, his colleague, and I find yourself, Mr. Chairman, another of his colleagues, all three of you, who have been practicing in the same courts as the honorable gentleman who has addressed this convention, had the same experience that he has had, who are just as loyal and pa-

triotic as he is—and I will grant no gentleman can be more so, I give him credit for his intentions—yet, at the same time, when I find myself with a majority of you gentlemen who have lived on this coast too long—lived so long that you have forgotten the powers of the state constitution and the Constitution of the United States, I think that I can dare raise my voice for these rights of the people that I see attempted to be stricken down here, without it being charged that I want to thrust my opinions on this convention, or being sneered at because perhaps we have not had the same experience as some other distinguished gentleman who has addressed the convention. And furthermore we have been treated to decisions of the Supreme Court. It is true of these constitutional questions that they have been set at rest, and yet with one exception every decision read was taken from opinions rendered long heretofore, and before the constitutions of those states had incorporated in them these innovations that are being made now every year or two in some of them. Why not come down to a latter day, and present to this convention, as the gentleman from Shoshone, Mr. Hagan, yesterday said, some decisions of recent date from this court, where they passed upon these very constitutional provisions the gentleman proposes to incorporate here? The first one he read, the one upon which he seemed to rely, was simply upon the wording of a criminal indictment—whether or not it charged the crime with certainty, and then he referred to the remark that it was not in conflict with the Fifth and Sixth Amendments to the federal constitution. And the gentleman assumed here to place us in a hole, in that we did not want to develop the resources of Idaho. What gentleman here has raised his voice against this provision for developing the mining interests of this territory? What member has risen on this floor and uttered one word against irrigation? Not one. That is not what we are striving to do—and the gentleman makes an argument on that—nobody has

opposed it, nobody has said that you cannot take water for the uses of irrigation or for mining purposes. But what have you got in that bill, in that portion of the section that I propose to strike out? That I may take private property "for any useful or beneficial purpose," for *any* purpose—for *any* useful or beneficial purpose! What does that mean? Why, it simply means that if you want to take your neighbor's property and run water across it for a tan-yard, for a mill—for any purpose conceived to be useful or beneficial, you can do it. I stand on this question like I did on the Mormon question; build your constitution so tight and so strong, and empower your legislature so fully to carry it out, that you can crush it. And that is the question with this section of the constitution we are considering; that Idaho may be developed by irrigation, that our mines may be dug out, that our resources and our wealth may be developed; but when you have done that, stop, and don't say that "for any useful or beneficial purpose" any man or any set of men can walk into the cabin of the poorest man, or across his land, and take his property for any purpose of that sort he may see fit; that is what I am protesting against here; I insist upon my rights guaranteed me by the Constitution of the United States. And, Mr. President, if I am to go into this Union without the barriers thrown around the protection of my rights and my liberties that the Constitution of the United States guarantees, then I don't want to go into a Union of that sort. I want its safeguards. I have seen the time when it protected us in difficulties as dangerous as history has ever recorded. Its great provisions, even in civil war, protected us with the writ of habeas corpus; we fought that war through, we saw our government nearly overthrown, we saw how much that represented—that old flag, those great principles that I am trying to stick to now, that gave us liberty and freedom. I have tested it and seen its benefits, and I propose to stand by it. I am willing to go as far as any gentleman, but when you

say that private property may be taken "for any useful or beneficial purpose," and leave it to juries, or courts, or individuals to do it, then I say you are striking down one of the safeguards of the constitution, and I say that you are making innovation after innovation, that the gentleman cannot find in the constitution of California or any other state, and never will find it there, because it don't belong there. If you do cut off debate here, if you do pass these innovations, when you go to the people you will have a forum where we will be heard, and if you touch the question of these constitutional rights that are dear to them, they will rise up and vote your constitution down at the ballot box; they will never be denied by that tribunal; they will reject it if these provisions go in.

Mr. HAGAN. One would think by the position taken by the gentleman who sustains in chief this proposed amendment, that if the convention endorsed that sentiment contained there, we would drift from constitutional limits and away from constitutional barriers. I judge by the reasons that he gave, I judge that the experience he has had in the territories has so affected him that he can drift insensibly away from these barriers and still maintain that he is within the constitution. All these decisions read by my friend Standrod are well settled principles of law, against which no lawyer today has a word to say, but not one of them touches the point in issue, and not one of them yet has told us the real issue in this case. They give us a dose of medicine; they expect, because they gave it with some covering, that we can't taste it; at present we have not taken the medicine. Why, that is worse than the original resolution. It is the most remarkably composed set of gush that I ever heard presented to either a legislature or a constitutional convention. Dissect it word for word, and with all due deference to what the gentleman says, he has got no legal reason for its adoption. There is not a constitution in this Union that ever adopted it; why don't they show us one? Why don't they tell us that

Colorado, when she sought to be admitted into the Union, had almost the same provision, but that they could not get it adopted, that Congress would not accept it, and the only state in this Union that had a provision that applied these principles or attempted to do it, is the state of Colorado, and she dared not yield her claim of sovereignty by putting into her constitution what we attempt today in Idaho to do, because it was deemed anti-republican, because, put this in your constitution and you will sound the death knell of every hope you have for admission into this Union. Private property for private use is what that means, and what it tries to say, it does not mean. Whoever heard of a constitution giving the right to a coterminous, adjoining farmer or mine owner to not only go with an easement over the ground or through it, under it, over it, but put a reservoir on it and confiscate the very foundation of his neighbor's property? Mr. Claggett says we call it a public use. You might call it a public use when my neighbor for his own self-protection does this, but not when for his own self-gratification he wishes to take my property. He says that is a public use; I say it is not. The Supreme Court of the United States, in a decision rendered there which has been frequently in the court cited, long ago held that the states may exercise acts of eminent domain; that is as far as any state has ever attempted to go. You may call it a public use for my neighbor to take my property because he wants it. What is to prevent me instead from taking his because I want it? Can you cover it up, make it any the less odious, because you call it a public use? Why the idea of the gentleman's proposition about railroads, about public corporations taking property! I fear he has not read the decisions if he seriously maintains that. If he had he would know that these corporations, unless they are public corporations known to the law, can never condemn for eminent domain. He should know that because a corporation is owned by private individuals it is no less a public corporation and so declared by law, and unless they are public—for the

benefit of the public—they cannot touch one foot of my property or force their way through my property in any manner. In speaking here today I am going to make the issue squarely and fairly; I am opposed to the section and every amendment that can be offered to it. I am opposed to taking gilded pills telling me that private property can be taken for private use, and that we will knock at the doors of this Union with such a clause in our constitution. I am opposed to it for the mining community. They are struck at especially in this, and they are the only class that the measure attempts to strike down. Anybody knows that proper resolutions can be passed for the protection of irrigation and water rights. I have one here on the table that I propose to offer at the proper time to protect all irrigating and water privileges throughout this state, one that can be made; and the courts have decided—and the gentlemen have not even found a decision upon their own side—the courts have decided the right of the state to control the waters of the state for irrigating and for any purpose, and the flow of water. That can be protected. Why don't you attempt then to pass a law that will protect every right? No; you go to the miner in the mining district and pass a law to take his property for all flumes, tunnels, ditches, reservoirs, dams, so that you can confiscate his property for private use. You don't do it with the farmer; you let him go; and one of the most vital interests in this country attempted to be stricken down is the one which I stand here to protect today. The gentleman comes from a mining community. Can he go back to his constituency and tell them that because a private individual joins him he has got a right to go through his mine, tear up his tunnels and works, make reservoirs right through his shaft because the water flows there—do anything, in other words, to destroy a coterminous proprietor—that that is a public use? It would take a more silver-tongued orator than he is to make those miners up there accept it. Our mining men in this country will

never tolerate a clause in that constitution of that sort, and when you pass a law under which you can take private property for private use you strike down the very business of that class of people in this country under this constitution. Now sir, I want to protect all the irrigating ventures and all the mining ventures, and it can be done on other lines. You have no right to take from a man his mining property except to the extent of an easement; that I am in favor of, all easements applicable to mining, agriculture, or anything else. I am in favor of that, but when you tell me that a private individual can take my property for his private use as he may see fit and say it is a public use, you deprive me of a constitutional privilege that is guaranteed by the constitution of the United States itself, and you seek to do that which no state in this Union has ever sought to do. Now why has Colorado had to come down and modify her constitution before she could be admitted? And it is the only state that contains it which I can find. On the question of irrigation—I will not read it all; it is long, five or six sections; it protects everybody in the use of water and all easements for water. I read from section 7, article 16:

"All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation."

Now that ought to suit anybody. That gives them every right, and the preceding sections protect far more interests throughout the country than have been protected in this state. I am in favor of going even that far and indorse it. But I am not in favor of calling it a public use for a private individual to take my property and subject it to the uses he pleases and

take it away from me. The Supreme Court of the United States has shown by decisions that we can do that. We are not restricted from that right. But to tell me now that we have got eminent domain engrafted in our law everywhere over the Union, that we shall now take a step farther and strike down every constitutional guarantee that protects a man in the ownership of his property and allow a private individual to take it—I do not believe there is a constitution or a country in the world where it is allowed. The gentleman says the state can take private property without compensation; I say it cannot. The state owns certain property, it has certain privileges and rights, and the only reason that the state through her constitution can take any property at all, or allow others to take it, is by reason of the sovereignty that remains in her, notwithstanding the limitations of the constitution of the United States. Those limitations have been thrown around the state and the people. She preserves to a certain extent sufficient sovereignty to exercise those rights of eminent domain, but no state has a right either by herself or otherwise to give an individual of that state the right to take my property for his own use.

The CHAIR. The gentleman's time has expired but if there is no objection he can continue.

Mr. HAGAN. All I have to say in addition is this——

Mr. CLAGGETT. I move that he be allowed to continue. (Seconded.)

Mr. CAVANAH. I object.

The CHAIR. It is moved and seconded that the gentleman be allowed to continue.

Mr. HAGAN. No sir, there has been objection made. I suppose the gentleman takes the position that private property can be taken for private use.

The CHAIR. The motion has been moved and seconded that the gentleman have more time. He can continue his remarks.

Mr. HAGAN. I am through, Mr. President.

Mr. MORGAN. The difference between the constitution of the United States and of the several states is this: The constitution of the United States is a granting of power to the federal government. The people give the federal government power to do certain things. It is also to some extent a limitation upon that power, and it is a grant by the sovereign people of all the states to the federal government to do certain things. On the contrary, the constitution of the state is a limitation of power; the power resides in the people. The legislature of the state can do anything, unless it is restrained by its constitution. We are seeking here to frame a constitution which shall restrain and limit the powers of the legislature of this state and of the courts. That is the difference between the federal constitution and the constitution of the state. I agree with the gentleman from Shoshone when he states that all power resides in the people of the state; within the sovereignty of the state, the state can do anything; but we propose by this constitution to put limitation upon that power. Among other limitations is the one to prevent the taking of private property for public or private use except with just compensation. Now, the taking of this property for the purpose of irrigation—and I speak of this question because I am more familiar with it than I am with the other; and I will leave those gentlemen who come from the mining districts to take care of their own interests—the necessity for taking private property for public and private use is absolutely essential and this country cannot exist without it. In any part of the country where irrigation is necessary it is also absolutely necessary that both individuals and corporations shall be permitted to take private property for the purpose of constructing reservoirs and ditches. It is an easement, and the only objection that I have to the section that was introduced this morning, is that I fear it does not go far enough. The question asked by Mr. Beatty

of the gentleman from Shoshone was not answered. His question was: Can one farmer take the property of another? He can to secure a right of way across the farm of his neighbor for the purpose of irrigation. I did not understand the question to be answered. If this section does not permit that to be done it does not go far enough. It is an extraordinary power, I grant it, and we should be careful in granting extraordinary powers, but it is a necessity which exists in this country and without which the country cannot exist. We must give this country up and let it go back to desert unless we can do this very thing. If we can't do it, then this country as a country cannot exist. Now a section has been laid upon our tables this morning which I think covers this thing completely, and if I understand the gentleman from Kootenai he is in favor of it. It is section 4 of the report of the committee on Manufactures, Agriculture and Irrigation. Section 4 reads as follows: "All persons and corporations shall have the right of way across public, private and corporate lands for the construction of ditches, canals and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation in the manner prescribed by law."

