

The chair is in doubt. (Rising vote shows ayes 31; number of noes uncertain).

Mr. CLAGGETT. I just rise for the purpose of calling attention to the fact that this amendment does not reach the point. Putting it "all monies not needed for current school purposes" would still leave it subject to the objection that the principal of the public school fund derived from the sale of land could be distributed around to pay current expenses.

Mr. REID. You are right about that too.

Mr. CLAGGETT. We have gone as far wrong this way as we were the other way before. "All monies belonging to——"

Mr. REID. I think that section should be drawn over again.

Mr. CLAGGETT. I move that the committee now rise and recommend to the committee to draw a substitute for the section here, ready to report tomorrow morning; that the committee now rise, report progress and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. MAYHEW. I am instructed by the committee of the Whole to make the following report: Mr. President, the committee of the Whole have had under consideration the report of the committee on Education, have come to no conclusion thereon, and ask leave to sit again.

The CHAIR. If there is no objection the report of the committee of the Whole will be received and lie upon the table. It is moved and seconded that the convention now adjourn until tomorrow morning at nine o'clock. (Carried).

SEVENTEENTH DAY.

WEDNESDAY, *July 24, 1889.*

Convention called to order by the President.

Prayer by the chaplain.

Roll-call shows absent: Messrs. Batten, Harris, Howe, Hendryx, McMahon, Steunenberg, Sweet; excused: Messrs. Beane, Cavanah, Crook, Hagan, Hammell, Stull, Woods.

Reading of the journal.

The CHAIR. Are there any corrections to the journal? If not, it will stand approved as read.

Presentation of memorials and petitions? None.

Reports of standing committees.

Mr. HAYS. The committee on Revenue and Finance wishes to report.

SECRETARY reads: Boise, Idaho, July 23, 1889. Constitutional Convention. Mr. President, I herewith submit the report of the committee on Revenue and Finance for the consideration of the convention; also a detailed statement of the annual expenses of a state government under the proposed constitution, and recommend that the same be printed for the information of members. Hays, Chairman.

Mr. REID. Mr. President, I ask unanimous consent that that report be printed in full. It contains information that every member would like to have in his possession. It will cost but little more to print all of it, and therefore I make that request. (Seconded).

The CHAIR. It will be so ordered, unless objected to. Are there any further reports of standing committees?

SECRETARY reads: Boise City, Idaho, July 23, 1889. To the Members and President of the Constitutional Convention: Your committee on Names, Boundaries and County Organization beg leave to submit the accompanying report. Respectfully submitted, James W. Reid, Chairman.

The CHAIR. The report will lie upon the table and be printed. Are there any further reports of standing committees? None. Final readings? None. The regular order of business is exhausted.

Mr. McCONNELL. I move that the convention resolve itself into committee of the Whole for the further

consideration of the report of the committee on Education. (Seconded and carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. MAYHEW in the Chair.

The CHAIR. Gentlemen, you had under consideration last evening a section of the report.

Mr. McCONNELL. I desire to offer a substitute for Section 17 (11).

SECRETARY reads: Section 17 (11). The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide.

It is moved and seconded that the same be adopted.

Mr. HEYBURN. I offer a substitute for the substitute.

SECRETARY reads: Substitute for Section 17 (11). The monies constituting the permanent school fund shall be invested in United States bonds, bonds of the state or first mortgage securities in the state, at no more than one-half the value of the lands. The interest and income of the money so invested to be used for the schools of the state.

The CHAIR. What is the pleasure of the committee?

Mr. REID. I move that it be adopted. (Seconded).

Mr. McCONNELL. Mr. Chairman, I hope this substitute will not be adopted. It does not specify on what lands it shall be. It may be held that they may be loaned on improved lands in the town of Placerville, or the town of Wardner, or in some other place. It does not specify, as I understand it, on farm lands, but it may be on any lands out here in the mountains. I don't think that kind of security would be any security to our school fund. If the legislature of the territory of Idaho wants to loan its permanent school fund in United States bonds, I have all respect for them, but I do think an intelligent management of our state

government could provide for a better revenue from the use of that money than loaning it on United States bonds, and I think they can also provide a safe manner of investing it, but it certainly would not be by loaning it on improved lands without specifying what class of lands it shall be.

Mr. REID. When this substitute is voted on, if adopted, I desire to offer this amendment, to one or the other, to preserve the coal lands of the state.

SECRETARY reads: All coal lands which the state may acquire shall never be sold, but such lands may be leased.

Mr. REID. I will withhold it until the convention has acted, but I would like to hear Mr. Heyburn's amendment.

SECRETARY reads: The monies constituting the permanent school fund, etc.

Mr. REID. I will support the substitute last offered, for this reason: The first substitute that has been offered by the committee, it seems to me presents the same difficulty that we had at first. It says the principal of the money. The last substitute offered by Mr. Heyburn says the permanent school fund. I think the permanent school fund can be defined by the legislature as money coming from lands. That principal of the money does not cover the case. And, furthermore, Mr. Heyburn's amendment provides and announces the general principle, but with this limitation, it shall never be loaned for more than half the value of the land. Now you may take off all the buildings, and that is the rule, that without reference to them it shall always be confined to the land *per se*, not with the improvements on it, but the land itself, whether it be in the country or in the towns. I am not in favor of legislating in favor of any class. I represent an agricultural constituency; I would like to see them get all the money they desire to run their farms, and loan it upon their farms, and they will have an equal chance. But if a man wants to start a shoe shop, a blacksmith,

undertaker's or carpenter shop, or a store or anything else in the town, and he will offer as security a town lot, and on that let him have money to half the value of the lot, it says there—and it is worded carefully—half the value of the land upon which the loan may be had—then I am in favor of his participating in this school fund. Then you will have every man interested in it. But the way the committee has drawn it, nobody but farmers or men owning farm lands can borrow this money, and no matter what the value—you may offer them a lot in this city worth thousands of dollars, with no improvements upon it, and yet you could not get a dollar on it because it is not farm lands. Now what right have they to limit it to farm lands only? I take it we would not have demand sufficient for it. We have companies loaning money all through the country on these farm lands; farmers get supplied from that source; they will perhaps get all the money they want; or they will have competition in that respect, but you are confining it so that nobody but a farmer or one who owns farm land can borrow a dollar of school money. He may have real estate in a city, he may be improving it, he may not be cultivating any crops at all, but by the amendment proposed, the first objection is that the money may include taxes, but the last amendment cuts that off by saying “permanent school fund,” and taxes could not get into a permanent school fund, and if they did it could be provided for by legislative enactment. And furthermore, while I represent an agricultural constituency, I am not willing to say that nobody but a farmer or a man owning farm lands shall borrow school money, especially if he have sufficient security, especially when you loan it to parties to improve their property and increase its value.

Mr. MORGAN. I would like to ask what would be done under circumstances such as this, which I know to be the case in this territory in half a dozen towns—mining towns, and I presume every man in the country who is acquainted with the mining portions of this

coast is acquainted with instances of the same kind. Ten years ago I knew lots in this territory worth from \$1,000 to \$1,500, and people were quarreling over them and cheating one another for the purpose of getting title, getting hold of any of them, that could not today be sold for \$5 apiece. What will you do with school money loaned on such lots as those? And there are a great many of them.

Mr. REID. If I had charge of the school fund I would not loan any money at all in a town of that sort, but I would take a town like Boise City, or Hailey, or Lewiston, or Moscow—a permanent town, that does not depend on a mining camp for its sustenance. I take it that no matter what the value was, a prudent commissioner, acting for himself—and that is the rule that governs a trustee, as the gentleman knows—if a man was loaning any money he would not put it in a place of that sort, and therefore the same rule that governs him in its interpretation, that of a prudent, cautious business man, ought to govern him when he is handling school funds, and I take it that no man would loan any money at all in a place of that sort, but in a place like Boise or other permanent town he would loan it.

Mr. MORGAN. Where is the man living who can tell what town is going up and what town is going down? There is not any question in my mind but what school money loaned upon lots in the city of Boise would be well secured, but there are very few towns in the country that we know anything about their future, whether they will be good or bad or indifferent in a very few years. We are not able to tell. Towns which are in an agricultural territory surrounded by agricultural lands are safer, certainly, than those in mining camps, but as I say, it is impossible to say what towns are going up and those that are going down. If we could tell this there would be no difficulty about it, and I would be in favor of loaning it to anybody who had good security. But this school money is not to be held to favor any particular class of people; and it is

not to favor the farmers, or to favor people living in a town. We loan it to favor the school fund, in order that it may produce a permanent interest which shall enure to the benefit of the school fund forever, and we loan it where it shall be safe; that is the only reason. It is not to favor farmers. It is not an advantage to farmers in any event to be able to borrow money on their land, and I think it is admitted that he is going on the road to ruin when he does borrow money.

Mr. REID. Let me ask the gentleman a question. Suppose a permanent town like Boise—not a mining camp. Mr. Heyburn offered an amendment; I do not feel at liberty to accept any amendment in his absence, or I would accept an amendment to restrict loans from mining camps. But there is a difference in this territory between those—it is a great difference, and it is this case. Suppose my town wanted to build a graded school, like this over there, and would bond the town or county or school district to pay for those bonds; you could not invest this school fund in a security of that sort.

Mr. MORGAN. The gentleman must excuse me, but we are not talking, Mr. Chairman, about what might be done; we are talking about the substitute that is here pending. That provides that the money may be loaned on all sorts of real estate to the extent of one-half the value of the land, and I am opposed to it for that reason. If you restrict it to certain classes of bonds, it is all right. If you desire to take state bonds of this state, they will be perfectly good security, in my opinion, forever. If you desire to put it upon the bonds of the United States, they will be good security. If you put it upon farm lands at one-half the value of the land, that will be good security, but there are very few towns where any man can say in the near future, within ten or fifteen years, whether the security shall be good or not, and therefore I am opposed to the substitute as it reads.

Mr. CLAGGETT. Mr. Chairman, I would like to

offer an amendment, striking out those words in the substitute offered by Mr. Heyburn, one-half of the value of the lands, and insert instead of it, one-quarter of the market value of the lands at the time of the loan. And in advocacy of that amendment I wish to say this: that it is not a safe, bankable proposition to loan money on real estate at half the value of the land. In any case, and especially in the country, there is frequently a shrinkage of fifty per cent in the course of a year in value, and the interest account, which is constantly accumulating, is liable in case a foreclosure of the mortgage is necessary—you take the shrinkage, the interest account, the principal, the necessary expenses of foreclosure and sale, and it is liable to leave the security deficient. I do not think, however, on this proposition which has been discussed here, that we ought to discriminate in the matter of the kind of lands. I will admit that farm lands as a rule, have a better more stable value than town lots, and yet there are exceptions to that rule, for while farm lands frequently deteriorate, city property where the city is permanent is almost constantly in the condition of improving in value, and I think that that matter should be left to the discretion of the authorities who have charge of this business. But it does not look well to put in the constitution a provision that discriminates in favor of one class of securities and cuts out all other securities. Miners will object to this. They do not care whether they receive any part of the school fund or not, but they do not want anything put in the constitution which is an advertisement to the world at large that they consider mining property of uncertain value.