Mr. HAGAN. Yes, but that has been withdrawn and this put in its place. That was a very well drawn article.

Mr. MORGAN. It has not been under consideration.

Mr. HAGAN. It was withdrawn. That was taken from the constitution of Colorado.

Mr. MORGAN. Now, gentlemen, the constitution of Colorado has precisely this section in it.

Mr. TAYLOR. I think the gentleman is mistaken about it being withdrawn. It has not been considered at all.

Mr. MORGAN. What I mean is this substitute for it by the committee.

Mr. HAGAN. Didn't the gentleman withdraw his substitute this morning?

Mr. BEANE. It was reported by another committee.

Mr. HAGAN. That I understand to refer to Mr. Standrod's substitute.

Mr. MORGAN. The section in the constitution which was reported here and which I understand the gentleman to refer to has not been withdrawn.

The CHAIR. The one goes under the Bill of Rights, and this section is in the report of the Committee on Agriculture, Irrigation and Manufactures.

Mr. MORGAN. Section 14 of Article 2 of the Colorado constitution is as follows:

"Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes."

It will be seen that this section of the constitution in terms permits the taking of private property for private use, and that is just precisely what we are contending for for the purpose of irrigation. And the objection I have to the section which was offered this morning as a substitute was that it did not seem to cover this thing. If it is proposed to pass both sections I am in favor of it, but if it is proposed to pass the substitute introduced by Mr. Standrod this morning and reject this section of the constitution of Colorado, or that section reported perhaps by the committee on Irrigation, then I am opposed to it because it does not go far enough. I want this convention to put it in such terms that the courts and everybody else can understand it, that for the purpose of irrigation private property may be taken for private use, and I contend it can be under the constitution of the United States.

Mr. HEYBURN. I would ask for the bill or amendment under consideration.

The CHAIR. There are two amendments to this substitute and we are now discussing the merits of the original substitute; an amendment is offered to strike out too.

Mr. HEYBURN. I am going to discuss briefly the amendments offered. My first impression as to the phraseology of this amendment or substitute was correct, I find, upon re-examination of it. With all due deference to the joint committees that have reported this and the skillful manner in which the gentlemen have framed its language, yet I see I am correct in my first impression as to the construction to be placed on the first sentence, and I will call the attention of members particularly to it, because I submit that it will not accomplish the purpose for which it is intended. It reads:

"The use of lands necessary for the construction of reservoirs, or storage basins for the purposes of irrigation or for rights of way across such lands." Across what lands? Lands necessary for the purpose of constructing reservoirs and storage basins; those are the "such lands" that are referred to. I say the word "such" should be stricken out, so that this right should be granted across all lands, and I submit that I am correct in this criticism. They say here: "The rights of way across such lands" and "such lands" are defined to be the lands necessary for the construction of reservoirs, or storage basins for the purpose of irrigation or for the right of way across such lands. Those are the "such lands" that are referred to. Now that would limit the rights of way intended to be conferred under that provision. Further it would deprive mining ditches and mining flumes from receiving any benefit under that provision. I am in favor of going just as far, right up to the line of possibility in this matter, of conferring the right of eminent domain in reference to irrigation and mining. I am in favor of the pro-

visions contained in the Colorado constitution, for one reason, because they have already been passed upon by the judiciary of the district courts of the United States, and have been accepted by the congress and president of the United States as proper measures and within the scope of the powers we have. They have been in other words adjudicated by one of the high courts in the land, and if we go to them with the same provisions in our constitution, they cannot criticize them, because we have the precedent established by themselves and we are safe. I am in favor of providing in this constitution that the corporations and individuals shall have the right to condemn the right of way across agricultural lands and across mining lands for useful and necessary purposes; but I do not find in this proposed substitute, or amendment to the substitute I believe, that it is confined to cases of necessity. The case of necessity should be clearly set out and established and defined, that is to say a man should not be allowed wantonly to condemn his neighbor's land for any purpose whatever. He should not be allowed to manufacture a necessity, a fictitious necessity, in order that he may take that which his neighbor particularly prizes. The necessity should be such that the court or jury would see it from the face of the matter. The case of necessity should be left to the court to determine whether it was necessary or not. Then if a mining corporation or an individual seeks to take his neighbor's property, his neighbor may raise the question of necessity, and say that the placing of your mill there to require the making of that waterway is a wanton act, that it is not necessary, that you should place it on your own land because you own all the property around there, and you can place it in such a manner that it would not be necessary to take this ditch through my land but you can construct it over your own. Instead of putting your mill on the other side of your property so that it would be necessary to bring your water

through my property to your mill, you bring your water through your own.

I say these questions of necessity should be left to the court to determine and the rights of the individual should be guarded against a wanton taking or condemnation of a man's land. I say that a man or a corporation which would desire to oppress an individual owner, a poor man or any other class of men that might lie below him, ought not to have the right, except in case of necessity, to go down upon that man's land and stop up his tunnels and make a dump over his grounds, if he has property of his own upon which he can make it. So that I say that question of necessity should be clearly expressed in this substitute. Now it is a well known principle of construction that if the constitution says as this does, in the last clause, "Private property may be taken for public use, but not until a just compensation to be ascertained in the manner prescribed by law therefor shall be paid." Now I say it is not right for the constitution to place that limitation upon the legislature, and it *is* a limitation upon the power of the legislature. It would not be competent for the courts or the legislature to say that you may take that property or use it for any purpose until after that compensation had been paid, and an appeal would tie up the attempt to take the benefits of this provision until the appeal was determined. I say there should be a provision in there such as is embodied in the amendment I sent up "or the money deposited in court on such conditions as the court may prescribe," because if the money is deposited in court that has been assessed as the value of this property, and if that individual whose property was taken was willing to accept that amount of money, then his rights are protected fully, as that money stays there subject to the determination of this issue between them; and the constitution places that limitation upon the legislature by the provisions of this proposed substitute, so that it would not be competent for the legislature even to say

that the court may require the money to be deposited and prevent that man from taking it, because the wording means delivery to the party and does not mean deposit to his credit.

We want to move carefully in this matter, because when we have done that we will not be able to undo it perhaps. I say leave that last clause off; leave it for the legislature to provide entirely, or else remove that limitation from it, one or the other. Either strike out that word "such" before lands, or else enlarge that so that it will cover cases of mining ditches and flumes that are necessary to take the water around the sides of the mountains in order to give pressure to run the machinery of mills. Don't let us have anything ambiguous or uncertain, anything that will need construction by the courts. I believe that this convention and that the people of this state represented in this convention, have the right to say that private property may be taken for these uses, but I concur with the suggestion of the gentleman from Nez Perce, (Mr. REID,) that the phrase "for any useful or beneficial purpose" should be stricken out, because it is indefinite. "Any useful or beneficial purpose" is an indefinite expression, and there should be nothing indefinite in the constitution. Enumerate every use to which you intend to apply this principle and then stop. But don't leave it in any way possible for somebody to say that it is useful he should take your property, when in all conscience and common sense it is not for any useful purpose except to himself; useful to whom, the proprietor or the public? Useful in the interests of developing the country, or useful in the interests of the pocketbook of the man who takes it? I say that expression is too indefinite to be in any constitution, and there should be no "ifs" or "ands" about it. When you have enumerated these uses—and I don't see any enumerated here that are not proper on the face of them—when you have enumerated them stop, and leave out the expression "any useful or beneficial use," because it is in-

definite. With these remarks I am in favor of the substitute; make it definite and certain.

Mr. KING. Mr. Chairman, I would like to ask a question of these gentlemen that are objecting to this bill on the ground that it is taking private property for private use. It seems to be their argument—they will all admit the fact—that private property may be taken for public use upon just compensation being paid for it. What I want to understand from these learned men is, who is to determine what is a public use. Is it a question that must be left to the courts, or is it a question to be left with the people? That is what I want to understand. If it is a question to be left with the courts we have nothing to do with it; if it is a question to be left to the people, as we represent the people, then it is for us to decide. For instance, if you admit the right to take a right of way for agricultural purposes, who is to determine that that right of way for the use of a farmer across there is a public use, when it is a well-known fact that that ditch is dug for the benefit of that particular individual? It seems to me that that is a private use just as much as it is to take a ditch for a mine; why not? Then who is to decide what is a public use and what is a private use? If we are going to decide that question then we must specify in our constitution those things that we consider a public use. We must specify clearly and distinctly what use is a public use and what a private use. If we can take private property for a public use, tell me what is a public use and who is to decide. I do not understand yet. Some of these men learned in the law may tell me if they will what is a public use and who decides what is a public use, whether it is the courts or whether it is the people of the state in their constitution.

Mr. CLAGGETT. Mr. Chairman, all that anyone wants is to get rid of objections. The objection which has been made by Mr. Heyburn I think is not well taken as a matter of construction, but by just simply changing the place of the word "necessary" it covers

the whole business and then I will read the section through, going back to the first clause:

"The necessary use of lands for the construction of reservoirs;" I change it you see. "The necessary use of lands for the construction of reservoirs or storage basins for the purpose of irrigation, the necessary use of lands for rights of way across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, the necessary use of lands for the drainage of mines or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary purposes——

Mr. HEYBURN. Put in "flumes or otherwise" and you will have it.

Mr. CLAGGETT. I have it in here: "drainage of mines, etc., or other necessary purposes;" that covers all those above.

Mr. HEYBURN. Why not put it right in there?

Mr. CLAGGETT. It is all in here above: "The necessary use of lands for rights of way across such lands for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose" which covers mines, irrigation and power.

Mr. HEYBURN. It says: "Across such lands." See what lands you have described.

Mr. CLAGGETT. "The necessary use of lands for the construction of reservoirs or storage basins for the purpose of irrigation; the necessary use of lands for rights of way across such lands"—what lands?

Mr. HEYBURN. For the use of reservoirs and basins.

Mr CLAGGETT. Not at all. Oh, you mean to strike out the words "such lands?"

Mr. HEYBURN. Yes.

Mr. CLAGGETT. I would not consent to that. By consent that can be done, but I will now read: "The necessary use of lands for the construction of reser-

voirs or storage basins for purposes of irrigation, the necessary use of lands for rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, or for drainage; the necessary use of lands for the drainage of mines or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development; the necessary use of lands for any other use necessary to the complete development of all the material resources of the state or the preservation of the health of its inhabitants is hereby declared to be a public use." Now that is the way I read it in substance. I have gone back to the first clause.

Mr. HEYBURN. Why not put in "ditches and flumes" in the section that deals especially with mines, and save any ambiguity?

Mr. CLAGGETT. Because I don't want to limit it to mines. That raises the question that has been raised by the gentleman from Nez Perce. I do not propose to limit this matter to the question of mines and irrigation. I say if a man wants to start a manufacturing establishment anywhere which will give employment to hundreds of people in all human probability, but who wants to take out a ditch which shall go down and convey that water to the place of use as power, he ought to have that right, and the right to condemn land for a right of way crossing private lands, for the purpose of getting to his place of use. And this phase "useful or beneficial purpose" is a phrase which is used in all the decisions of courts with reference to appropriating the use of water. If you turn to your own state you will find it here, with regard to appropriations that may be made for any useful or beneficial purpose. In order to enjoy the use of water for any useful or beneficial purpose, it is absolutely necessary that there shall be a right of way across lands, in order to get from the point of diversion to the

place of use, and therefor this substitute as suggested by the committee this morning, covers all these matters and leaves the whole thing to the regulation and control of the state. Now in answer to the question of my friend from Shoshone, which was an exceedingly pertinent inquiry, as to in whom is lodged the power to determine what is a public use, I will say that it is lodged in the sovereign power of the state.

Mr. KING. That's it.

Mr. CLAGGETT. And if you do not put such a provision—and we are here to define and limit this power to necessary uses for useful and beneficial purposes, and to preserve the welfare of the inhabitants and develop the resources of the state—if you do not put that necessity in this constitution as a limit upon the sovereign powers, speaking through the legislature, I say here that the legislature can go on and subject private property to any purpose whatever without restriction, and that is the reason why this thing should be put in the constitution, not as a grant of power to the legislature, for the legislature has got the power already unless we see fit to limit it and control it, but as an expression to the legislature of the purpose for which this thing may be done, and leaving to them the method within the scope of the authority herein conveyed, to define the manner by which this power shall be exercised.

I would like in conclusion to say simply that I am trying to meet these objections which in any shape or form may be raised to the provisions reported. I would ask unanimous consent to insert after the words "public use" the words "to be subject to the regulation and control of the state." If there is no objection I will put it in. It is implied anyway, and you can put it in in specific terms, and then we will know who it is that is going to have the power, and then I will read it again.

Mr. HEYBURN. Can the state delegate that power to the judiciary?

Mr. CLAGGETT. No, sir.

Mr. HEYBURN. The state is an indefinite thing then?

Mr. CLAGGETT. The powers of every state, Mr. Chairman, are divided up between three co-ordinate departments. When you speak of regulation by the state, you speak of regulation by legislative authority. The functions of the judiciary are merely interpretative. They neither can make laws nor limit laws; they interpret the law as they find it. The constitution of the state tells the legislature how far they can go and what they may do. In pursuance of that power that is delegated by the sovereign to the legislature, laws are passed, and then the functions of the judiciary come in, and they interpret and construe and apply the law as given by the legislature in pursuance with the terms of the constitution. Of course the people can abolish the legislative department altogether if they choose, and provide that the judges shall get up the law to suit themselves; but we don't propose to do anything of that kind. I will now read this: "The necessary use of lands for the construction of reservoirs or storage basins for purposes of irrigation or for rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful or beneficial purpose, or for drainage, or for the drainage of mines or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means for their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state but not until a just compensation to be ascertained in the manner prescribed by law shall be paid therefor."

Mr. HEYBURN. I would ask the gentleman to read back towards "for any useful or beneficial purpose."

Mr. CLAGGETT. You mean that clause ending——

Mr. HEYBURN. —"for any useful or beneficial purpose."

Mr. CLAGGETT. "Or for rights of way for the construction of canals, ditches, flumes, or pipes to convey water to the place of use or for any useful or beneficial purpose."

Mr. HEYBURN. Add the word "necessary."

Mr. CLAGGETT. Where? Why, it will not be necessary in one sense of the word, I have got that all in; "the *necessary* use of lands" for the purpose of conveying, etc., the right of way subjects it to the necessity.

Mr. HEYBURN. That "necessary" there—it is "The necessary use of lands for the purpose" but the purpose should be necessary also; not only the use of lands themselves should be necessary, but the purpose itself should be necessary.

Mr. CLAGGETT. You mean "useful, beneficial or necessary purposes?"

Mr. HEYBURN. Yes.

Mr. CLAGGETT. I have no objection to that; I will put it right in here.

Mr. REID. Does the gentleman object to changing the "useful or beneficial purpose" to leave it to the——

Mr. CLAGGETT. No sir; I put it where it is because I stand on the proposition that this right should be allowed, subject to control of the state for any useful or beneficial purpose. There in the case which the gentleman has himself put, that is to say the condemnation of a right of way, a right of way, an easement upon land—for this use is nothing but an easement and an easement is nothing but a use—a right of way across private lands even to carry water for the purpose of a tan-yard if there is anything of that sort—it is to be assumed that the legislature when it comes to regulate this question, is not going to job the constituency which sent them; it is to be assumed they will legislate with

that degree of consideration which will protect the powers herein conferred upon the legislature and the limitations herein placed upon the legislature in such a manner as will promote the general welfare of this state. We are getting back to the old proposition too often suggested, namely, that in cases——

The CHAIR. The gentleman's time has expired.

Mr. BATTEN. Mr. Chairman, the end which is sought to be attained by this measure is certainly one that we can all readily agree in, but the means seem to me to be questionable. I am reminded somewhat of a certain legal fiction devised by some of the old-time lawyers, in what the attorneys always denominated the action of trover. The substance of that action and the real purport of it was this, that John Doe may steal Richard Roe's property, and then under cover of the protection of a certain ridiculous fiction which these cunning lawyers devised, it was said that he found John Doe's property and appropriated it to his own use, thereby escaping all the pains and penalties of thievery. It is said the astute lawyers sought to excuse it by calling it a pious fraud. Now it seems to me that this is a parallel case with that to a certain extent. The primary object of this scheme is really to deprive a man of his goods and chattels, of his property, because it is real estate, under the specious pretext that it is being taken for a public use. Now that to my notion is tantamount to the old idea of pious fraud. The force of the mere declaration here that Mr. A. can take Mr. B's property by declaring it to be for a public use, I fail to see. I am willing to admit the force of the argument that we are laboring under a peculiar condition of things that does not prevail in other states, except to some extent in this intermountain region. We have vast tracts of arid land that need fructifying, need to be made productive, and I am willing to go as far as any man will go within the proper limits, in any measures or any schemes or plans that may be proposed, whereby this vast area of

land may be reclaimed and made to support a teeming population. But I am not disposed to go to the extent that this measure proposes, because I say it is a specious pretext to take the private property of the individual under the guise or false claim of its being a public use. I think in the consideration of this measure the gentlemen are certainly proceeding in a commendable spirit of trying to avoid all these obnoxious features, and to get it into such shape as will make it less odious to us all, but I don't think it is in that shape yet. That clause "beneficial or useful purpose" is very broad indeed; it gives almost an arbitrary power to any single man to take the property of his neighbor and claim protection under this broad, constitutional right that is sought to be injected into this constitution. I am opposed to it for that reason. I believe we should add additional safeguards in this matter, recognizing the need of some action of this kind, in regard to these dump easements or whatever you call them that go with mines, and the rights of way that go with irrigating ditches. Still I am not disposed to violate my convictions on constitutional law and what is fundamentally right and proper, to meet any exigencies that may arise, unless every safeguard is thrown around the measure proposed.

Mr. WOODS. Mr. Chairman, the gentleman from Alturas who has just spoken has voiced in a measure my sentiments on this subject. I am opposed, certainly, Mr. Chairman, to doing by indirection that which we have a right to do directly, and I do not believe in calling this thing of taking private property for private use—I do not believe the declaration in the section proposed as the member has said, makes it a public use by any manner of means. I do claim that this convention has the power under the constitution to prescribe the taking of this private property for private uses in the way of easements, and in order to reduce this thing somewhat I move a substitute which I will send up.

SECRETARY reads: "Private property shall not be taken or damaged for public use without just compensation. The taking of private property except for private ways of necessity, and for easements for reservoirs, drains, flumes, ditches, pipes, or other means to appropriate water for agricultural, mining, milling, domestic or sanitary purposes, and for roads, railroads or tramways over or across the lands of another, shall be prohibited, and all appropriations hereby excepted shall be made in the manner prescribed by law, and then only by making just compensation to the owner."

Mr. AINSLIE. Mr. Chairman, I move the adoption of the substitute offered by the gentleman from Shoshone. (Motion seconded).

Mr. McCONNELL. Mr. Chairman——

Mr. AINSLIE. I have not yielded the floor yet, Mr. Chairman.

The CHAIR. That is correct.

Mr. AINSLIE. The substitute reported this morning, which I understand to be the concurrent action of some gentlemen on these committees, appears to me nothing but a sugar-coated pill—sugar-coated for the purpose of catching the votes of the agriculturists, and it may be also to get the vote of the monopolists and corporations who can crush out mining men and mining enterprises for the benefit of their own. As to the question of constitutionality or the right of this convention to incorporate in the constitution a provision for taking private property for private use, the question of the sovereignty of the people as we propose to put it in our constitution here in the Bill of Rights, is a question that has been thoroughly discussed in the last twenty or thirty years. We are told by all the republican newspapers and by all the republican statesmen that the state's right doctrine was a heresy and state sovereignty was politically dead. I am glad to see some leading lights of the republican party residing in this territory like prodigal sons return to the fold. I am glad to see such able men as the gentleman

from Shoshone admit that the doctrine of state's rights is not a heresy, but that the states do possess certain rights, that state sovereignty still exists among the people and in the state organization. If it is dead as claimed by the majority of their party, in the attempt to take private property for private use as proposed in this measure, they are in the position of trying to revive a political corpse and infuse the breath of life into it by this amendment. Now there should be something done by this convention. Everyone admits the necessity of placing something within the organic law of the state by which the purpose of irrigating all these unimproved public lands may be accomplished. Nobody denies the necessity of it. We should also incorporate some measure by which the lands of water appropriators throughout this territory cannot be shut out of water by one single proprietor. But gentlemen, when you admit the right of private ownership in private property, you must so guard the provisions of the organic law that no injustice may be done to the individual. There is a provision of law well known to lawyers and probably to many laymen, that is recognized throughout the civilized world wherever the law is enforced, that he who is first in point of time is first in right. Now are we going to reverse all the laws of every civilized country? Are we going to admit the right, when it was contended for years and years before all the highest courts in the United States that you cannot even take private property for public use or for public purposes? Are you going beyond all the safeguards that have been hedged around the rights of the individual for the protection of his property, and come in here in this convention and say for the new state begging for admission into the Union, that the property of one individual may be taken and given to another and call it a public use? While I admit the doctrine that private property may be taken for public uses upon a just compensation being paid, as incorporated in the organic law of every state, I deny the right of

anybody, of any legislative body or convention, to take the property of one individual and give it to another. Do it under the forms of law if you choose, but it is nothing but legalized robbery, an invasion of the inalienable rights of the individual to possess his own property and protect it, and we propose today to incorporate in the charter of this state the right to take an individual's property from him and give it to another, but not taking it for a public use. Now, gentlemen, it is impossible to accomplish that without injustice. I question the statement of one of the gentlemen here, that all persons interested in the welfare of the state are supporting the substitute first presented in this convention this morning. I know of no people more interested in the welfare of Idaho than those who came here and discovered it and have been living in it twenty or thirty years, and have lived under a territorial organization, under a system almost of communism. I know of no people who will appreciate the benefits of liberty more than the people who have lived under this old system of vassalage. I do not know a set of men who will appreciate the privileges and rights of liberty which will be granted them by the constitution and admission into statehood more than those who, like myself and many others sitting in this convention, have been living in territories all of their lifetime. But sir, in striking for liberty, in striking for more freedom and more rights than we have enjoyed under the territorial system, we should carefully guard and protect the rights of the individual as against the encroachments of monopolists and the encroachments of other individuals who are entitled to equal rights but not higher than those who are here first.