Mr. McCONNELL. I am glad my friend Mr. Claggett is becoming converted to the idea that farm lands do depreciate in value sometimes. That is doubtless a fact, but it is also a fact that while we are representatives here of farming constituencies, we are nearly every one of us from a town, and it is doubtless also a fact that we might as well face it if we act with safety,

that it is not wise for our citizens in these towns to borrow money on their town lots. I think the town in which I have the pleasure to live, Moscow, is as permanent a town as there is in the territory and will be in the future state of Idaho. Yet if any commissioner would go there today for the purpose of looking up the matter of investing school funds, he would find property valued far beyond what he would think or any other gentleman would think it would be safe to loan money, at even half or one-third. And this thing becomes or may become a question of privilege as to who will borrow these funds. It has been my experience in the loaning of school funds that during the seasons when we have political elections, that the privilege of loaning these monies for the state has been and always will be used as a political leverage to obtain power. I desire for that very reason to take this entirely out of the hands of this board, and specify particularly as to what class of securities they may loan this money upon. While I would not be in favor of putting anything in the constitution against mining towns or any class of towns, one as against another, yet I will recognize the facts, as will every other gentleman on this floor, that these towns which are mining towns are not safe security, or that property in those towns is not safe security. I do not desire to discriminate against any class of people or industry, and that was not the object of this committee in making this report, but the sole and only object was to secure the perpetuity of this fund. I have no objections to the amendment, so far as relates to the wording of the "permanent school fund." I think it would be a good amendment to offer, but I take it that this substitute will be voted down, and then that amendment may be made to the first line of the original substitute. Then it will be far safer. There may also be an amendment to place it in the power of the commission to loan money on United States bonds. However, I do not think there would be any money loaned in that way, because I think there will always be oppor-

tunity to loan this money to obtain a higher rate of interest than on United States bonds. I hope the substitute will be voted down, and then any amendments the gentlemen may desire to offer to the original substitute may be entertained.

Mr. BEATTY. Mr. Chairman, I do not remember these substitutes, but I would like to hear the one we vote upon first, in order to see whether these loans shall be first mortgage loans.

Mr. McCONNELL. There is that provision in it.

Mr. GRAY. I shall certainly oppose the lending of any money upon any town property or any mining property or anything connected with the mines. I remember it says in the original text here, "improved farm lands." As a matter of course I would think security upon Boise City property would be good, but there are very few towns I would feel that way towards, and therefore I would want to exclude them all. If a restriction is put upon it, let it be upon it as in the text, that it shall be "improved farm lands." There is no mining town—I care not how prosperous it is now—I have seen mining towns come and go, when property was, you might say, at a fourth of its value, and in ten years, from fabulous prices, there was nothing. But with farm land, that is not the case; therefore put the restriction so there can be no question about it. I have seen this town of Idaho City, where I will say I have rented the bare ground for \$100 a month, twelve foot front, without a thing on it, that is not worth a dollar today—not a dollar. One hundred dollars a month rent for that very ground, and it is not worth a single cent today. I am opposed to anything only as specified in the text.

Mr. CHANEY. Mr. Chairman, in 1882, in the town of Silver Cliff, Colorado, to my certain knowledge town lots sold for five and six hundred dollars. In three years, to my certain knowledge, you could not get ten dollars for those lots. That is the kind of security that

is proposed by the honorable member from Shoshone, Mr. Claggett, that we invest these school funds——

Mr. CLAGGETT. No, I did not make any amendment to that effect.

Mr. CHANEY. In real estate, when we know by the history of the past that this real estate of these mining camps is as insecure as anything you can possibly imagine.

Mr. MYER. The other day we had a startling example in the way of language in regard to what the farm lands of Idaho amount to when they are used a little. One gentleman told us that as soon as water strikes them all the productive elements of the soil are washed away, and another gentleman told us that up in north Idaho as soon as they begin to plow and till the soil and let it lie idle a little while, thistles, cockle-burrs, briars and wild oats get hold of it. Now I would like to have some gentleman—they all seem to know what mining property is going to be worth in the future, and what city property has been worth—I would like some gentleman who knows all about farming property to get up here and let this convention know what farm lands are going to be worth in the future.

Mr. McCONNELL. I think that was fully explained by my honorable friend Mr. Claggett yesterday. He explained to this convention that farm lands in a few years would be worth \$400 an acre all over this country. (Laughter).

Mr. CLAGGETT. Mr. Chairman, I don't think there is any use in indulging in this kind of cross-fire back and forth. The reason why I object to limiting this matter in the constitution to farm lands, is not because I want any of this school money loaned on real estate of any kind of uncertain or indefinite value, but I object to any kind of plan that throws into the hands of a few bankers, scattered here and there through the agricultural regions, the exclusive handling of the school funds of the state. That is where the thing comes to in the end. If the school board or boards of

county commissioners are proposing to lend this money, and are limited to the people to whom that loan is to be made, certain syndicates will be formed—they necessarily must be formed—school commissioners would get together all over the state and negotiate individual loans; they will make certain bankers in certain portions of the country, or certain agents for them, to negotiate loans and notify them in regard to it, and in the meantime the school fund will go there—it will be there, subject to loan. I propose to put this thing into the hands of the board of education in such a way that they may go to work and loan it upon good security, not to exceed one-quarter of the market value of the lands—the market value of them at the time the loan is made. I want to call the attention of the convention to another thing. Although farm lands as a rule are much better security on long loans than other forms of real estate, they do not begin to be as good security on short loans, and nowhere is a farming community as good and prompt in the payment of loans and debts as they are in a live, growing and progressive city. You can get a larger interest upon your investment and still have it perfectly secure, if you leave the matter in the discretion of the board of commissioners.

We all know that as a rule farmers turn their property once a year, market their crops and pay their debts. You take a business man engaged in business, who is a citizen in a live, progressive city or town—and we need not talk about mining camps; I do not care about loaning anything there, except as I said before, I do not want this constitution to forbid it—but you take any given amount of money and you can loan it at better rates of interest on short loans, than you can go to work and loan it for five, ten or fifteen years to a farmer. You can go on and practically compound your interest once a year. I do not want to see the school fund crippled by being limited to any form of real estate, but I do want to see such provisions put in here as will protect the school fund, by limiting the amount

of loans, in accordance with the amendment I suggest, to one-quarter of the market value at the time. Another thing. Gentlemen need not go ahead and refer, as my friend from Ada does, to Idaho county and Idaho City. I will ask the gentleman as to whether a loan on real estate in Idaho City would not have been perfectly good at one time?

Mr. GRAY. Perhaps at one time it would, and in another six months it might not.

Mr. CLAGGETT. But at the time it was loaned, at the time Idaho City was prosperous, I will ask the gentleman whether a six months loan would not have been good on real estate?

Mr. GRAY. I can't tell you about the years it would have been good. In one year it was prosperous, and in six months it was not worth the taxes.

Mr. CLAGGETT. I should not wonder if that were so, but I assume this board of education will have sense enough to know what lands to loan it upon, and will be acting under the obligations which will be imposed upon them by law. I do not like these discriminations, and I do not like this idea of going to work and putting in the constitution that none of the school money, or any other money, shall be loaned except to certain classes of people; it is class legislation under the guise of security for the school fund. (Cries of "Question").

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

Mr. STANDROD. Will the secretary please read Mr. McConnell's substitute?

SECRETARY reads: Substitute for Section 17 (11): The monies constituting the permanent school fund shall be invested in United States bonds, bonds of the state or first mortgage securities in the state at no more than one-half the value of the lands; the interest and income of the monies so invested to be used for the schools of the state. Heyburn.

Mr. McCONNELL. That is the substitute for the substitute.

Mr. REID. The other substitute is called for.

SECRETARY reads: The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide.

Mr. REID. Was the substitute just read the one introduced by Mr. Heyburn?

Mr. McCONNELL. That was the substitute I offered.

Mr. REID. I would like to hear Mr. Heyburn's substitute read, and the amendment offered by Mr. Claggett.

SECRETARY reads: The monies constituting the permanent school fund, etc. Mr. Claggett offered the amendment "one-quarter of the market value of the lands at the time of the loan."

Mr. REID. Do we vote on the amendment of Mr. Claggett first?

The CHAIR. No sir, we vote on the substitute first. (Cries of "Question").

The CHAIR. The question is upon the substitute offered by Mr. Heyburn. (Vote). The noes seem to have it; the noes have it; it is lost. That disposes of the substitute, and also the amendment of Mr. Claggett. The question now before the convention is the substitute offered by Mr. McConnell of Latah, for Section 17 (11). (Cries of "Question").

Mr. GRAY. Read it.

SECRETARY reads: The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. (Cries of "Question").

Mr. CLAGGETT. Is that subject to amendment?

The CHAIR. I think it is better to adopt it first.

All in favor of the substitute offered by Mr. McConnell say aye. (Vote and carried). It is adopted.

Mr. CLAGGETT. I move to——

Mr. REID. There was an amendment I offered if this was adopted, by adding after the section.

SECRETARY reads: All coal lands the state may acquire shall never be sold, but such lands may be leased.

The CHAIR. That is to amend the section.

Mr. CLAGGETT. I move now to strike out the words "the principal of all educational funds," and insert the words "the monies constituting the permanent school fund." The way it is now, it is subject to precisely the same objection it was yesterday.

Mr. McCONNELL. We will accept that, with the consent of the convention. I don't think the committee will have any objections.

Mr. CLAGGETT. Then I offer this further amendment, which I offered before, and let it come in at the proper place.

The CHAIR. Those words should be stricken out—and by consent of the convention—and those others inserted. That had better be done at once.

Mr. CLAGGETT. I will now offer this as the sense of the convention, and that is, that the quantity of money loaned shall not exceed one-quarter of the market value of the lands at the time of the loan. I will say, Mr. Chairman, there is not a banker in the territory of Idaho——

The CHAIR. Is the amendment supported? (Sec-onded).

Mr. CLAGGETT. There is not a banker in the territory of Idaho that will loan money at current rates of interest for more than one-half the market value of the land. It is not regarded as good security or a good loan, and practically the highest they will go, when they are doing a prudent and conservative business, is to advance one-third of the value of the land at the time of the loan, but in dealing with the school

fund I think it would be best always to limit it to one-quarter, and that on first mortgage bonds, and then you will have good security.

Mr. McCONNELL. I do not think it necessary to tie up the commission by putting in a clause of that kind, because it is left entirely to the legislature as to the provisions on which this money shall be loaned. I do not think it is necessary to make a voluminous constitution in order to put these things in. The legislature has got to act intelligently in this matter. They are restricted as to the class of securities. I have a few times in my life had a few dollars to loan, and frequently found it to my advantage to loan a larger proportion than that on the value of land. I take issue with the gentleman's assertion as to what bankers do in loaning money on lands. I think it frequently occurs that half the value of the land is a good investment and good security.

Mr. CLAGGETT. It may be in a well conducted bank and when a prudent banker does it. The laws of the United States absolutely forbid all national banks to loan money on real estate at all. (Cries of "Question").

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

Mr. MORGAN. I don't think that is germane to the section at all, or even to the article; I rise to a point of order.

Mr. GRAY. I don't understand that coal lands are school lands, under any construction.

Mr. REID. I will ask the clerk to read the amendment, and maybe the gentlemen will understand it then.

SECRETARY reads: All coal lands which the state may acquire shall never be sold, but such lands may be leased.

Mr. REID. The point is this: Suppose under this grant from congress, when we come into the Union, which we get from the national government, it should turn out that these sections reserved happened to be

coal lands, or some part of them, or some of the grants that are issued to the state, which includes not only school lands but lands for irrigation or any purpose whatever. The state is made a grant, and it turns out that some of them are coal lands. It is just the provision put in the Dakota constitution.¹ The object of the amendment is to keep the coal lands from being sold. However, if the convention desires it should go in, if the gentlemen object that it is not germane to that clause, I will withdraw it and offer it at another point.

The CHAIR. The chair is satisfied that it should be placed in some part of the constitution.

Mr. REID. If not, we can put up mineral lands and sell them for ten dollars an acre. Coal would be quite an item, if the discovery should be made in this territory.

Mr. MORGAN. I have no objection to it in its proper place, I think it is proper. Have we no article referring to other lands that may be given by the government to the state?

Mr. REID. We cannot take up any other section now, unless we move reconsideration, because we have gone through the constitution, and these amendments are offered in committee of the Whole.

Mr. MORGAN. I don't think that is germane to any section in this bill.

Mr. REID. The chair held it was germane to this section.

The CHAIR. No, I should rather think it was not. I think it would be prudent to make it an independent section.

Mr. REID. Well, I will withdraw it for the present and offer it as an independent section.

Mr. ALLEN. The bill for the admission of Idaho provides that no mineral lands shall be included in the

¹—"The coal lands of the state shall never be sold, but the General Assembly may by general laws provide for leasing the same. The word 'coal lands' shall include lands bearing lignite coal."—Constitution of North Dakota, Art. 9, Sec. 155.

school lands,¹ and I think that is a provision of the United States laws. It separates it from the school lands.

Mr. REID. The gentleman does not understand me. Suppose that this grant is made, that they grant so many acres, and afterwards, after the state gets title to it, it is holding it and it is located, somebody makes a discovery of coal. They may not know it is mineral land at the time; it may be laid off as agricultural land, but I take it that this amendment will govern a case of that sort. It will prohibit the land commissioners from selling mineral lands that may be discovered, but the state can lease them.

Mr. ALLEN. I will answer that by reading the section. I find in the admission bill for the territory of Idaho (reading) "that sections sixteen and thirty-six in every township within said state, or in case any of said lands have been disposed of under the provisions of any act of congress to settlers or purchasers from the United States, or in case any of said sections sixteen or thirty-six are fractional in quantity, or wanting by reason of the township being fractional, or shall be found, when surveyed, to be mineral lands, or worthless for agricultural purposes, * * * "2

Mr. REID. Suppose that that is not surveyed, but will be the moment we are received into the Union, and after they are surveyed and located there is a discovery of coal made on them before the commissioners sell it, then this amendment provides that they could not sell it, but could lease it.

Mr. ALLEN. That is controlled according to this provision, which says: "other lands, equivalent in quantity thereto, in legal subdivisions of not less than forty acres, to be selected within said state in such manner as the constitution and legislature thereof may provide, * * * "3

¹—Sec. 16, Platt amendment to Mitchell Bill. See Appendix.

²—Sec. 16, Mitchell Bill.

³—Continuation of first quotation from Sec. 16, Mitchell Bill.

Mr. REID. But that cannot be after the United States has parted with its title altogether, they cannot select other lands. The moment we are in the Union the United States loses all control of that land and the grant becomes complete and we may dispose of every acre. We may get hundreds of thousands of acres for irrigation and other purposes. The only idea of this amendment is that if these lands are discovered by the irrigation commissioners, or other commissioners appointed to handle lands for any purpose, to be coal lands, then they shall not sell them.

Mr. GRAY. I understand where mineral lands have been laid off as school lands—I don't know what the rule will be after it becomes a state, but if it is as it is now, when mineral is discovered, you make application to the land office to have it set apart as mineral land, if it has been surveyed and returned as agricultural land. Then you make the application to the land office, setting forth the fact that it is mineral land of any kind, and then it is withdrawn from the market, and also, as I understand, from the school lands, and other lands are taken. I don't know if the United States intends to part with the title to part of its lands, and I don't know but, as we get it from the United States, the United States could give other lands in lieu thereof. I don't know but there might be such a thing as a state law that might control these matters, and it would be necessary, but I believe we better cross the river when we come to it. Let the thing stand as it is now. However, as the gentleman from Bingham says, I can't see where it is germane to this subject in any respect. I hardly know whether the title to them would be regarded, even if we became a state, as school lands, if they are found to be mineral lands. If it did, it would have to be under state law, sure.

The CHAIR. An amendment is offered to the substitute.

SECRETARY reads: One-quarter of the market value of the lands at the time of the loan.

Mr. CLAGGETT. In the substitute as adopted there is no limit whatever. If the land is worth \$1,000, they can loan \$10,000 on it as security. There is no provision, no safeguard whatever, in the substitute. That was in the substitute offered by Mr. Heyburn, one-half, which was voted down. We now have before the convention the amendment I offer, namely, to limit the amount of money to be loaned to one-quarter of the market value at the time of the loan.

The CHAIR. The amendment of Mr. Claggett, as offered to the section as it now stands, has not been voted upon.

Mr. REID. I would like to ask the chairman of the committee of there is any limit, if you couldn't even loan double the value on it? There is no protection.

Mr. McCONNELL. The security is provided, in that it shall be loaned under such regulations as the legislature may provide.

Mr. REID. The question I asked is answered; it leaves it to the legislature. We have limited how much they may sell; we have made class legislation by saying you shall not loan it only on a certain class of lands, although, as stated by Mr. Myer, these farm lands may prove valueless. The gentlemen argue here that we cannot loan it on other lands, that the value may be fluctuating, and yet you put it in the constitution and clothe the legislature with power to loan these funds to any extent—the school money, to any extent, and there is no safeguard around it whatever.

Mr. WILSON. I desire to amend the amendment Judge Claggett makes by inserting the word one-third instead of one-fourth. (Seconded). And the reason for that is merely that all the loan companies in this country make that their rule—one-third of the value of the property, and I think as financiers they are better able to judge what the security is than we are; I think that is a proper amendment.

The CHAIR. An amendment to the amendment?

Mr. CLAGGETT. The only objection in the world

to such an amendment as that is this. Take a man who is loaning money and is always on the ground, he can safely loan one-third on the market value; he is there all the time to look after it. But when you come to loan the money of the state you cannot expect that careful and prudent supervision of loans which you will in the case of a private individual, and therefore I think the quantity of money loaned should be less than that which a banker is willing to advance or a money lender, when his whole business consists in going around through the country looking after the security, and that is the reason I put it one-quarter, something below what an ordinary banker would loan it at.

Mr. WILSON. I would answer that by saying that I do not believe money can be loaned at one-fourth the value of the land, to any extent. In fact it is hard for these loan companies to loan much money at one-third the value of the land. If you want to loan money you cannot do it at one-fourth the value of the land, unless you give it a fictitious valuation. And the loan companies have their agents here, and the school fund would have a sworn officer as their representative and agent, and I think the school fund should have a man to represent them on the ground as well qualified to judge as the loan companies.

Mr. HEYBURN. I would like to have the substitute and amendments read, so that we may know how they stand.

The CHAIR. The amendment you offered has been voted down by the committee. The substitute as offered by Mr. McConnel has been adopted, and an amendment offered by Mr. Claggett, which the clerk will please read.

SECRETARY reads substitute for Section 17 (11). The principal of all educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide.

Mr. CLAGGETT. That was amended by consent to "permanent school funds of the state."

Mr. McCONNELL. I would have it, instead of the "permanent school funds," "permanent educational funds."

Mr. CLAGGETT. Very well, that is all right.

SECRETARY. Shall I add that word here, "the principal of all permanent educational funds?"

Mr. McCONNELL. "The permanent educational funds belonging to the state."

The CHAIR. That is done by unanimous consent.

SECRETARY reads:—shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide; one-quarter of the market value of the lands at the time of the loan.

Mr. CLAGGETT. I suggested when I offered the amendment, that it was the sense of the convention that the amount of money loaned should not exceed one-quarter of the market value of the land at the time. It is not incorporated in there; I will have to draw it up afterwards.

Mr. HEYBURN. I would like to ask a question. When he uses the term land, is it exclusive of the value of the buildings? If not, Mr. Chairman, I desire to amend by adding to that the words; "exclusive of the value of buildings." If they are going to discriminate in favor of land, we will have the bare land.

Mr. CLAGGETT. I will accept the amendment.

Mr. HARRIS. I have got an amendment, Mr. Chairman.

Mr. WILSON. Mr. Chairman, I rise to a point of order. Mr. Heyburn's amendment is an amendment to an amendment.

The CHAIR. No, it is an amendment directed towards the section; it does not interfere with your amendment.

Mr. WILSON. There are two amendments already.

Mr. HEYBURN. There may be twenty at the same time.

The CHAIR. The question now before the committee would be the adoption of the amendment to the amendment offered by Mr. Wilson, to strike out the word "one-quarter" and insert "one-third." I will state that Mr. Claggett is preparing an amendment, as you will see by the reading of it; it does not read as it should be, to the section, and this only goes to the quantity, to strike out "one-fourth" and insert "one-third," and when that amendment is prepared by Mr. Claggett, your amendment will be more proper than it is at the present time.

Cries of "Question."

The CHAIR. What are you calling "question" for, gentlemen?

Mr. CLAGGETT. I will offer this in the shape of a proviso at the end of the section.

SECRETARY reads: Add at the end of the section: "*Provided*, that no loan shall be made of an amount of money exceeding one-quarter of the market value of the lands at the time of the loan." Mr. Heyburn's amendment is, by inserting thereafter the words "exclusive of the buildings."