Now, if I am engaged in developing the material resources of this state, or the necessary resources, as denominated by the gentleman in some of his amendments, I may have a twenty or forty acre patch of land up here above a small canyon, and been living there for years upon it, have my dwelling house upon it, my

little home. Forty acres of land is sufficient for my purpose, it is my homestead, there my children are born and raised. People come in and settle the lands below me, half a dozen or a dozen take up some land, wealthy people. These people own 640 or 1000 acres of land. Now under the provisions of this substitute if they consider, in the interest of developing the material resources of the state, that they should farm or cultivate more land than I am able to farm or cultivate, they can put a dam across that ravine, condemn my forty-acre tract for a reservoir and run me out altogether, by giving me a nominal consideration, for the benefit of those people who have settled below the canyon. Now that can be done if you adopt this in your constitution. I say protect the rights of every individual, and do not take the property of one man and give it to another. And therefore, I am opposed to any such provisions as are attempted to be incorporated in this constitution, and in favor of the substitute offered by Major Woods of Shoshone.

Mr. McCONNELL. Mr. Chairman, the question arises now to put an end to this matter. I regret the necessity of taking any steps which would deprive future generations of reading or us from listening to the eloquence of these gentlemen, but we have had a generation of talk on the question of state's rights. I will therefore move the previous question. (Seconded).

Mr. BEATTY. Which is the previous question?

Mr. REID. Does not that motion have to come from the chairman of one of the two committees having the bill in charge?

Mr. McCONNELL. I think any member on this floor is entitled to move the previous question, which recurs on the previous motion.

The CHAIR. If I understand the rule, the gentleman must be supported.

Mr. CLAGGETT. It has been seconded by several members.

The CHAIR. The question is: Shall the main

question be put? Are you ready for the question?

Mr. BEATTY. Before that is done I would like to know what the main question is.

The CHAIR. It is upon the original substitute as offered by the gentleman from Oneida, Mr. Standrod.

Mr. McCONNELL. And that as I understand, was the report of the joint committee?

Mr. STANDROD. Yes.

Mr. CLAGGETT. That original proposition by unanimous consent, to simplify these matters, was to be amended by putting that word "necessary" in——

The CHAIR. I will state to the joint committee that as to unanimous consent I don't know anything about it. There was some amendment that was sent up by Mr. Heyburn that has never been disposed of by motion. He has not withdrawn the amendment, nor has it, so far as the committee is concerned, been referred at all by his consent.

Mr. HEYBURN. Some changes were made; I don't know how far——

Mr. CLAGGETT. The words "or necessary" were put in and the phrase "subject to the control and regulation of the state."

Mr. BEATTY. Before that question is put I would call for the reading of the resolution upon which we are to vote, so that we will understand distinctly what we are voting on.

The CHAIR. The question is upon the previous question now—the main question. That must be supported; then we vote upon the resolution, the gentleman from Shoshone's motion; the secretary will please read it.

SECRETARY. What shall I read?

Mr. POE. I would like to vote intelligently upon this question but Mr. Claggett, as I understood, had what purported to be a substitute offered by Mr. Standrod, and in that there were certain alterations or changes made which covered the objections made by Mr. Heyburn; that is my understanding.

Mr. CLAGGETT. Yes, I think so.

Mr. POE. Now I want to know if we are voting upon the proposition made by Mr. Standrod, as altered by Mr. Claggett at that time.

Mr. CLAGGETT. That was done by unanimous consent.

Mr. REID. If that is the case, I make the point of order that the first thing in order under Rule 20 would be the substitute offered to the main question by Mr. Woods; the main question comes last. First is the substitute offered by Mr. Woods, then my amendment, then Mr. Heyburn's, then the main question, in each case in the inverse order.

The CHAIR. The rule on the motion for the previous question is, that before a vote on the same a call of the convention is in order; that is the rule.

Mr. REID. Yes.

The CHAIR. "That if the demand for the previous question shall have been sustained, no call shall be in order, and the convention shall be brought to an immediate vote, first, upon the pending amendments in the inverse order of their age, and then upon the main question." (Reading from Rule No. 20).

Mr. REID. I maintain, sir, under the rule that the main question has not been altered, but it will be altered and then the vote shall be in the inverse order, Mr. Woods' first, and then mine, and then Mr. Heyburn's.

Mr. McCONNELL. Is there any rule of parliamentary law upon which you can vote on an amendment when the roll is called on the previous question?

Mr. REID. If the clerk will read Rule 20, he will find it there.

The CHAIR. I will read the rule upon the pending question: (Reading Rule No. 20). Now it seems to me the vote must first be had upon the substitute to the substitute, as made by Mr. Woods. I cannot find any other construction to be placed upon it.

Mr. CLAGGETT. I rise to a point of order. There

is nothing before this house; the question is: Shall the main question now be put?

Mr. REID. That's it; the other questions they are talking about now would be in order when the previous question is ordered by the convention, but they are out of order now.

The CHAIR. Very well; then the convention is in order and the chair is out of order as I understand it, (laughter) if the gentlemen cannot place any other construction upon it than the gentleman from Nez Perce.

Mr. REID. The point the gentleman from Shoshone makes is that we ought to vote upon the main question; we have not voted upon that yet.

The CHAIR. There is no doubt about that. The question now before the convention is: Shall the main question be put? (Vote.) The ayes have it. Now the main question shall be put, and this is the motion of Mr. Woods, as I understand it.

Mr. REID. I ask that it be read.

Mr. CLAGGETT. I ask that the original proposition may first be read, and then the pending amendments in their order.

Mr. REID. I make the point of order under the rule that it is to put in the inverse order.

Mr. CLAGGETT. I do not question about the order of putting that; I ask that they be read simply.

The CHAIR. The secretary will read it.

SECRETARY reads: "Section 14. The use of lands necessary for the construction of reservoirs or storage basins for purposes of irrigating or for rights of way across——"

Mr. BEATTY. Which is being read now?

The CHAIR. If the gentlemen will allow the chair, I will ask the secretary to read the substitute offered by Mr. Standrod this morning.

The SECRETARY. That was the one I was reading. "—such lands for the construction of canals,

ditches, flumes or pipes to convey water to the place of use for any useful——"

Mr. HEYBURN. Mr. Chairman, the one that is being read by the clerk is not the original, and the changes I think are not in it.

Mr. CLAGGETT. Yes they are.

The CHAIR. This is the original offered by Mr. Standrod.

Mr. CLAGGETT. He is not reading from the copy, where the committee agreed that these amendments might be made to the copy, and that was done by unanimous consent, and it states a part of the original proposition.

SECRETARY reads Section 14 as revised: "The necessary use of lands for the construction of reservoirs or storage basins, for the purposes of irrigation, or for the rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use, for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

"Private property may be taken for a public use, but not until a just compensation, to be ascertained in a manner prescribed by law, shall be paid therefor."

Mr. REID. Now I ask that my amendment be changed by unanimous consent so that it will meet the change made by the gentleman from Shoshone. The original amendment read to strike out "any useful or beneficial purpose." He has put in the word "necessary." I want the amendment to read now "for any useful, beneficial or necessary purpose" so as to strike

out that clause. I ask unanimous consent that that be done.

The CHAIR. If there are no objections it will be so ordered.

Mr. CLAGGETT. I would suggest to the gentleman from Nez Perce that it embrace the word "purpose" also after the word "necessary."

Mr. REID. Yes, I want to strike out that clause "for any useful, beneficial or necessary purpose" so as to limit it entirely to mining and irrigating.

The CHAIR. Now the question is upon the substitute as offered by Mr. Woods.

SECRETARY reads: "Private property shall not be taken or damaged for public use without just compensation. The taking of private property except for private ways of necessity, and for easements for reservoirs, drains, flumes, ditches, pipes, or other means to appropriate water for agricultural, mining, milling, domestic or sanitary purposes, and for roads, railroads or tramways over or across the lands of another, shall be prohibited, and all appropriations hereby excepted shall be made in the manner prescribed by law, and then only by making just compensation to the owner."

The CHAIR. Are you ready for the question, which is upon the adoption of Mr. Woods' substitute? (Vote). The nays seem to have it. (Division called for. Rising vote, 16 affirmative, 38 in the negative). The motion is lost. Now the question is on the adoption of the amendment offered by Mr. Reid of Nez Perce.

Mr. REID. I call for a division. (Rising vote, 15 in the affirmative, 32 in the negative).

The CHAIR. The amendment is lost. The question now is on the original motion to adopt the substitute offered by the committee reported this morning. (Vote). The chair is in doubt. (Rising vote, 39 in the affirmative, 11 in the negative). The motion to adopt the substitute prevails.

Mr. BEATTY. I now move the adoption of the substitute as amended, as Section 14. (Seconded).

Mr. HEYBURN. I call the attention of the committee to the fact that the title of this section will need to be changed by striking out the word "private." I move that the words "private and" in the title where it occurs the second time be stricken out. (Seconded and carried).

The CHAIR. The motion prevails and the words "private and" are stricken out. The question is now on the adoption of the section as amended.

Mr. AINSLIE. Is it on the adoption of the whole section?

The CHAIR. On the whole section; the motion is that the substitute be adopted.

Mr. BEATTY. My motion, Mr. Chairman, was that the section as amended be adopted.

Mr. REID. It has not been amended; it is a substitute.

The CHAIR. This is a substitute.

Mr. CLAGGETT. I rise to a point of order. It has already been adopted. It was proposed as a substitute for this convention to consider, and it has been adopted by the convention.

Mr. BEATTY. I will withdraw my motion, Mr. Chairman.

The CHAIR. The gentleman withdraws his motion and the substitute is adopted for the entire Section 14.

Mr. WILSON. I move that the committee rise, report progress and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. MAYHEW. The chairman of the committee of the Whole desires to submit its report.

SECRETARY reads: Mr. President, the committee of the Whole have had under consideration the report of the committee on Preamble and Bill of Rights, have come to no conclusion thereon and ask leave to sit again. A. E. Mayhew, Chairman."

Mr. TAYLOR. I move that the report of the committee of the Whole be adopted. (Seconded and carried.)

It is moved and seconded that the convention take a recess until 2:00 p. m. (Carried.)

RECESS.

CONVENTION called to order by the President at 2:30 p. m.

Mr. MAYHEW. I suggest, Mr. President, that the roll be called to see whether a quorum is present. (The roll is called by the clerk and a quorum found present).

LEAVES OF ABSENCE.

Mr. PYEATT. I would like to ask for leave of absence for my colleague, Mr. Andrews; it is my opinion he will not return again but I can't say as to that.

Mr. PRESIDENT. What is the reason?

Mr. PYEATT. He did not express to me the full purport of it, but he said he had important business at home that he must attend to; if the convention holds any great length of time he would return, if it does not he will not return.

Mr. PRESIDENT. Indefinite leave of absence is requested for Mr. Andrews of Lemhi county. Is there any objection?

Mr. MORGAN. Is Mr. Andrews going away today?

Mr. PYEATT. Yes.

Mr. MORGAN. I think a man ought to state when he requests leave of absence what his reasons are; it is important that he should return.

The CHAIR. Gentlemen, I think it is necessary to excuse him under a vote of the house.

Mr. PYEATT. I move that Mr. Andrews be allowed leave of absence. (Seconded).

Mr. GRAY. I would like Mr. Andrews to come and state the reasons, if he has reasons.

Mr. MORGAN. I have been informed that his father is sick, and that his father has been attending to

his business. Perhaps the gentleman who moved for leave of absence can tell.

Mr. PYEATT. It is my opinion that it is not the principal cause, but that his business is of such a nature that he would not care to come into this room and make his business known. His father is not well also. He has not expressed to me exactly the cause.