The CHAIR. Do you accept that amendment?

Mr. CLAGGETT. I will accept the amendment.

The CHAIR. The question is on the amendment proposed by Mr. Claggett to section 17 (11); are you ready for the question?

Mr. McCONNELL. I hope this convention will not tie up the Board by any such amendment as this. If you take into consideration one-third of the appraised value, or one-fourth, exclusive of buildings or improvements, it will place the Board in such a position that they cannot loan these funds other than on state bonds, and if the state did not want to borrow the money, the money would have to be locked up in the treasury. I suppose it will doubtless occur sometimes that we may have a treasurer who would like to hold the money and take care of it himself. I hope this amendment will not be adopted. I hope the convention will leave the

matter so the legislature can attend to it, as different conditions and circumstances arise in this territory. We cannot say as to what the future of our territory is going to be, and we ought to leave a little something open to the legislature. I am, as my friend Gray from Ada suggested the other day on the floor,—I have a little confidence in our state legislatures. If we are going to think they are incompetent and dishonest, we had better adjourn and go home and not have any constitution, not have any state.

Mr. HEYBURN. He is considering it on the proposition that there is some honesty left in the people, and would be some in those of the people that would go into the legislature. But the gentleman at that time seemed to think it was doubtful, and wanted to tie up this fund so that it could be loaned only upon improved farm lands. He did not think the legislature would be competent or honest enough to secure safe loans upon any other class of property than farm lands, and did not want to leave any latitude to them. This morning his confidence in the honesty of the people and the legislature has somewhat grown. The amendment I offered this morning before being compelled to leave the hall, which in my absence was disposed of, provided a refuge in case there was no market for this money, that it might be invested in government securities, which can always be done, and for which there is always some rate of interest provided, so that there need never be one dollar of this fund lying entirely idle. It might not be drawing the highest rate of interest, but whenever a better rate of interest can be obtained for it, government bonds can be converted, as government bank notes can, into cash and the money always available, and it would be invested in the very best security.

Mr. McCONNELL. I rise to a point of order, the amendment he is talking about has been disposed of.

Mr. HEYBURN. I am discussing the amendment that I have just offered. I have a right to refer to these matters as I see fit. The matter was referred to in the

substitute offered this morning, that these funds might be invested in government securities, in order that they may at no time be entirely idle, and it was intended to provide against that contingency of this absence of a market for money which the gentleman seems to be afraid of. Now to secure this class legislation,—for that is all it amounts to,—that money shall be only loaned to one class of people, that is, the farmers,—and it excludes every other class, the gentlemen admit,—the argument is made that land is something permanent and something that cannot be disturbed or interfered with, and this security would always be good. Now I assent to the making of this rule, but I want to see that it shall be lands and lands alone that are security for this money, not a section of land that without any buildings is worth two dollars and a half an acre, but happens to have a value of \$10,000 worth of buildings on it; I don't want this money to be loaned on the basis of this value of the land with these buildings, but upon the basis of the value of the land alone, so that if you are going to provide an absolutely sure security based upon this land, have it upon the land without the buildings. Because the buildings in a city,—the buildings and improved property in a city are just as safe from fire and just as absolutely protected by insurance as the buildings of a farmer in the country, with his haystacks and inflammable material all around them. So that I say, let us be consistent about this thing and not be carried away by this idea of farm lands. Farm buildings are no more secure than city buildings; they are no better security for a loan than city buildings. The value of farm lands can be taken away, destroyed, according to the argument that was advanced by this gentleman the other day; it may go down the stream. Or, according to the argument of this other gentleman we had the pleasure of hearing the other day, this land may depreciate in value very much, and then it is not as good security as city property. Let us not be carried away by this idea that there is no other security in the

world but land. The experience of every attorney on this floor who has had to do with the collecting of loans, mortgage loans, in the last twenty years, is that there is no class of loans as difficult to realize upon as the loans made to farmers, when you exceed about one-half of the value of their property. When a farmer is bankrupt, he is about the worst bankrupt in the world.

Mr. McCONNELL. I would like to have that amendment read again.

SECRETARY reads: *Provided*, that no loan shall be made of an amount of money exceeding one-quarter of the market value of the lands at the time of the loan, exclusive of buildings.

Mr. GRAY. Mr. Chairman, just one word. There is no question but what farm buildings should be insured, and the insurance may go to the protection of the mortgagee,—no question about that. I cannot see any reason why they should exclude the buildings. The gentleman from Shoshone seems to think that, while we are excluding all lands but farm lands. There are towns, plenty of them perhaps in the territory, where the security would be good, that is, with the insurance, but if we can name them I don't want to name them. But, as I said before, I am opposed to loaning the state money upon town property situated in a mining country; I have seen them fluctuate too much. All those who have lived in mining countries have certainly seen towns where property at one time would be very valuable and at other times worth nothing. But I have confidence in the legislature, and if they want to leave it all to the legislature and this Board, I am willing to do that, but if you are going to make restrictions I want to have them made properly; that is, if we are going to restrict them at all let us have it entirely. But, as I say, I am not opposed to loaning upon farm lands, but I don't see why it should be exclusive of the buildings.

Mr. MAXEY. Mr. Chairman, I hope the convention will not lost sight of the original text as proposed by the committee. We have been working upon this sec-

tion now a part of two days, and we are just about where we commenced,—we are not advanced one step. Therefore I hope the convention will not lose sight of the original text: “The monies belonging to the school and university funds shall be loaned on first mortgage on improved lands under such regulations as the legislature may provide.”

Mr. McCONNELL. Mr. Chairman—

The CHAIR. That was the substitute that was offered for that section which was adopted. I desire to call the attention of gentlemen to the fact that there is an amendment to the amendment of Mr. Claggett, to strike out the word “one-fourth” and insert “one-third,” offered by Mr. Wilson.

Mr. McCONNELL. The question before this convention, as I conceive it to be now, is whether as a matter of good policy it is better for us to go on with this legislation in this convention any further, or leave it to future legislatures. If we are to go on and prescribe the amount of money which is to be loaned on land and the manner of loaning it, I think the amendment offered by the gentleman from Shoshone, (Mr. HEYBURN,) is all right so far as excluding buildings, because my own experience in taking securities on property where there are buildings, is that it is a great deal of trouble for me to look after these insurance policies. The Board may have that provision, that it shall be insured in favor of the Board; but sometimes insurance policies are neglected: I know I have a great deal of trouble in keeping my insurance account up, and any gentleman who has any improvements to insure has the same difficulty, and sometimes buildings are neglected, policies will expire. But I am willing to have the legislature provide for the amount, and to provide whether or not buildings should be assessed in valuing this property, but if we are going to do it here, if this convention thinks it is better for us to do it, I am entirely willing. That is the only question, I think, that is to be decided by us. I am inclined to think we had better leave it

to the legislature; if the convention thinks otherwise I am agreeable to go on and prescribe the limitations upon which the money shall be loaned. I think one-fourth too small. I would be in favor of making it one-third, if I was a member of the legislature, and make it exclusive of buildings, so as to have it entirely safe, but one-fourth is entirely too little if we exclude the buildings.

Mr. CLAGGETT. I concede that, and will accept the amendment of the gentleman from Ada, inasmuch as the buildings are excluded in the amendment.

Mr. McCONNELL. I would like to have the convention vote on it, and give their views. (Cries of "Question").

The CHAIR. All in favor of striking out in the amendment as offered by Mr. Claggett the word "one-fourth," and inserting in lieu thereof the word "one-third," say aye. (Vote and carried). The question is now on the adoption of the original amendment, after its amendment by striking out the word "one-fourth" and inserting "one-third." The clerk will read the amendment to the committee.

SECRETARY reads: "*Provided*, That no loan shall be made of an amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

The CHAIR. Are you ready for the question? (Cries of "Question." Vote and carried). It is carried. Are there any further amendments? I believe there was an amendment sent up by Mr. Harris that has not been read.

SECRETARY reads: Amend by saying "one-half" instead of "one-quarter" or "one-third."

The CHAIR. There is no second to the amendment. The question is now before the convention of the adoption of the section as read. It is moved and seconded that the same be adopted. (Vote and carried). The section is adopted. What is the pleasure of the com-

mittee? The question now before the committee is the adoption of Article 9 as amended. It is moved and seconded that the same be adopted. (Vote and carried).

Mr. McCONNELL. I move that the committee rise, report progress, and recommend to the convention that this article be adopted.

Mr. REID. Mr. President, before we rise, I move to amend the motion, that the report be laid aside, and when the committee rises it report to the convention and recommend that it be adopted, and that we continue with the order of business.

Mr. McCONNELL. I will accept the amendment.

The CHAIR. It is moved and seconded that when the committee rise it report the article to the convention and recommend that it be adopted, and that the committee continue with the further order of business. (Vote and carried).

Mr. REID. I move that we take up the report of the committee on Public and Private Corporations. (Seconded and carried).

The CHAIR. I desire to state that I was chairman of the committee on Public and Private Corporations, and desire to have some other member in the chair of the committee of the Whole.

Mr. PRESIDENT in the Chair: Will the gentleman from Nez Perce, Mr. Poe, take the chair?

Mr. POE in the Chair: Gentlemen, you have now under consideration the report of the committee on Public and Private Corporations.

REPORT OF COMMITTEE ON PUBLIC AND PRIVATE CORPORATIONS.

The CHAIR. What is your pleasure?

SECTION 1.

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

SECTION 2.

SECRETARY reads Section 2.

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

SECRETARY reads: Amend Section 2 by striking out all after the word "created" in line 5.

Mr. SHOUP. Mr. Chairman, I understand that the legislature can do it anyway; I think it is not necessary in the section. (Seconded).

Mr. MAYHEW. I don't know as I understand the gentleman's motion exactly, in offering an amendment to this section. I am under the impression, Mr. Chairman, that this matter should be left to the legislature as far as possible, to regulate matters in relation to public and private corporations. His amendment is to strike out that portion in line 6 which provides that any such law shall be subject to future repeal or alteration by the legislative assembly. I don't know of any reason from what the gentleman stated,—I don't know that there is any strong reason for his suggestion, or I might be perfectly willing to adopt it.

Mr. SHOUP. What I understood was this, that this provides that after the legislature passes a law, that that law shall be subject to repeal; I think that is unnecessary.

Mr. MAYHEW. Then if it is unnecessary, as this matter stands, it is here as surplusage merely.

Mr. SHOUP. Yes, that is my view of it.

Mr. AINSLIE. Mr. Chairman, I rather think it would be preferable to retain that proviso in the section, to place it beyond dispute in the future. These corporations are very hard to fight sometimes, especially where the legislature passes a bill infringing upon what they consider their vested rights, and in order to prevent the possibility of any future litigation upon the action of future legislatures of the state of Idaho by these corporations, I think it would be a matter of

safety to leave it in. It certainly does no harm, and is in the interests of the people at least.

The CHAIR. Those in favor of the adoption of the amendment say aye. (Vote). Contrary no. (Vote). The noes have it.

Mr. CLAGGETT. I really do not understand the section.

Mr. VINEYARD. I move to strike out all after the word "state" in the third line.

Mr. MAYHEW. I don't know what the gentleman means by that; I will say it is not supported.

The CHAIR. Is there any support to that motion? (No second). What is the pleasure of the committee?

Mr. HARRIS. I move an amendment to the article.

Mr. MORGAN. I suggest that the words "legislative assembly," where they occur in Section 2, be stricken out, and the word "legislature" inserted.

The CHAIR. I think that that order may be given to the secretary, that that change will be made hereafter in any bill that comes before the convention, wherever it occurs in any report, and it is the judgment of this convention that the words "legislative assembly" shall be stricken out by the clerk and in lieu thereof the word "legislature" shall be substituted. If there is no objection that will be the order of the chair. There is no objection and it is so ordered.

SECRETARY reads amendment offered by Mr. Harris, which proves to be the same as suggested by Mr. Morgan. It is moved and seconded that Section 2 be adopted.

Mr. CLAGGETT. Mr. Chairman, I would like to ask a question of the chairman of the committee on Corporations. I do not understand the section, and I want light. It seems to me it defeats itself. It says: "No charter of incorporation shall be granted, extended, changed or amended by special law." Then follow certain exceptions, which might go in parenthesis, and then "provided, that any such law shall be subject to future repeal or alteration by the legislature." We

will apparently prohibit the passage of a special law, and then seem to anticipate the legislature will violate such a provision, and so provide that all legislation shall be subject to repeal. That is the way it reads to me.

Mr. MAYHEW. I understand that the legislature, after the formation of the state, shall not pass any special law for any particular corporation or association; that it shall be done in the future by general laws. But this section sanctions such special laws as are now in existence by the laws of this territory passed heretofore. I will state now——

Mr. CLAGGETT. I see the point. I would suggest that the gentleman amend that last proviso, as special laws and general laws are both included in it, that he insert after the words "any such" in line five, the word "general," so as to read: "*Provided*, That any such general law shall be subject to future repeal or alteration by the legislature."

Mr. MAYHEW. I accept the amendment, and move that the word "general" be inserted. (Seconded and carried).

Mr. MORGAN. I want to suggest to the chairman of the committee having this bill in charge, that by the clause in the legislative department adopted by the committee, Section 21 (19), "the legislature shall not pass any local or special laws in any of the following cases," that is to say, line 42, "creating any corporation."

Mr. MAYHEW. Well, that does not interfere with this at all.

Mr. MORGAN. It makes this unnecessary, it seems to me.

Mr. MAYHEW. This section is absolutely necessary, and it does not conflict.

Mr. SHOUP. I would like to understand what is meant by "penal corporations." What kind of a corporation is that?

The CHAIR. I do not think it is proper to take up the valuable time of this committee in having explanations made about particular sections. There might be a great many men here that did not understand some particular term. While I am in the chair I shall not entertain anything of that kind, and shall entertain nothing but what is legitimately before the house. The matter that is now before the house is upon the adoption of Section 2 as amended. Are there any further amendments? (Cries of "Question"). All in favor of the adoption of the section as amended say aye. (Vote and carried). It is adopted.

Mr. MAYHEW. Since the question was asked me, I think perhaps it would be advisable at this time to inform the gentleman upon that point, that penal and reformatory corporations are such corporations as may have been established, whose object and purpose is to prevent or aid and assist in any way under the general laws of this territory in matters that would be contrary to law and criminal in their nature. I have observed, Mr. Chairman, that in drafting this article—

The CHAIR. The next thing in order is the consideration of Section 3.

Mr. MAYHEW. Yes, but Mr. Chairman, I have been asked a question, and I desire to explain to the gentleman. If the chair thinks it unnecessary—

The CHAIR. I do not think it is proper.

Mr. BEATTY. Mr. Chairman, I would like to ask if the rule is going to be made that we cannot ask for explanations. If the chair makes that ruling I shall appeal from it.

The CHAIR. The chair does not rule that.

Mr. BEATTY. I just desire only to suggest that there are many times when by a little explanation of the chairman we may save amendments and time.

The CHAIR. I shall not rule that the chairman of the committee may not make such necessary explanations as are necessary to enlighten the convention. At the same time, so far as this section is concerned we

have passed upon that and it is adopted. The voice of the convention has been uttered in relation to that matter, and if there is any gentleman that does not understand it, he has now ample opportunity, and will have in the convention, to inform himself, and if there is anything wrong, he will have opportunity to offer an amendment at another time and place. But I do not think it is necessary now, after we have adopted it, to continue making explanations; because there might be a great many men in this convention at this time who did not understand it. We might consume the whole day in explaining an article which we have passed. So far as any article is concerned that is to come up for consideration, if there is any member who is in doubt as to the interpretation of it, I shall not rule that he shall not have the right to ask for information.

SECTION 3.

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

Mr. AINSLIE. Mr. Chairman, I rose before that motion was announced. It seems to me, Mr. Chairman, that that section is giving too much power to the legislature. "The legislature shall have power," etc. Now that is a question of law, as to whether it would be injurious to the interests of the state, and I do not see how the legislature can well make a judicial body of itself. It seems to me it should be amended in some way, to the effect that the legislature shall have the power to provide by law for the alteration or revoking or annulling of any charter of incorporation. Any corporation, like an individual, is entitled to its day in court, and I think we are infringing upon the inalienable rights of corporations, which are the same in law as those of an individual, to say that a legislature, elected by the people, without any notice at all, or showing, can come in and annul a charter of incorporation already existing; it is placing too much power in a legislative body. They should have their day in court.

Mr. BEATTY. I would like to call the gentleman's attention to one word in there which saves it; otherwise the whole thing ought to be stricken out. This applies to those charters which are revocable. But for that one word it should be stricken out, for you cannot revoke the charter of a corporation any more than you can revoke the right of an individual; but the clause seems to be guarded by the word "revocable." Now I understand from this report that it is meant to apply only to such charters as are absolutely void or revocable, or where a corporation has failed to comply with some provision, and therefore the charter is rendered invalid or revocable; otherwise of course we could not put such a provision in the constitution. We cannot revoke a corporate right any more than an individual right, and I take it that word saves the objection the member from Boise has suggested. I think there is a great deal of point in what he suggested, that it ought not to be left entirely to the legislature to say just when it should revoke and when not.

Mr. MAYHEW. I presume to say that the gentlemen discussing the section miss its nature and purport entirely. That is the section as it stands. If the object of the proposed amendment is to defeat the section or to prevent the adoption of the section, then I do not think it should be done. If you will observe, Mr. Chairman, the language of this section, "revocable at the time," etc., and "that no injustice shall be done to the incorporators." Now I think this section has perfect safeguards thrown around all incorporators, by providing that no injustice shall be done to them by revoking, annulling or repealing any law or charter existing at that time. You will observe this fact, that this section says in its very language "charters revocable." I understand the section to mean that all corporations that have forfeited their charter should be repealed and revoked. Now if you strike out the words "in the opinion of the legislature" you take from them that which justly belongs to the legislature. It

does not strike me in the way of argument, that because it says "in the opinion of the legislature," it constitutes that body a judicial body. They must have some grounds, they must have some cause to revoke or repeal or set aside any charter of incorporation. The very language of this section itself says that they shall not do so when it shall be doing injustice to the corporation. It gives the legislature some latitude to act upon, in their opinion. I cannot see how it is giving them any power as a judicial body to set aside any rights of any citizens at all; it does not strike me in that light. You could not take from the legislature, Mr. Chairman, certain judicial rights; that is, you could not dissuade any legislature from looking upon subjects in a judicial light in order to aid them in passing any law or legislative enactment. All legislatures in passing any law look to the judicial effect, to the bearing of all acts which they may pass, and unless the gentlemen can bring something more valuable than is expressed in this section, I am in favor of adopting it as it stands, although I desire, Mr. Chairman, to say that I am not going to insist upon the adoption of these sections, when any member of this body can offer any amendment to any section that shall be agreeable to this body. I am not asking or insisting that it shall be done, but there is no amendment offered yet that strikes me, that places this section in any better light than it now stands.

Mr. AINSLIE. I have sent an amendment up which I think covers the power of the legislature.

SECRETARY reads: Strike out after the word "to" in line one down to "any" in the same line, and insert the following: "provide by law for the alteration, revocation or annulling of."

Mr. HEYBURN. I second the amendment.

Mr. HASBROUCK. I would like that read again; I don't understand it.

Mr. MORGAN. I have an amendment.

SECRETARY reads: The legislature may provide

by law for revoking or annulling any charter of incorporation.

Mr. MORGAN. The objection that I have to yours, Mr. Ainslie, is that it provides that the legislature may provide by law for altering.

Mr. AINSLIE. That is in the text of the original section.

Mr. MORGAN. I see it is; but if the legislature is to provide by law, it should simply be for revoking or annulling incorporations.

Mr. AINSLIE. I accept the amendment of the gentleman from Bingham; I think that is proper.

Mr. MORGAN. I suggest also that the words in the third line as follows be stricken out, in order to make it harmonious; "whenever in its opinion it may be injurious to the citizens of the state."

Mr. MAYHEW. That is the very language adopted in many states, the state of Colorado¹ and several other states, and several other proposed constitutions of the different territories. This was examined by the committee, the different constitutions of the different states and territories in the preparation of their constitutions to become states, and we simply adopted the very language in those constitutions. Although I am not one of those men who think that because you find language or ideas expressed in other constitutions we should not deviate from it, but in the committee we adhered to the idea that it was a prudent and proper proposition, more according to my suggestion, to leave it to the opinion of the legislature. I desire now to have the section read as it would read if the amendment were adopted.

Mr. AINSLIE. I will withdraw my amendment and

¹—"The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the state, in such manner, however, that no injustice shall be done to the incorporators."—Const. of Colorado, 1876, Art. 15, Sec. 3.

accept the amendment proposed by the gentleman from Bingham.

Mr. CLAGGETT. Then I offer an amendment to it which will cover the whole ground in two words: "the legislature shall have the power by law to" etc. I do not suppose it is contemplated that the legislature is going to pass any general law for the purpose of revoking charters; they simply propose to act upon charters which are injurious to the state. They will do it by law anyway. I don't think there is any necessity even for my amendment; the section is good enough as it is.

SECRETARY reads: The legislature may prescribe by law for revoking or annulling any charter of incorporation existing and revocable at the time of the adoption of this constitution, in such manner, however, that no injustice shall be done to the corporators.