Mr. PRESIDENT. It is moved and seconded that Mr. Andrews be granted indefinite leave of absence. (Carried.)

Mr. ARMSTRONG. I desire to ask leave of absence until next Monday evening. I have important business to attend to.

The CHAIR. Is there any objection? There being no objection Mr. Armstrong is excused.

Mr. SHOUP. I move that when this convention adjourns it adjourn to meet tomorrow morning at nine o'clock. (Seconded and carried.)

COMMITTEE REPORTS.

Mr. HEYBURN. Mr. President, with the consent of the convention I submit the report of the Judiciary committee.

SECRETARY reads: Mr. President, your committee on the Judiciary herewith submit their report and beg leave to state that on the question of the manner of selecting the judges of the Supreme Court they are unable to agree and herewith submit two reports, sections numbered 6 and 7 on that question. W. B. Heyburn, Chairman.

Mr. PRESIDENT. The report of the committee will lie upon the table and be printed.

Mr. ARMSTRONG. The committee on Labor wishes to report.

SECRETARY reads: Mr. President, the committee on Labor hereby submit to the convention their annexed report. Respectfully, H. Armstrong, Chairman.

Mr. PRESIDENT. The report will lie upon the

table and be printed. What is the pleasure of the convention?

Mr. HASBROUCK. As I am informed there are some members that have got excused, the committee on Ways and Means have to report the mileage of members, and on behalf of the committee on Ways and Means I request that those members, if any there be, report to the committee their mileage, so that the committee may report the same to this convention.

Mr. MORGAN. I move that the convention go into the committee of the Whole on the general orders of the day. Carried.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. MAYHEW in the Chair.

SECTION 15, ARTICLE I.

The CHAIR. Section 15 and Article I. is the first. (The secretary reads Section 15 as reported).

Mr. SHOUP. Mr. Chairman, I wish to offer an amendment.

SECRETARY reads: Strike out in the third line after the word "law" the words "or in cases of tort." Also all after the word "fraud."

Mr. REID. I offer a substitute for the whole section.

SECRETARY reads: Substitute for Section 15: There shall be no imprisonment for debt in this state except in cases of fraud. (Seconded).

Mr. REID. That expression "only upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law" I think is a little too broad; it leaves to the legislature the enactment of an insolvent law which might affect their rights. As recognized now in most states you can arrest a debtor in a civil action in any case of fraud, for instance an absconding debtor. I do not like the expression there "where there is a strong presumption of fraud." I think the affidavit should always

show such a state of facts that the court in passing upon it shall find there was fraud when he issues the order of arrest, and the substitute I have sent up embodies the statement contained in most constitutions. Where there is fraud he can always be arrested, as an absconding debtor. The words "or in cases of tort" I think might as well be left out, but wherever there is a civil transaction tainted with fraud you can arrest the debtor. To provide there shall be no arrest except in cases of fraud, I think covers all cases.[1]

Cries of "Question." (Vote).

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

Section 16.

SECRETARY reads Section 16, and it is moved and seconded that the same be adopted, which is carried.

Section 17.

SECRETARY reads Section 17, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have sent up an amendment.

SECRETARY reads: Amend by inserting after the word "affidavit" in the third line the words "showing such probable cause."

Mr. REID. I second the amendment.

Mr. HEYBURN. Mr. Chairman, the object of that is, that in drawing it, it does not show to what the affidavit shall be directed, and it should be directed of course to the subject of showing probable cause, and should on its face show it.

Mr. CLAGGETT. I would suggest striking out the

1—This section as originally reported appears to have been based upon Section 12, Article II of the Colorado Constitution, which is as follows: "That no person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases of tort where there is a strong presumption of fraud."

words "support" and put in the words "be shown" so that it will read: "without probable cause be shown by affidavit."

Mr. HEYBURN. I accept the amendment.

Mr. SINNOTT. I have an amendment which I wish to offer.

SECRETARY reads: Substitute the word "unlawful" for the word "unreasonable" in the second line. (Seconded).

The CHAIR. The amendment is offered to strike out the word "unreasonable" and insert the word "unlawful." (Vote). The motion is lost.

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

SECTION STRICKEN OUT.

SECRETARY reads Section 18 and it is moved and seconded that the same be adopted.

Mr. HEYBURN. I move to strike out Section 18.

Mr. HAGAN. I second the motion.

Mr. HEYBURN. Mr. Chairman, the object of moving to strike this section out, is because it belongs in the Judiciary department of the government and is already provided for, inasmuch as it has been reported by Section 5 of the Judiciary Act, describing the crime of treason; the same provision is contained in the Judiciary department and does not belong to the Bill of Rights.

The CHAIR. It is moved and seconded that Section 18 be stricken out. (Vote.) The ayes seem to have it. (Division called for. On rising vote, 32 in the affirmative, 12 in the negative). The motion is carried. Section 18 is stricken out of the Bill of Rights.

SECTION 18.

SECRETARY reads Section 19. (18).

Mr. CLAGGETT. I suggest that this section be numbered 18 to take the place of the one stricken out.

It is moved and seconded that the section be adopted.

Mr. HOWE. Mr. Chairman, I move to strike out the word "to" in the second line after the word "afforded" and substitute the word "for."

Mr. CLAGGETT. I second the motion.

It is moved and seconded that Section 18 be adopted as amended, which is carried.

Section 19.

SECRETARY reads Section 19 (according to changed numbering, being section on elections).

Mr. CLAGGETT. I move to amend by inserting the words "and lawful" after the word "free" in the second line, so that it will read "interfere with or prevent the free and lawful exercise of the right of suffrage."

Mr. HEYBURN. I second the motion. (Carried).

Mr. PINKHAM. Mr. Chairman, I desire to submit a substitute for the section which was read.

SECRETARY reads: Substitute for Section 19 the following: All elections authorized by the laws of the United States and of this state shall be free and equal.

The CHAIR. Is there any support to the amendment?

Mr. MORGAN. I second the amendment.

Mr. PINKHAM. Mr. Chairman, it seems to me that there are too many restrictions upon elections of all kinds. It does not confine itself to elections held under the authority of Congress, but it goes to all elections, that they shall be free; it does not use the word "equal" at all, but that they shall be free, open and legal, and no power, civil or military, shall interfere with them. Now I have known circumstances only a few years ago, especially in some of the states of this Union, where the writ of habeas corpus was suspended and that elections were held under military authority when it was in full force after the suspension of the writ of habeas corpus. Such conditions as that might arise with us, in cases for instance of insurrection or rebellion in our midst, when it would be actually neces-

sary for the governor to suspend the writ of habeas corpus and an election should be ordered, it would be necessary for us to have something of this character in the constitution, or leave out this portion of it entirely; because there would be a condition of circumstances in which those in authority would conflict, and it would be impossible to hold an election under those circumstances; for that reason I move the substitute.

Mr. AINSLIE. I don't understand that expression: "Free and equal." I don't see how you can have equal elections. I never saw the expression used in reference to elections. All men are created free and equal, according to the Declaration of Rights, but how you can have an equal election is not plain to me. All elections shall be free and open, is a proper term to use. I don't know what an equal election would be, unless every candidate would have an equal number of votes.

Mr. PINKHAM. In reply to the gentleman who has just taken his seat I refer him to every constitution of the eastern states. I have before me this section in the constitution of the state of Illinois which reads: "All elections shall be free and equal."[1] (Vote.)

The CHAIR. The noes have it; the substitute is lost. What is the pleasure of the committee?

Mr. HEYBURN. I move that after the word "open" in the first line we insert the words "and by secret ballot."

Mr. BEATTY. I object to that, because that is a matter to be provided for in another report, in the report of the committee on Elections and Suffrage is the proper place for it.

Mr. HAGAN. I think it is a good place for it in the Bill of Rights.

Mr. AINSLIE. I move to strike out all of the section down to the word "no" in the first line, to leave it to read "No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." Mr. Chairman, in moving

---

1—Art. 2, Sec. 18, Ill. Const. 1870.

that amendment, I do it for the reason that the provision with regard to the manner of holding elections by ballot was committed to the committee on Suffrage and Elections, and that is provided for in another report, and it is unnecessary to put it in the Bill of Rights. (Seconded).

The CHAIR. The question is now on the amendment offered by Mr. Hagan. (Vote). The chair is in doubt. (Rising vote, 20 in the affirmative, 29 in the negative). The motion is lost. The question is now on the amendment offered by Mr. Ainslie. Is it supported? (The motion is seconded). (Vote). The chair is in doubt. (Rising vote, 26 in the affirmative, opposed 23). The motion prevails, the amendment is adopted. The question now recurs on the adoption of the section as amended. It is moved and seconded that the section be adopted as amended. (Carried.)

Section 20.

Mr. REID. I offer the following amendment. In Section 20, line 1 after the word "property" insert the following "or educational." The object of the amendment is simply that in prescribing that no property qualification shall be required, that no educational qualification shall be required either. I don't think a man should be required to read and write or any other qualification, to entitle him to vote. I have seen some of the best men in the country that had to sign their names with a cross-mark, and they were just as safe depositaries of the business of the state as the graduate of a university, and I do not think an educational qualification should be required; I hope the amendment will be adopted.

Mr. SHOUP. I wish to offer an amendment to the section.

SECRETARY reads: Amend Section 20 by inserting after the word "office" in the second line the words "except in school elections or elections creating indebtedness."

Mr. BEATTY. I second that amendment.

Mr. SWEET. Mr. Chairman, I don't propose to take the time of this convention on this amendment proposed by the gentleman from Nez Perce, Mr. Reid, but I hope it will not prevail. While under the status of affairs in this state today I would not be in favor of adding an amendment requiring an educational qualification for suffrage, at the same time we do not know what class of people may become citizens of this state, how many of them or where they may come from, and it may be very desirable some time to require this qualification, to insist that the voter know something about the fundamental principles of state government and that he can read the fundamental law, and it may be desirable to have such a qualification, but I don't think it is a good idea at the present time.

Mr. BEATTY. I think it is bad enough to send out over the world a section, even as drawn, that does not prescribe an educational qualification, but I think it would be even worse to say to the world that we will positively provide that no educational qualification shall ever be required. I hope the amendment of the member from Nez Perce will not prevail. As we leave it here, we leave it that all may vote, but we do not want for all time to bind ourselves to that kind of provision. The emergency may arise when we may want to say that we value and encourage education in this territory, and I am opposed to any proposition so broad as that, to say to the world we do not care whether the people can read or write the English language or not, and that is what it amounts to.

Mr. POE. If the present constitution is such that it would be proper that this amendment should go in here—it is the present that we are looking out for, it is the present we are legislating for, and we are also legislating for the future. I am unalterably opposed to putting in any qualification whatever as to the right of exercising the elective franchise. There are many persons in this territory who have never had the opportunities of some of the gentlemen who oppose this, good

citizens, men who know what is right and what is wrong as well as the learned gentlemen who oppose it. Why, we have a provision now in this constitution, or proposed provision, to allow Indians not taxed the right of suffrage; that is now pending. How many of those Indians who had renounced their tribal relations but have never had any advantages of education, brought up in ignorance, could exercise that right if this restrictive bar was put upon it? But I believe it to be an absolute wrong for us at this time to deny any American citizen the right of suffrage on account of his ignorance. Every man in this country is presumed to be equal in law; there is no distinction, and no man who is an American citizen should be deprived of that right unless he is convicted of some crime or associated with some organization that is inimical to our institutions; and though perchance this particular man has been unfortunate in his early days, neglected by his parents, and therefore cannot read or write, I say it would be an injustice to him now to deprive him of that right. We are not sending out to the world the idea that we are opposed to education; nothing of the kind; but we are endeavoring to do what is just and what is right. We in this constitution will publish to the world that we are in favor of public schools, that we are in favor of education and the dissemination of knowledge and of the arts and sciences. Now while we are doing this it seems to me right at the same time that we should not take away from him, the poor man who has been unfortunate in his early days, and deprive him of his right of citizenship. I do not think it is right, gentlemen, and therefore I shall favor the amendment, that the words "educational qualification" shall be placed there.