Mr. MAYHEW. I don't exactly get the idea; how does it read?

SECRETARY reads the section again. Cries of "Question."

Mr. GRAY. What amendment are we acting upon now?

The CHAIR. Judge Morgan's. (Vote). It is carried. (Division called for, and rising vote shows ayes 35, noes 9).

Mr. MORGAN. I now move the adoption of the section as amended. (Seconded and carried).¹

SECTION 4.

SECRETARY reads Section 4, and it is moved and seconded that the same be adopted.

Mr. KINPORT. Mr. Chairman, I have an amendment.

SECRETARY reads: Amend Section 4 by adding

¹—It is to be noted that in the constitution as finally adopted the word "altering" is inserted before the word "revoking," although it was expressly stricken out in the committee of the Whole, by Morgan's amendment, and does not appear to have been inserted later by the convention.

thereto the following: "or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors shall not be elected in any other manner." (Seconded).

Mr. KINPORT. Mr. Chairman, the amendment which I offer is one that was taken from the proposed constitution of the state of Montana,¹ and I consider it a very wise provision, inasmuch as it may secure a minority representation on a board of directors. The clause as it now stands can be so taken and acted upon by a majority of the directors, no matter how small that majority may be, to the utter exclusion of the minority; and I think it nothing more than right and just that this amendment should be adopted, in order that the smaller stockholders cannot be frozen out and excluded from representation on the board of directors.

Mr. BALLENTINE. I will just state that the committee had this matter under consideration and objected to it for this reason, that it would give the minority the chance or the power to elect the majority of the managers or directors for any corporation, if it saw fit. That was the objection that was raised in the committee, and I think it is an objection to be raised in this convention—not to adopt any system of that kind whereby the minority can control a vote to elect the majority of the board of directors.

Mr. CHANEY. I would like the gentleman to show, or any other gentleman to show, how it is possible under this amendment for the minority to elect a majority of that board. The amendment provides that the minority may at least have some representation on these boards. To illustrate, we will suppose that I hold 100 shares in the stock of a corporation. Now this provides, in case there are five members to elect, instead of being

¹—Sec. 4, Art. 15, Const. of Montana, 1889.

compelled to distribute my 100 shares among those five men who are to be elected as directors of this corporation, I may concentrate my 100 votes on one man, instead of giving twenty votes to each of five men. That is simply to give the minority at least some representation on these boards, and that is just and proper, and there is no departure from justice in this provision. That is the rule that has been established and is now in vogue in the state of Illinois,¹ in regard to the election of members of the legislature. It has proven satisfactory; it is nothing but a safeguard thrown around the minority; I think it is proper and I hope the convention will adopt it.

Mr. HEYBURN. I would like to ask a question of the chairman of the committee. Is it intended or supposed that a party owning a given number of shares can vote them all for any one of four or five directors that are being elected?

Mr. BALLENTINE. He simply votes them all.

Mr. HEYBURN. If a man owns a hundred shares in a corporation, and there are five directors to be elected, he votes the hundred shares to just one director?

Mr. BALLENTINE. Yes.

Mr. HEYBURN. That would be vicious, to allow one man to vote more shares than another.

Mr. BALLENTINE. He votes the number of shares, but according to the number of officers to be elected.

Mr. HEYBURN. It seems to me you are invading the province of the by-laws of the corporation, and instead of making a constitution for the state are making by-laws for a corporation, and although I do not want

¹—"In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected."
—Secs. 7 and 8, Art. 3, Const. Illinois, 1870.

to enter largely into this, I think it would be wise to strike the entire section out. I do not know why the constitution should be making laws for the government of the private corporation.

Mr. MAYHEW. Mr. Chairman, I have nothing further to add to what has been explained by the two members of the committee, Mr. Ballentine and Mr. Chaney; as they have expressed it they are correct in their views. When that matter was discussed before the committee, the committee concluded to report just as the report has been made. It seemed to be the desire of some of the committee, when this matter was referred to the convention, that it should be included, in order to have the matter discussed there, and this amendment the gentleman offers, who is also a member of the committee, was on the understanding that it should be reported just as it is, and that this matter should be amended by considering it in committee of the Whole or in the convention.

Now the purpose of the committee in drafting this as it is, is to restrict these corporations in a great measure as to their action. It has gone to such an extent throughout the length and breadth of this country that corporations should be in some measure checked, that is to say, to hold them within the bounds of reason and compel them, if possible, to do justice not only to the people as a general thing but to themselves. Now this section provides as it stands that "the legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are managers or directors to be elected." I do not understand that because of the provisions here we are interfering with the action of any incorporated company, or attempting to legislate by the adoption of this section, or passing any by-laws whatever for the corporations, but in other words it goes to the proper protection of the parties to the corpor-

tion. It in fact prevents these corporations in many instances from having permission when they are incorporated to freeze out and destroy one another. Mr. Chairman, I have seen some of these corporations in the section of the country I have lived in, a number of them—they call them corporations, and I have no doubt they are corporations—but whenever you go to attach under the old system that existed in this territory to get hold of these corporations, they had nothing. They would run considerably in debt and accumulate property, illegitimately in many instances, and after they had accumulated property and by representations of their property incurred a large indebtedness, when you went to collect old debts there was hardly anything in existence that looked like or had the semblance of a corporation. Now I think it is time that the legislature should take some steps to prevent many things that may occur and many attempts that would be made by the different corporations to impose upon the people at large. While I am in favor entirely of the protection of corporations everywhere, and of every kind of corporation that is organized or chartered under our laws or the laws that may hereafter be passed by the state, while I believe in protection for all of these corporations, I further submit that it is necessary by an article of our constitution to so engraft in the constitution as to prevent these corporations from imposing upon the masses of the people, and for that reason this section was engrafted in this report. I will say again that this has been the view of California, and has been the constitution of California,¹ and the constitution as adopted at one time by Montana,² and it strikes me that the provisions are wholesome and legitimate. I cannot look at it in the same light as my colleague Mr. Heyburn does, that it is attempting to legislate in the way of passing by-laws for these corporations. I hope the amendment will

¹—Art. 12, Sec. 12, Cal. Const. 1897 (same language).

one time by Montana,² and it strikes me that the provis-

²—Art. 15, Sec. 4, Montana Const, 1889 (same language).

be accepted. It will be for the protection of the minority in corporations. I have the honor to be a member of one of those corporations where the church is dominant, and we are in the minority. If we can look around Sodom and find one or two just men, we can concentrate our strength and elect them to that corporation, or elect them as directors of that corporation, and so I hope the amendment will be adopted.

Mr. AINSLIE. I considered this question a little when the committee on Corporations was in session, and I must say I am in favor of an amendment to the extent offered by the gentleman from Bingham. The way the present law of incorporation stands upon the Idaho statutes, and upon the statutes of most of the states, it vests absolute control of the corporation and its property in the hands of an exceedingly small majority. Take a corporation with one hundred thousand shares, under the present law, as proposed in this article of the constitution, a syndicate holding 51,000 shares out of the 100,000, by electing the board of directors, have the absolute control of the corporation, and can conceal from the minority the entire transactions of the majority of the board of directors. The history of corporations in the state of Nevada, Sir, should be a lesson to us to be careful in securing protection for the minority stockholders. There is hardly a corporation existing in the state of Nevada in the mining interests but what has frozen out everybody that invested one cent in that corporation that did not happen to be inside of the ring.

Now take a syndicate holding 51,000 shares and let those men incorporate; they can elect their directorate under the proposition as reported by this bill, they can elect every single one of the five directors, or every director on the board. The minority, representing 49,000 shares, will have no voice whatever in the business of the corporation, and are deprived frequently from access to the books of the company when they desire it. There is nothing to prevent fraud or any

rascality upon the part of the full board of directors in a corporation organized under this section as proposed in this constitution. But if you give the minority a representation, as proposed by the gentleman from Bingham, by allowing them to cumulate the vote of their whole number of shares upon a certain number of directors, the 49,000 shares can now be represented upon the board of directors; where it is composed of five, they can get two directors out of the five. Now it is a theoretical, a mathematical, a geometrical impossibility that the majority of the stockholders can ever be placed at the mercy of the minority. That system has been worked out so far in the state of Illinois that under the plan existing there a minority of the voters in any section of that state, by cumulating their votes upon a member of the legislature, where the other party is in the majority, will have their proportion of representation in the state legislature, and I think it is a very proper provision, and one that should be adopted throughout the whole country. And sir, I say that the proposition made by the gentleman from Bingham tends to go a great way to correct the abuses that exist under the present system of corporation management in the United States. By cumulating their votes the minority would be entitled to representation upon a board of directors; they could secure two out of five, but under the present system they cannot elect a single director. Fifty-one thousand shares out of a hundred thousand can elect every director, and that ring of directors elects the officers of the corporation, elects a superintendent, who can appoint the bookkeeper, and the secretary and treasurer, and the minority representing the other 49,000 shares may have no knowledge for a year of what is going on or being done by the board of directors of that company. But by allowing the minority to cumulate their votes and concentrate them upon two directors, you have a check upon the action of the majority, and will be able to expose their fraudulent acts and bring them before a court of justice. I think the

amendment should be adopted, Sir. (Cries of "Question").

The CHAIR. The question before the house now is the amendment offered by the gentleman from Bingham. (Vote). It is carried. It is moved and seconded that the section as amended be adopted. (Carried).

SECTION 5.

SECRETARY reads Section 5.

Mr. BEATTY. Mr. Chairman, I offer an amendment to this section.

SECRETARY reads: Amend Section 5 by striking out all after the word "control" in line 2, down to and including the word "state" in line 5. (Seconded).

Mr. MAYHEW. I would like to hear some reason for that.

Mr. CLAGGETT. I second this amendment for one reason, and only one reason. I am certainly in favor of the state having the power, as set forth here in this section, but I object to putting it in here for this reason, that without this language the state has the power just the same, but by inserting it here at this time it will give rise to considerable opposition to the constitution that should be avoided. The supreme court of the United States has decided repeatedly that the state by virtue of its sovereign powers as a state can regulate freights and fares, but there is no necessity for putting it in the constitution. There is no question with regard to the power of the state in the premises. If I had the slightest doubt that the power did not exist, I would be in favor of retaining it.

Mr. BEATTY. Mr. Chairman, I favor that amendment for several reasons: first, I am opposed to putting anything in this constitution which will tend to discourage the building of railroads in this territory. We want all the railroads we can get, the more the better. I object to that provision and some others that are in this article, because their tendency is to discourage railroads from building in this territory and this

country. So far as this provision is concerned, it is entirely unnecessary. As you will see by reading the section, we would be as well off without it. "All railroads shall be public highways, and all railroads, transportation and express companies shall be common carriers and subject to legislative control." That I propose to leave in. Now strike out all the rest, and the legislature has all the control that is needed to meet every abuse referred to in the part which I propose to strike out. Gentlemen might ask why, then, strike it out? My reason for striking it out is because it appears rather offensive. It is a clause that railroads proposing to build here would seize upon as an objection. The other clause does not seem so objectionable upon first blush, although it contains within itself the power of the legislature as absolutely as if you put in this obnoxious provision, and I am not in favor of putting any advertisement in this constitution—plainly written, at any rate—that we propose to legislate against railroad companies or organizations that attempt public enterprises. It may be argued that it is a sly way of retaining in this constitution the power while we apparently are striking it out—well taken, too. I admit that that would be the logical conclusion, for I believe the legislature has, without a word in there, the right to regulate and control, as much power as it would have by leaving this objectionable clause in it. But wherever I can see a provision that it certainly seems to me would discourage the building of railroads, I shall object to it, for I for one want all the railroads we can get, and I don't want to publish any advertisement to the world that we do not want them or do not encourage them. On the contrary we want to encourage them all we can.

Mr. MAYHEW. Mr. Chairman, I have a few words to say about this matter. I do not agree with my distinguished friend from Alturas. I cannot see how this language in this section is so particularly obnoxious and so offensive to my friend and these railroad corporations. I do not understand that it is put in here to

discourage or interfere with the construction of railroads in this territory. I presume to say that every member of this body is in favor of encouraging railroads and the construction of railroads, but that does not argue that the state should not have the power to control the rates for passengers and freight. Now that is put in here, as it is in other states, for the purpose of giving the legislature the power of regulating matters of fare and freight. Notwithstanding it may be that the legislature does possess this power, being one of the co-ordinate branches of the government, and that they might control it—notwithstanding that fact I cannot see why this section should not remain in this constitution. It brings to the legislature notice that they have the power and control of such matters, and leaves to the legislature that question. I don't know of any decision, although there may be a great many, that has decided that the legislature has the power to pass such laws to regulate them. That is the position assumed by my friend Mr. Claggett. And if that is his reasoning, and the reasoning is sound upon that proposition, I would have no objection to striking it out. But the reasoning of the distinguished gentleman from Alturas is upon another ground, upon the ground that he thinks it is obnoxious, and to whom, to the railroads? How can it be obnoxious to the railroads? He certainly is aware that such a law was passed by the congress of the United States, that this authority as engrafted in this constitution has been exercised by the congress of the United States in regulating rates of fare and freight by its intercommerce law. That did not seem obnoxious to congress. It did not seem obnoxious to railroad men generally throughout the United States that such a law as that was passed, but on the contrary, so far as I have been able to read, I have understood that the railroads throughout the United States were in favor of the intercommerce law.

Now, Mr. Chairman, it is not exactly my opinion as an attorney at law that the state would have the right

to regulate fares and freights upon railroads that are already existing, and have been built and were running their lines through this territory before it was organized as a state. But it strikes me that we should do something, and legitimately too, to regulate these fares. While I say that, I cannot see how this is so wonderfully obnoxious. I have not heard any railroad men say so, and I have asked their opinions upon this section as it is engrafted in here. It seemed to meet with their approbation, and this is the first time, and the gentleman is the first one I have heard utter a single word, in the convention or out of it, that such a law as this was an obnoxious provision. It does not seem obnoxious to them, but on the contrary they have adopted it and accepted it everywhere. And if that is the objection of the gentleman, because it will not give them pleasure, I hope it will not meet with the approbation of this convention. But on the other hand, if the legislature has the power to control this matter and regulate fares and freights within the limits of this territory, or within the state of Idaho, then I say that such a provision should be engrafted in the constitution. I don't see that it is going to do any injustice to the people. It only holds these great corporations, these powerful bodies of capital in the state, more under control, prevents them from overriding the wants and compels them to serve the necessities of the people. I hope the amendment will not prevail. (Cries of "Question." Vote).

The CHAIR. The amendment is lost.

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

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. POE. Mr. President, your committee of the Whole have had under consideration the report of the committee on Public and Private Corporations and report

progress, and ask for further time for the consideration of the bill.

The CHAIR. The question is upon receiving the report of the committee; if there is no objection the report will be adopted.

Mr. MAYHEW. Mr. Chairman, as chairman of the committee of the Whole, I wish to report that the committee of the Whole having had under consideration Article 9 beg leave to report at the incoming of the convention this afternoon.

The CHAIR. If there is no objection it will be granted. It is moved and seconded that the convention take a recess until two o'clock. (Carried).

Afternoon Session.

Convention called to order.

Mr. SHOUP. I move that the report of the committee on Preamble and Bill of Rights be taken up and considered.

Mr. MAYHEW. The committee of the Whole having had under consideration Article 9, instructed me to make the following report:

COMMITTEE OF THE WHOLE REPORT ON ARTICLE IX.

SECRETARY reads: Mr. President: Your committee of the Whole have had under consideration the report of the committee on Education, Schools, School and University Lands, and recommend as follows:

Amend the report by striking out the words "Legislative Assembly" wherever they occur in the report, and insert "Legislature" in lieu thereof.

Adopt Section 2.

Amend Section 3 by striking out all of the section after the word "state" in the third line.

Adopt Sections 4 and 5.

Strike out Section 6.

Amend Section 7 by inserting "religious" after "sectarian" in the last line.

Amend Section 8 by adding at the end of the section the following: "and no books, papers, tracts or documents of a political, sectarian or denominational

character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.”

Adopt Section 9.

Amend Section 10 by inserting after the word “therefor” in line 5 the following: *Provided*, No school lands shall be sold for less than ten dollars per acre.” Strike out in the second line the words “other disposition,” and insert in lieu thereof, “rental.” And after the word “grants” in the 14th line, the following: “*Provided*, That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions of not to exceed 160 acres to any one person, company or corporation.” Strike out in line 2 the word “the” and insert “school” therefor.

Adopt Section 11.

Strike out Section 12 and 13.

Substitute for Section 14: “The location of the University of Idaho as established by existing laws is hereby confirmed. All the rights, immunities, franchises and endowments heretofore granted by the Territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law.”

Strike out Sections 15 and 16.

Substitute for Section 17: “The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. *Provided*, That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings.”

And that the report be adopted as amended. A. E. Mayhew, Chairman.

The CHAIR. Under the rules the first thing in order is the consideration of the report of the committee of the Whole that has just been read. The clerk will read the bill and the amendments, section by section.

SECTION 1.

SECRETARY reads Section 1. "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general uniform and thorough system of public free common schools."

SECTION 2.

Sec. 2. "The general supervision of the public schools of the state shall be vested in a board of education, whose powers and duties shall be prescribed by law. The superintendent of public instruction, the secretary of state and attorney general shall constitute the board, of which the superintendent of public instruction shall be president." No amendments.

It is moved and seconded that it be adopted. Carried.

SECTION 3. (STRICKEN OUT).¹

SECRETARY reads Section 3. "The General Assembly shall as soon as practicable provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state——"

Mr. GRAY. I moved that that be stricken out.

The CHAIR. The secretary will read the section as amended in committee of the Whole. We are now considering the report of the committee of the Whole, the section as amended.

¹—See p. 868.

SECRETARY reads. “—wherein all residents of the state between the ages of six and twenty-one years may be educated gratuitously. One or more public schools shall be maintained in each school district at least three months in the year. Any school district failing to have such school shall not be entitled to receive any portion of the school funds for that year.”

Mr. GRAY. Is that the way it reads now? If that is the way that reads——

SECRETARY. The amendment is to strike out all of the section after the word “state.”

Mr. GRAY. I move that the same be adopted. (Seconded and carried).

Mr. HASBROUCK. Mr. President, I notice you are adopting these sections as read. I didn't understand that Section 1 was adopted.

A MEMBER. No sir, I didn't either.

The CHAIR. The chair considered it was adopted by unanimous consent, there being no amendments to it.

Mr. PINKHAM. Mr. President, I call the attention of the convention to the fact that Section 3 as adopted here is almost verbatim what is provided for in Section 1. I don't see any necessity for two sections of the same character in the same article of this constitution.

The CHAIR. The secretary will read the next section.

SECTION 3.

SECRETARY reads Section 4 (3). “The public school fund of the state shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the state, and shall be distributed among the several counties and school districts of the state in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested, as

may be by law directed. The state shall supply all losses thereof that may in any manner occur."

It is moved and seconded that the same be adopted.
(Carried).

SECTION 4.

SECRETARY reads Section 5 (4). "The public school fund of the state shall" etc. (No amendments to it).

It is moved and seconded that the same be adopted.
Carried.

SECTION 5.

SECRETARY. Section 6 was stricken out. Section 7 will be Section 6 (5) now. (Reading): "Neither the legislature, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose."

It is moved and seconded that the same be adopted.
Carried.

SECTION 6.

SECRETARY reads Section 7 (6). "No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public

schools, nor shall any distinction or classification of pupils be made on account of race or color, and no books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school money in which the schools have not been taught in accordance with the provisions of this article.”

It is moved and seconded that the same be adopted.
Carried.

SECTION 7.

SECRETARY reads Section 8 (7). “The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.”

It is moved and seconded that the same be adopted.
Carried.

SECTION 8.

SECRETARY reads Section 9 (8). “It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the school lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and

carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of such grants. *Provided*, That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions not to exceed 160 acres to any one person, company or corporation."

Mr. TAYLOR. That was also amended by inserting in line 5: "*Provided*, That no lands shall be sold for less than ten dollars per acre."

Mr. MOSS. Mr. President, I would like to ask the chairman of this committee if there is anything in this article that would prohibit the sale of timber from off the public school lands—logs or timber?

The CHAIR. I think there should be a further proviso, providing for the sale of timber on lands, that the state may at any time sell the merchantable timber thereon; otherwise it would be cut off before it was sold, probably.

Mr. MOSS. I wish to offer an amendment.

Mr. McCONNELL. I presume under these provisions the lands could be rented with the understanding that the timber should be taken off for the use of the land, for cutting the timber a certain number of years.

SECRETARY reads: Amend by inserting after the words "time to time" in line 13, "and for the sale of timber on the public school lands." Seconded.

It is moved and seconded that the amendment be adopted. Carried.

Mr. GRAY. I have an amendment.

SECRETARY reads: Strike out all after the word "grants."

Mr. GRAY. I will not object to changing the language of the section as it now stands, so as to allow one section to be sold in a township, but the idea of selling

No. 16 only, I don't see what sense there is in that—not allowing them to sell 36.

Mr. MORGAN. I would like to know where the amendment comes in.

Mr. GRAY. Strike out all in the printed bill after the word "grants." There has an amendment been made there which says that you must sell Section 16, and I don't see any sense in limiting it to Section 16. If they want to limit it to one section in each township, I shall not object, but the idea of selling only Section 16—I don't see by what rule of reason we can vote for that and put it in the constitution. Therefore I am inclined to think that we had better have no limitation on that further than it has been fixed in the bill.