Mr. REID. I have but one word to offer in reply to my friend from Latah. The Judiciary committee have reported a plan of amending this constitution, that where two-thirds of the general assembly recommend an amendment, it may be submitted to the people. As

our interests may require or as the public safety may demand, we can limit the suffrage. But especially in a territory am I opposed to it. You have not had the common schools nor the subscription schools nor the means for education in the territories that you have in the east. I know of no such qualification in the states; doubtless it may exist in some, but there is many a man and boy who has grown up here without having the opportunity of attending school, a class of men who don't have these facilities and advantages of civilization, and who have grown up without these educational qualifications. The residents of this territory may change, and I am ready as any man to take up that question hereafter, and I propose to disfranchise the dangerous elements that may come in; we will disfranchise this class of citizens. If I am not mistaken the committee on Education have reported a bill in which they require children between certain ages to go to school. That is a requirement which we propose to incorporate in our laws, but I do not propose that there shall be any test put upon the suffrage in our new state, so far as my individual vote is concerned, except that of true manhood. If a man is a citizen who obeys the law, does what is right, don't connect him, as my friend says, with any organization that countenances crime; if he is a citizen of this territory, and comes up in every other respect to the qualifications prescribed by law, don't say that he can't vote for the people who tax him, simply because he was unfortunate in his early days and could not have the blessings of education that he wished for himself.

Mr. SWEET. These gentlemen seem to talk as if there was a provision in this constitution requiring educational qualification for suffrage or for the exercise of the right of suffrage. There is no such provision here as I understand it. I do not understand further that there is any disposition to insert such a requirement in this constitution. The objection urged here is that it prevents such a qualification ever being

made. Now take the case referred to by Mr. Poe: suppose two or three reservations are opened here, and a thousand Indians are permitted to vote at once, without any knowledge whatever of the laws of this country, or of the English language, or of the customs of society, or in any way fitted at all for citizenship or to exercise the right of suffrage. Now I say it is no more than right that they be required to know a little something about our government and our people, at least as much as would be attained in learning how to read and write. I would not be in favor of having this clause in our constitution at this time.

Mr. REID. That would not do in Nez Perce county; Indians who have severed their tribal relations vote, and is there any evil——

Mr. SWEET. I think they did on county seat questions.

Mr. REID. Didn't they on all other questions?

Mr. SWEET. I never saw any. (Laughter.)

Mr. REID. Don't some of them vote the Republican ticket?

Mr. SWEET. I have no doubt they do.

The CHAIR. I think the objection is well taken.

Mr. SWEET. What objection?

The CHAIR. Of the gentleman from Nez Perce.

Mr. SWEET. Well, I think it is reserving no greater right than we ought to, and it is a matter of necessity.

Mr. POE. What we are complaining about is this: It says that no property qualification shall ever be required of any person to vote or hold office. Now that does mean that an educational qualification can be engrafted in our law. That is what I am objecting to, and therefore we wish to prevent the legislature from passing a law requiring an educational qualification to vote.

Mr. GRAY. Mr. Chairman, I can hardly see the force of this amendment. I read the section and it says: "No property qualification shall ever be required for

any person to vote or hold office." Now if we are to bind ourselves by this constitution that we require that, then I might just refer now to the report of the Judiciary committee, which requires that gentlemen be learned in the law, etc., but no such qualification it seems now must be required. We do not require it. This section don't require it for suffrage or for anything else. Now, on yesterday we were asking the gentleman from Nez Perce if he was not willing to leave something to the legislature. Are they afraid they will shut out their party vote, or some of their party vote, or some sections of the country that never intend to learn to read or write? Perhaps it may never be the law, but I do say this, that I believe the time will come when probably it will, and when that time does come, probably the legislature will take it in hand and enact such laws as will be just and equitable at that time. There would be some force in this objection if that educational proposition was to be in here, if it was a requirement here. But no, we leave it as it is; they are all voters now and probably will be, and I fail to see their object in putting that in there; can't we trust our legislature to deal with it? Let them take care of that when the proper time arises. The only thing is that this section gives as much right to hold office as it does to exercise the suffrage, and there is no qualification, no educational qualification for holding office, a school office or any other office. Why, I hate to see such a constitution as that go out to the world, to say that a man need not have any educational qualification at all to hold office.

Mr. BEATTY. I will ask the gentleman a question: Would it not be an inducement to an ignorant population, to come in here instead of intelligent people?

Mr. GRAY. Well, it would seem that we are trying to here. (Applause). If there was any restriction, if they had an educational qualification in here, there would be some force in this amendment, but I cannot

see any now whatever, and further than that I would hate dreadfully to see that engrafted in our constitution.

Mr. MORGAN. If this amendment was inserted, a man who could neither read or write could appear as a candidate for superintendent of schools in the county, and there would be no law against it.

Mr. REID. When there is an express provision put in the constitution, and a declaration of right in the Bill of Rights, does not the express prohibition or declaration in the constitution take precedence and become the law over any declaration in the Bill of Rights?

Mr. MORGAN. As a matter of course it does.

Mr. REID. Then the declaration that a judge shall be learned in the law must take precedence.

Mr. MORGAN. I am not speaking of that.

Mr. REID. That was the argument made by Mr. Gray which you are upholding.

The CHAIR. Mr. Morgan has the floor.

Mr. BEATTY. I would like to ask the gentleman from Nez Perce county a question.

The CHAIR. Does the gentleman from Bingham yield the floor?

Mr. MORGAN. I think I had better say what I have to say first, and then let him go on. With the amendment inserted in the constitution which is proposed by the gentleman from Nez Perce, there is nothing to prevent a person from running and being elected as superintendent of schools in every county or any county in this proposed state, who could neither read nor write. There is nothing to prevent a person from running for election to the office of the clerk of the district court; yet he might not be able to read and write at all. I think there is not a constitution in the Union, so far as I can see from the very hasty examination I have made, that has this provision in it, and I would like to ask the gentleman if there are any constitutions which have it.

Mr. REID. None at all, Mr. Chairman. If the people want to elect a man of that sort, let them do it. I remember the fact that Andrew Johnson learned to read and write after he was 21 years of age and he was good enough to be elected vice-president.

Mr. MORGAN. That was after he had learned to read and write; the people would not have elected him if he had not learned.

Mr. HEYBURN. Mr. Chairman, I would be rather inclined to favor a provision that would require that in ten years no person should be allowed to vote who could not read and write, to compel these people to learn to read and write who have been here so many years that they have had time enough. I do not offer this as an amendment at all, but I say I would favor an amendment of that kind rather than to favor an amendment so unusual as to require that it should never be made a qualification. Of course this will be an interesting question to us. They are dividing these Indian lands in severalty, and putting them in a position where they can demand the franchise, and if we had a provision that no person after a certain time could vote unless they could read and write, we would prevent these people voting. If this law was made in the northwestern states where public school books are in Norwegian and Swedish, that would compel them to learn to read the English language and it would be so much better for the nation. I certainly shall oppose this amendment.

Mr. LEWIS. There is another reason. It is a well known fact that in the Mormon church a very large percentage of the members of that church in this territory today are unable to read or write, and the source of their strength is the fact that in their ignorance they have absolute control of all their material affairs.

Mr. REID. Will you allow me to ask you a question?

Mr. LEWIS. Yes; two of them.

Mr. REID. Is not every Mormon precluded under another declaration of this constitution from voting?

Mr. LEWIS. The Mormon church and the position they take today, and the position which their missionary in this city has suggested, is this: That this very legislature be restricted in its powers, and that is the very reason we should object to having the change that the gentleman proposes inserted.

Mr. REID. But it is provided in this very declaration I refer to that the legislature may restrict the powers of the voter in the future.

Mr. LEWIS. And that is the reason why Mormon citizens stand here and maintain the proposition that the legislature shall not restrict the ignorant population, thereby preventing the Mormon church from controlling the people of this territory.

Mr. REID. I will ask the gentleman a question if he will yield a moment; if in this very Bill of Rights itself is it not declared that every man who in any manner belongs to that church, who aids, abets, or counsels it, or contributes to it in any way, is precluded from voting, without requiring an additional qualification?

Mr. LEWIS. Very true.

Mr. REID. Then if that is true, would not that exclude him, no matter what the additional qualification was?

Mr. LEWIS. I will answer my friend with proof when he gets through. However, I wish to suggest here that that is a great amendment, and that is the position of the Mormon church in relation to the action of this convention, and I can prove it if the gentleman wishes to have it. That is the very position the Mormon church takes in this convention and in this constitution, that no restriction shall be placed, so far as it is concerned, upon the right of suffrage, so that if they have the majority in the legislature they can demand this elective franchise, and I say that is another reasor why we should guard the matter and vote that amendment down.

The CHAIR. Did I understand the gentleman to say that in this convention on the part of Mormonism?

Mr. LEWIS. No, I say the position which they take in regard to the action of this convention.

The CHAIR. In this convention?

Mr. LEWIS. Yes, the action which the convention may take, so far as the restriction in the constitution which they may prepare, that they desire this restriction shall not be too broad, but shall be limited, that is, the right of the legislature to make it. I say that is one more reason why the right of qualification, so far as education is concerned, should be included.

Mr. REID. Just one word. I will not trouble the convention long, but since the gentleman has said something about missionaries in the Mormon church, I desire to state to the convention that I knew nothing about any missionary. I will state further that this question has been on this floor before; I have had the honor to preside over the democratic caucus, and have presided over it and called it every time it has been held since this convention assembled, and the statement that a missionary or Bishop Hoge or any outsider has ever been in that caucus or ever present or taken any part in it in any way in favor of the Mormon church is untrue. If there is any missionary here in this town influencing anybody's vote or anybody's action, I know nothing about it. I offered this amendment in good faith, because I am not in favor of a man who has money in his pocket to send his children to school and another man who is too poor even to support them—to force him to go to the public school to learn to read and write, or that there should be a property qualification prescribed for him. I lived in a town——

Mr. SWEET. Are we allowed to speak twice on this question?

The CHAIR. The gentleman objects to speaking more than twice on the question.

Mr. REID. The gentleman had his say, and I rise to a question of personal privilege. The gentleman's intimation is that a missionary in this city or in this town is influencing the vote of this convention; it

might have been considered to apply to myself. He made the explanation, or it was made to appear that that was one reason why the Mormon church wanted this done, that they were in favor of this. He stated the reason why; he introduced it; he said he could prove it. I do not care anything about it if he can. I defy him or any other gentleman to prove that any Mormon missionary influenced me in my action in this matter or in any other.

Mr. LEWIS. I will simply explain to correct that impression, that I didn't say any missionary was in any democratic caucus or intimate anything of the kind. I hope the gentleman will not state that because it is not the fact.

Mr. REID. Didn't the gentleman state a missionary was trying to influence the action of the convention?

Mr. LEWIS. I will explain just what I said and what I meant. I say that the position of the church is represented by its members.

The CHAIR. In the convention?

Mr. LEWIS. I didn't say in the convention; I say —I don't say in this convention, I say there has been no missionary in this convention, nor in any caucus of this convention, but I say that their wish is, as to the action of this convention, that the legislature shall not have the power to restrict the suffrage by a property or educational or other qualification, which may affect their power in this territory.

Mr. REID. What I desired to say, Mr. Chairman, in explanation of that was; the only reason is, I never intend to cast a vote that will make a distinction between the rich man's son and the poor man's son. I have lived in a country where one-half of them could not read and write; they went to the ballot box and voted and cast their vote intelligently; I never saw that they mismanaged it——

Mr. SWEET. I object to the gentleman's speaking continually, unless we can all have a chance to talk.

The CHAIR. The gentleman is called to order.

(Cries of question.)

The CHAIR. The question is on the amendment offered by Mr. Reid of Nez Perce. Are you ready for the question? All in favor of the motion prevailing say aye, those opposed no. (Loud chorus of "noes.")

The CHAIR. The motion is lost. The next amendment in order is that of Mr. Shoup.

SECRETARY reads: Amend by inserting after the word "office" in the second line the words "except in school elections or elections creating indebtedness." (Vote.)

The CHAIR. The ayes seem to have it. It is moved and seconded that the section as amended be adopted.

SECRETARY reads section as amended: No property qualification shall ever be required for any person to vote or hold office, except in school elections or elections creating indebtedness. (Carried.)

Mr. PEFLEY. I wish to offer an additional section.

SECRETARY reads: "No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious service in either house of the legislature." (Seconded.)

Mr. PEFLEY. Mr. Chairman, the object I have in introducing that addition or amendment to the Bill of Rights, is this; it is to save the disbursement of several hundreds of dollars at each convening of the session of the legislature.

Not only that but it is to keep any sectarian lobbyists or influences away from the legislature during its session. It also is to prohibit services that are distasteful to a large majority or at least a large number of law makers in this day and age of progressiveness. I am opposed to that mode of taking money out of the treasury to pay for services for which the people receive no adequate benefit. Not only that, but most of the legislators look upon these exercises as ostentatious bosh, and that they have no influence or any good

effect upon the deliberations of a body that feels such exercises are preposterous. Not only so, but the people send their legislators to the capitol for a certain purpose; they send them there to make laws for the country, and not to make long-winded prayers themselves or listen to them from others. Secondly, I am opposed *in toto* to taxing people for any sinecure office whatever. It is not necessary to say that congress or many of the states have these officers, or that the government makes provision for their payment in the navy, in the army and territories of the United States, or that it is impossible not to have these officials in assemblies of this character, or that it is breaking down a custom hoary with age in legislatures generally, or that it is in direct opposition to religion itself. All this, Mr. Chairman, has nothing to do with the question of legislation, which legislators are expected to perform with ability and dispatch. These old customs should be discarded; they are discarded in many of the great powers. The houses of parliament with their twenty-eight bishops have no exercises of this kind. The assembly of France has nothing of the kind; and very few of the courts, especially the Supreme Court of the United States. The legislatures of New York, Virginia, Pennsylvania, Illinois, Oregon, and perhaps others have no such exercises. They have done away with this expensive nonsense. I say "nonsense" from the fact that three-fourths of the law makers, as is well known, in America at least, are non-communicants of any society or sect, and take no interest in anything which cannot be demonstrated. The other one-fourth may belong to as many sects as there are members, and if you elect a Catholic or a Methodist, or a Baptist as a chaplain, he may have but few members that would care to hear his supplications, and the others all the time would consider him a heretic; yet each member would be obliged to hear something that he was opposed to, or else absent himself purposely; in either case it would divert his mind from the special

duties which he is supposed to perform. But if these diurnal exercises are actually necessary, I am in favor, when the legislature convenes in this capital, to invite the whole clergy to come here and perform, so that each member may find his affinity, and let them pray and carry on their exercises as long and as late and as often as the tenets of their creed require, provided that the time so occupied does not impinge upon the legislative hours, and that the members shall be required to settle the bill therefor. This is taken from a neighboring state constitution,[1] one of the most prosperous in the Union. They have had this provision in their constitution for thirty years, and I think perhaps it has a good deal to do with its prosperity, because they have saved many thousand dollars thereby. I move its adoption.

The CHAIR. Is the motion supported? (Seconded.)

Mr. POE. Mr. Chairman, I cannot sit quietly and hear such principles avowed in the blaze of the nineteenth century, in this Christian age, in the age of civilization, the Christianity that now exists. I am astonished to see any gentleman get up in a deliberative body like this, in a constitutional convention organized as it were by the Christian people of this country, because we all claim, I think, to be Christians, we all, I think, claim that there is a Supreme Being to whom we look for aid and comfort in our hours of need; and yet there is a gentleman in this convention who has the effrontery, has the boldness, in the blaze of the nineteenth century, to propose that the future legislation of this state shall be directed and empowered to withhold from all deliberative bodies one who might offer supplications to the Divine Being——

Mr. PEFLEY. Will the gentleman allow me a moment——

Mr. POE. ——for the reason, as he maintains, that it would be an expenditure of public money, that it is

---

1—Oregon Constitution of 1857, Art. 1, Sec. 5.

wrong for the people to pay a chaplain, and therefore he wants an interdiction put in this constitution, forever denying to the people the right when assembled in their legislative halls to employ a chaplain.

Mr. PEFLEY. Mr. Chairman, the gentleman has either misunderstood me, or else he intends to misrepresent me; I don't know which.

Mr. POE. No sir, I don't intend to misrepresent you.

Mr. PEFLEY. He says I deny the people having that privilege. I not only do not deny it, I agree to give it to them, but I wish every man that comes to the legislature to have persons to pray for him that are suitable to his sect. If you employ a chaplain, he may be elected by one majority; the other 49 or 29, or whatever the minority should be, may belong to other churches; his ministrations would be distasteful, his petitions would not suit them; they might all think he was a heretic. But my proposition is to allow every man his affinity, to invite the whole clergy to the capitol, to come and ministrate, but that they shall not take up the hours of legislation, and that each member shall foot the bill, because he received the benefit and not the people. That is my position, Mr. President.

Member from ADA. This is my first attempt, Mr. President, to say anything in this convention; I cannot sit still. Does the gentleman from Ada forget our fathers and our forefathers, the founders of this republic? Does he forget the example set to us from the Declaration of Independence down to the present day? Does he forget Washington, who bowed in the snow and adored the great architect of the universe? Does he forget that Lincoln, Washington and Jefferson set us the example? Gentlemen, I trust that this amendment will not prevail. I as a citizen of Idaho want us to recognize that Supreme Being who presides over the destinies of all nations.

Mr. AINSLIE. I call for another reading of that

amendment. It appears to me that a part of that should be adopted in the constitution, and a part I think not.

SECRETARY reads: No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislature.

Mr. AINSLIE. I ask for a division of the question; I am in favor of the first part of it. I do not believe the money of the people in this state should be drawn from the treasury and appropriated to support any religion or religious institution of any kind. In several states, and I think the state of New York, there are probably a million or two dollars a year appropriated for schools and asylums which state they are under some particular denomination, not under the state government at all. I believe in appropriating all the money necessary to support the institutions of the state, but I am opposed to appropriating the money of the people, or state money, towards the support of any denominational or religious institution of any kind. But I am in favor of allowing the people to have a chaplain, if they want it.

Mr. GRAY. Let me ask the gentleman if Sec. 4 of the Bill of Rights does not cover that?

Mr. MORGAN. I think upon examination you will find that subject fully covered by the section in the educational bill; it covers every point under discussion in this clause. (Cries of "Question.")

The CHAIR. The question is on the adoption of a new section to the article, to be called section 21. I don't know that it demands a separate vote on this question; "No money shall be drawn from the treasury for the benefit of any religious or theological institution." Do you desire a separate vote on that, Mr. Ainslie?

Mr. AINSLIE. There is a provision in section 4

which says "no person shall be required to attend or support," etc.——

The CHAIR. Are you opposed to the adoption of the section?

Mr. AINSLIE. I am in favor of the first portion, and of dividing it, to leave out the chaplain part.

Mr. SWEET. I would like to say to Mr. Ainslie that I have seen the report of the committee on Education,—I don't know whether it is printed or not,—and they absolutely prohibit the apportioning of one dollar of public money to any sort of secret or denominational institution.

Mr. AINSLIE. Very well; I am satisfied then.

Mr. PEFLEY. I——

The CHAIR. The gentleman has spoken twice; if there is objection——

SEVERAL MEMBERS. I object.

Mr. MORGAN. I hope the gentlemen will hear the gentleman in explanation.

Mr. PEFLEY. Mr. Chairman, I don't wish that question divided; I want it to stand or fall altogether. If the people of this territory or this coming state wish to carry on something that is hoary with age and handed down from a barbarous generation to the present time, of course I cannot object; I am not a majority here. But gentlemen, I hear them talking about this blaze of the nineteenth century. According to my reading, the blaze of the nineteenth century does away with this nonsense, because many of the great states,—New York has more people than twenty or thirty such states as this alone,—they do not have it there. They have done away with it in the Supreme Court of the United States. The Congress of course keeps it up, as a mere matter of form. And the question of economy is what is looked at more than anything else, from the fact that it is one of the questions upon which the adoption of this constitution will depend,—the economy of the provisions made in it. And the idea of taking out several hundred dollars every session of the legis-

lature, to pay for something that does no one any good, and that is a sinecure office in any way, shape or form you can put it——

Mr. BEATTY. I rise to a point of order. I understood the gentleman rose simply for an explanation; it seems to be for an additional argument. It is the third time he has been on the floor.

Mr. PEFLEY. I had permission to go on.

Mr. BEATTY. We understood it was simply for an explanation.

The CHAIR. The gentleman is in his third speech, and he cannot speak, unless it is by motion giving him permission.

Mr. PEFLEY. Then I can sit down, I guess. (Cries of "Question.")

The CHAIR. All those in favor of the adoption of the section offered by Mr. Pefley say aye, contrary no. (Vote.) The noes have it, the section is rejected.

SECTION 21.

SECRETARY reads: Sec. 21. "This enumeration of rights shall not be construed to impair or deny other rights retained by the people."

It is moved and seconded that it be adopted.

Mr. HEYBURN. I suggest striking out the word "popular" in the title.

Mr. HOWE. I would like to know whether these headings are to be printed in the constitution or not.

The CHAIR. I don't know what the committee on Revision are going to do. It is moved and seconded that the word "popular" be stricken out of the title. (Carried.)

The CHAIR. The question is now upon the adoption of the section as read; it is moved and seconded that it be adopted. (Carried.)

HEADINGS TO SECTIONS.

Mr. GRAY. I call the attention of the chair to section 13, in the title to that, the right of accused

persons to depositions in criminal cases,—by referring to the correction of this section, I see that depositions in criminal cases was stricken out, and it should be stricken out of the title.

Mr. CLAGGETT. I do not suppose that anybody will imagine that when this comes to be incorporated in the constitution, these headings will be put in; it will be simply articles and sections.

The CHAIR. Some have them in, and some have not.

Mr. STANDROD. Whenever it is construed by a court, certainly the whole title of a section is no part of the section.

Mr. GRAY. What harm would it be to strike that out?

Mr. STANDROD. None at all.

Mr. GRAY. I move that that part, depositions in criminal cases, shall be stricken out in the title. (Seconded and carried.)

Mr. BEATTY. Mr. Chairman, as chairman of the committee on Revision, I would like to call attention to the fact that this report which we have been considering has a heading to all the sections, while some subsequent reports have no headings whatever. Now the committee ought to adopt some rule and ought to have some instructions from this body or from the convention. We have no rule and no instructions upon it.

Mr. SHOUP. I rise to a point of order; we are considering the preamble to the Bill of Rights, and have not yet adopted the Bill of Rights.

The CHAIR. Well, do not by a point of order prevent any member from asking information.

Mr. HAGAN. I think the preamble cannot be considered until the whole constitution is adopted. It is the last thing to be acted upon.

The CHAIR. What is the pleasure of the convention?

Mr. CLAGGETT. I move that we adopt the preamble at the head of this article. (Seconded.)

Mr. PEFLEY. Mr. Chairman, I wish to offer a substitute.

SECRETARY reads: Constitution of the State of Idaho, Preamble: We the people of Idaho, to the end that justice be established, order maintained and liberty perpetuated, do ordain this constitution." (Seconded.)

Mr. PEFLEY. Mr. Chairman, the reason why I offer that substitute is that there are no redundant, meaningless or ambiguous words in its composition. Every man, woman and child can understand that, and agree on every word as to what it means. Not only so, but it is no secret that in the greatest charter of liberty or freedom ever conceived, promulgated to the world by American men, they made plain statements in their preamble; and if such men as Washington, whom we consider the greatest man that ever lived in our own or any other age, such men as Franklin, the greatest philosopher that this continent ever produced, and Madison, the greatest law-giver, or rather framer of constitutions that the world has ever seen, and fifty others of their compatriots,—I say if they had no use for ambiguous words in the preamble of the constitution of the United States, why should we, amateur statesmen here, far away in the sagebrush of Idaho, undertake to improve on their work, that has been applauded all over this great universe, and is the grandest and best work that ever fell from the hand of living men? (Cries of Question.)

The CHAIR. The question is on the adoption of the substitute for the preamble, offered by the gentleman from Ada. All in favor of the motion signify it by saying aye.

Mr. PEFLEY. Aye.

The CHAIR. Contrary, no. (Vote.) The noes seem to have it. (Laughter.) The amendment is lost.

Mr. PEFLEY. Mr. Chairman, I wish to offer an amendment.

SECRETARY reads. Amendment to Preamble, article 1, State Constitution. Strike out in the first line all after the word "to" to the word "for" and insert in lieu thereof; "the Constitution of the United States."

The CHAIR. Is there any support to the motion?

Mr. BALLENTINE. I move that the committee rise, and that the bill be reported with the amendments to the convention.

The CHAIR. The gentleman is out of order.

Mr. CLAGGETT. Mr. Chairman——

Mr. BALLENTINE. But I understood the preamble to be adopted.

The CHAIR. No; the question now before the committee is the adoption of the preamble.

Mr. HAGAN. Mr. Chairman, I rise to a point of order; that the preamble is a clause in which we recite the fact that we do establish this as the constitution. We have made no constitution yet. After we get through with it, we go back and pass the preamble.

The CHAIR. A particular rule provides that that shall be the last considered, whether it means the last of this article, or the entire constitution——

Mr. HAGAN. I think it refers to the entire constitution. This article is only one part of the constitution; it is the same as the title to a bill. That question was asked, and it was stated by the president of the convention Monday morning.

Mr. CLAGGETT. Before the chair rules upon the matter, I would like to refer to Rule 53, which says: "as soon as any entire proposition for incorporation in the constitution shall have been disposed of, such proposition, if agreed to by the convention, shall be referred to the committee on Revision, to be by that committee embodied in the constitution;" and that is what is done with this report. It necessarily will go to the committee on Revision, as soon as it is agreed

to in the convention, and if we hang it up to the holidays, we hold it there until the whole thing is adopted.

Mr. REID. Under Rule 49, directed to this question, it says; "In committee of the Whole propositions shall be read by the chairman or secretary, and considered item by item, unless it shall be otherwise directed by the committees, leaving the preamble, if any, last to be considered." That is, the preamble is to the whole constitution. It says that we do establish this whole constitution, in the Bill of Rights, and the whole proposition, to which this preamble refers, is not only the Bill of Rights but the whole constitution, and I think the point made by the gentleman from Shoshone is well taken.

Mr. HEYBURN. That is not a part of article one, which we have been considering.

Mr. CLAGGETT. Then in order to reach the matter, so that we can get along into business, I move that when the committee rise it report the matter which has been considered by the committee in that article one, the Declaration of Rights, and recommend to the convention that it be turned over to the committee on Revision, to be incorporated into the constitution.

The CHAIR. I think the only proposition before the committee now is the adoption of article one, as amended by the committee; until we have adopted it section by section, that that is not the adoption of the entire article. However, I submit that proposition to the committee. I think it would be proper to adopt the entire article as amended.

Mr. HAGAN. We have got to go before the convention for that purpose.

The CHAIR. No, the committee adopts it, and then recommends it to the convention. I think the proper motion would be to adopt it as a whole, and recommend its adoption by the convention.

Mr. CLAGGETT. I will withdraw the motion then, which I have just made, and make that motion to ex-

pedite business, that article one, the Declaration of Rights, be now adopted. (Seconded.)

ARTICLE 1 ADOPTED.

The CHAIR. It is moved and seconded that article one be adopted by this committee, and that the committee recommend its adoption to the convention. (Carried.)

The CHAIR. I will decide as chairman, that the preamble is last to be considered by the convention under Rule 49. Gentlemen, that completes the consideration of the Bill of Rights; what is the pleasure of the committee?

Mr. CLAGGETT. I call for the next regular order of business, and that is the report of the committee on Militia and Military Affairs.

COMMITTEE REPORT ON MILITIA AND MILITARY AFFAIRS.

ARTICLE XIV,—SECTION 1.

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

SECTION 2.

SECRETARY reads section 2, and it is moved and seconded that it be adopted. (Carried.)

SECTION 3.

SECRETARY reads section 3, and it is moved and seconded that it be adopted. (Carried.)

SECTION 4.

SECRETARY reads section 4, and it is moved and seconded that it be adopted. (Carried.)

SECTION 5.

SECRETARY reads section 5, and it is moved and seconded that it be adopted.

Mr. CLAGGETT. I would like to transpose the words, so as to make it read; "No military organization under the laws of this state shall carry any other

device." It says now; " All military organizations—shall carry no other device." It is not good language.

Mr. HAMMELL. I second the motion.

Mr. HOWE. I would like to have it read.

SECRETARY reads: No military organization under the laws of this state shall carry any other device, banner or flag than that of the United States or of the State of Idaho.

Mr. HAMMELL. I offer a substitute to the gentleman's amendment, to strike out the word "all," so that it will read; "Military organizations under the laws of this state shall carry no other device, banner or flag than that of the United States or the state of Idaho. It is in the negative, the way it stands now.

Mr. CLAGGETT. It should be; "shall not carry any other device." I accept the substitute offered by Mr. Hammell.

Secretary reads the substitute of Mr. Hammell.

Mr. CLAGGETT. I move the adoption of the substitute.

Mr. MORGAN. I move the insertion of the word "organized" after the word "organization," so that it will read, "military organizations organized under the laws of this state."

Mr. CLAGGETT. Is it intended that we shall allow military organizations from foreign parts to parade flags other than the flag of the Union? It is limited in that way; our own local companies can do nothing, but foreign companies that come here on business or anything of that kind may do it. My idea in regard to the language is that military organizations, whether organized under the laws of this state or any other state, should not be permitted to parade anywhere in this state under any other flag except the flag of the country or of the state.

The CHAIR. Is the amendment proposed by the gentleman supported? I see no support to the amendment. The question now recurs on the substitute section,

Mr. MORGAN. The section is ambiguous as it stands.

The CHAIR. The committee thinks differently.

Mr. HAMMELL. I think I can suggest a word probably there that would satisfy the gentleman. "Military organizations, existing under the laws of this state, shall carry no other banner or flag than that of the United States or the state of Idaho." I offer that amendment. (Seconded.)

Mr. HOWE. I move the amendment to the section, to strike out the words "under the laws of this state."

The CHAIR. Gentlemen, you have heard the amendment proposed by the gentleman from Nez Perce. Is the motion supported? (Seconded).

Mr. BEATTY. Mr. Chairman I have an amendment. (Laughter). My amendment is to make the first line read "No military organization shall in this state carry any other device, banner or flag than that of the United States or of the state of Idaho."

Mr. AINSLIE. That last arrangement would prevent the parade of voluntary organizations in the militia at all. I am not in favor of that.

Mr. HAMMELL. It would prevent also voluntary military organizations from any other states from carrying their own state banner.

Mr. BEATTY. I would submit the amendment I have reported there will not prevent any kind of military organization.

The CHAIR. It is moved and seconded that the last amendment, sent up by the gentleman from Alturas, be adopted.

Mr. HEYBURN. I should not like to see that amendment prevail, because if I understand it, it would prevent any number of military organizations from carrying their regimental flags, unless I misunderstand the nature of it.

Mr. TAYLOR. I move that all these amendments be laid on the table, and call for the previous question. (Seconded and carried).

Mr. TAYLOR. I now move that we adopt the original section. (Seconded and carried).

Mr. TAYLOR. I move now that the article be adopted as a whole by the committee, and that when the committee rise, it report the bill back to the convention and recommend that it be adopted.

Mr. GRAY. I move that the committee rise and report all matters that have been before them to the convention. I don't know that it would be necessary in this motion to report progress and ask leave to sit again.

The CHAIR. Probably the motion would be to rise, report these two articles to the convention, and recommend to the convention their adoption.

Mr. GRAY. That is my motion.

The CHAIR. It is moved and seconded that the committee now rise and report these two articles to the convention and recommend their adoption. (Carried).

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. MAYHEW. Mr. Chairman, as chairman of the committee of the Whole, I beg to report that your committe have had under consideration the article on the Bill of Rights and also the article on Militia, and desire until tomorrow morning to make their report. The clerks cannot arrange them intelligently before that time, unless you are going to have an evening session.

Mr. CLAGGETT. The instruction was to report them now.

Mr. MAYHEW. No sir, I beg your pardon, Mr. President, the motion was that the committee rise and report the two bills back with the recommendation for their adoption, not that we shall report now.

The CHAIR. If there is no objection that action will be taken, although it does not agree with the ideas of the chair upon the subject.

Mr. GRAY. I move we adjourn until nine o'clock tomorrow morning. (Seconded).

(Vote. Division called for. Rising vote, 24 in the affirmative, 21 in the negative).

Mr. PRESIDENT. The motion to adjourn is carried.

FOURTEENTH DAY.

SATURDAY, *July 20th, 1889.*

CONVENTION met at nine o'clock a. m., Mr. President in the chair. Prayer by Chaplain.

ROLL-CALL. Present: Mr. Claggett, President, Ainslie, Allen, Armstrong, Batten, Beatty, Ballentine, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammel, Hampton, Harkness, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Parker, Pierce, Pinkham, Poe, Pyeatt, Reid, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Taylor, Underwood, Vineyard, Whitton, Woods, Andrews, McMahon, Pritchard, Lamoreaux, Lewis, Brigham, Pefley.

Absent: Blake, Harris, Robbins, Sweet, Wilson, Lemp.

Excused: Anderson, Beane and Stull.

Mr. BALLENTINE. I move that the reading of the minutes be dispensed with. (Seconded).

Mr. CAVANAH. There is one part of the minutes I wish to make amendment to, and I don't see how I can have it amended unless they are read. I will state that it is all that part of the minutes that refers to that infidel resolution yesterday. I didn't want the Ada delegation to be plastered with such a name, and it seems they will be, because not one of them have got up to protest against it.

The CHAIR. The chair would suggest that the committee on yesterday ordered the chairman to report back the two articles for incorporation in the constitution. The amendments which were proposed to those