Mr. VINEYARD. The object of that simply was to keep these land commissioners or purchasers from selecting such lands as were to be sold from wherever they chose; that is, to select the better class of school lands and leave the worse class unsold. In other words, it would give these men the pick of the best lands and leave the worse lands still unsold, and the idea of that amendment was simply to provide that if these lands were to be sold they were to be taken from the 16th section.

Mr. GRAY. How do you know that the 16th section is not the best land to be sold, or whether it is or not? It is like throwing up a copper.

Mr. VINEYARD. We have got to take one class or a portion of this land in some way, in order to avoid the indiscriminate sale of this land in every direction, and it was thought by the mover of this amendment, Mr. Anderson, that that would better effect the object than any other way that the bill could be amended. I am opposed to the indiscriminate sale of these lands, that a man should go on the 16th or on the 36th section, or wherever the best land is situated, and I say there should be a limitation, and that is a wise provision in the bill.

Mr. GRAY. Mr. Chairman, I cannot see why we

are protected any because they designate Section 16. I have confidence in the board here and I have confidence in the legislature. I don't think that all the honesty of the territory is embodied here. (Laughter). Not that I do not think we are honest men, but I don't think all the honesty is embodied here. And I would even give them some limit. But to sell only Section 16, it may carry out just the very thing that the gentleman from Alturas is afraid of, in enforcing the sale of 16. If they want to sell one section, I am willing to do that, but I would rather have it just as it is in the printed bill.

Mr. ANDERSON. Mr. President, the reason I want to put that in as Section 16, is that I thought of going through the various townships in Idaho by taking one of those numbers. I would just as soon have Section 36, but by taking one of the numbers we strike an average of good land and bad land in the whole territory; and I want to give this plan of renting the land a fair trial and the plan of selling it a fair trial. If after the establishment of this state we find that the sale of this land is the better plan, then we will have half the good land left, provided a general average brings it about equal. But if we find it is not wise to sell them, then we retain the balance of the lands.

Mr. SHOUP. Mr. President, I second the amendment of the gentleman from Ada upon that question, and demand the ayes and nays.

Mr. AINSLIE. Mr. Chairman, the amendment by the gentleman from Ada to strike out Section 16, carries with it the limitation as to the sale of these lands, not to exceed twenty sections of land per annum.

Mr. GRAY. Yes.

Mr. AINSLIE. So that would allow all the lands belonging to the public schools of Idaho territory and the university to be sold in any one year, if they saw proper. That is throwing open the doors again, if such an amendment should be adopted as proposed by the gentleman from Ada, to these speculators and syndicates here. This matter has been passed upon for the

preservation of the school lands to some extent, and I am in favor of supporting the action of the committee of the Whole in limiting the sale of lands, as the action of the committee shows. I think it is nothing more than fair and right, and to throw this open to speculators at this time—I am utterly opposed to it. I propose to stand by the action of the committee.

Mr. GRAY. Mr. Chairman, one word.

The CHAIR. The gentleman from Ada has already spoken twice on this question.

Mr. MAXEY. I do not understand that the gentleman from Ada objects so positively to the number 16, but he objects simply to being confined to the number 16.

Mr. GRAY. That is it largely, but I would just as soon have the section without that at all.

Mr. MAXEY. Then why not insert "one section?"

Mr. GRAY. Because that would be just as bad. The ayes and nays have been called for, and I second that.

Mr. POE. Mr. President, the difficulty of designating Section 16 is this. My opinion is that it was the intention of this convention when they passed that, that there should be authority for selling one-half of the school lands, that that was the intention. Now it would seem they have limited that to Section 16. Now it is a well known fact, Mr. President, that prior to the survey of these lands many school sections were settled upon by actual settlers, and under those circumstances when the land became surveyed they had established a right to it, and it could not be taken away from them, and it became necessary, and is the law in reference to public lands, that in such cases they have other lands in lieu of that given to the schools. You will at once then see, Mr. President and gentlemen, that when you designate Section 16, Section 16 may be taken out and owned by private individuals, and there may be other lands which are given in lieu of Section 16. Now I think, as I said, it is the intention of this body to sell

one-half of the school lands, and I simply say that when they designate Section 16 they may not have the right to sell Section 16 at all, because it may be in the hands of individuals. And if I understood the gentleman's amendment, it was to authorize the sale of one-half of the school lands, instead of saying Section 16. We then would have made the prohibition and would have acceded to the intention of this convention.

Mr. GRAY. I would just say this——

Mr. MAYHEW. I understand my friend's motion is to strike out the entire section?

Mr. GRAY. Oh no; strike out the amendments.

Mr. MAYHEW. Well——

Mr. GRAY. But I——

Mr. MAYHEW. Remember, no more speeches.

The CHAIR. The gentleman from Ada is out of order.

Mr. GRAY. Well, let me state what I——

The CHAIR. The chair cannot let you so state unless the convention so orders, under the rules.

Mr. WILSON. I move that the gentleman be allowed to make the statement.

The CHAIR. I would like to hear the gentleman from Ada myself, but I must adhere to the rule.

Mr. POE. I call for the reading of the amendment.

The CHAIR. The secretary will again read the section as amended, for the information of the convention. (Secretary again reads it).

Mr. SHOUP. Mr. President, it will be noticed that this applies to all land that may hereafter be granted to the state. Now we may get a great deal more school land than these two sections in each township, and if we do, No. 16 is all that can be sold. What you get hereafter——

The CHAIR. The question is upon the motion made by the gentleman from Ada that this proviso at the end of this section shall be stricken out, and upon that the ayes and nays are demanded.

Mr. TAYLOR. Mr. President, I move an amendment

to that amendment of his; that all that part of it down to and including "twenty years" be stricken out.

The CHAIR. The secretary will read that part of it to be stricken out.

SECRETARY reads: "*Provided*, That no other land than Section 16 in each township be sold during the first twenty years."

Mr. MORGAN. Is that your amendment, Mr. Taylor?

Mr. TAYLOR. Yes.

Mr. GRAY Then it reads that none but Section 16 shall be sold.

Mr. TAYLOR. No sir; that is what I strike out.

Mr. GRAY. I will accept the amendment of the gentleman from Bingham.

Mr. AINSLIE. That would not leave any sense to the preceding portions of the section.

The CHAIR. The question is upon the adoption of the motion of the gentleman from Ada, as amended by the motion of the gentleman from Bingham, whose motion is accepted by the mover, to strike out that portion of the proviso which limits the sale of school and public lands belonging to the state to Section 16 for the period of twenty years. (Vote). The nays seem to have it; the motion is rejected. What is your pleasure with regard to this section?

Mr. McCONNELL. I offer an amendment.

Mr. GRAY. The ayes and nays were called on that, However, I don't care particularly about it.

The CHAIR. Five members did not second it.

Mr. AINSLIE. I want to bring this question before the——

The CHAIR. If the gentleman desires a roll-call, I will order it.

Mr. AINSLIE. I call for the previous question on the section, as amended by the committee of the Whole. (Seconded by a number of members).

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

Mr. McCONNELL. In the interest of the school fund I wish the gentleman would give me an opportunity to explain.

The CHAIR. Does the gentleman from Boise yield?

Mr. AINSLIE. I do not desire to cut anybody off; I will give the gentleman an opportunity.

Mr. McCONNELL. In our zeal to do what is right, Mr. President, in this matter, I think we have made some very grave mistakes, and I think if the convention will look the matter over it will conclude it is better to remedy them now while we have an opportunity than to leave them on our statute books. You will find (reading): "It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the school lands heretofore or which may be hereafter granted to the state by the general government" (mind, the term "school lands" is used) "under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. *Provided*, That no school lands shall be sold for less than ten dollars per acre." Now this refers entirely to school lands—this entire section. We have other lands, and will have large quantities of school lands provided for educational purposes, and I think in this section we should not lose sight of them. There should be as well a similar limitation placed upon university lands, and there will doubtless be some lands donated to this state for agricultural purposes, and there is no provision as to their protection or how they shall be sold, no limitation as to condition or quantity or time at which they shall be sold, and I don't think we should lose sight of those. I will equal any gentleman on this floor in being zealous to do the very best I can to protect this fund.

Mr. MAYHEW. I don't desire to discuss this matter, but just ask you this question. Do you intend by this amendment to protect other lands, independent of school lands?

Mr. McCONNELL. I think the word "school lands"—the word "school" as it has been put in by amendment, should not be in there. I think there should be some other provision to prevent the sale of some of the outside lands, or provide for it—some of the outside lands which we may in the future get, but I don't think that word should be there.

Mr. MAYHEW. I would like to ask another question for information; might not the amendment you propose interfere, in the very nature of it, with the article we are trying now to adopt? This committee—its purpose was, as I understand—it was for the purpose of regulating the manner in which our school system should be governed and conducted, and for the protection of school lands and university lands, and any other lands that may be donated by the general government.

Mr. McCONNELL. It limits it to school lands.

The CHAIR. Gentlemen, this debate is all out of order; the previous question has been moved and seconded, and this has been allowed by the chair by consent. The question now is——

Mr. McCONNELL. I want the ayes and nays on this question.

Mr. AINSLIE. I suggest that Brother McConnell prepare another section to settle the entire question.

Mr. McCONNELL. I call for the ayes and nays on this previous question.

The CHAIR. The question is now, shall the main question be put? On that motion the ayes and nays are demanded. The secretary will call the roll.

Mr. SHOUP. Under Rule 19 I understand five members have the right to demand the previous question.

The CHAIR. It has been seconded by at least eight or nine.

Roll-call—

Ayes—Ainslie, Allen, Anderson, Armstrong, Bevan, Clark, Coston, Crutcher, Harris, Hasbrouck, Hays, Jewell, King, Kin-

port, Mayhew, Pefley, Salisbury, Sinnott, Standrod, Steunenberg, Taylor, Vineyard, Whitton, Mr. President,—24.

Nays—Ballentine, Brigham, Campbell, Chaney, Glidden, Gray, Hampton, Harkness, Hendryx, Heyburn, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Pinkham, Poe, Pritchard, Pyeatt, Reid, Savidge, Shoup, Wilson—25.

The SECRETARY. Mr President, on the motion to call for the previous question, there are 24 ayes and 25 nays.

The CHAIR. The motion is lost.

Mr. McCONNELL. Mr. Chairman, I desire to offer an amendment.

SECRETARY reads: Strike out all of line 14, Section 10, after the word "grants," and insert "*Provided*, That no more than one-half of said lands shall be sold during the first twenty years."

Mr. GRAY. I second the motion.

Mr. AINSLIE. I have an amendment to offer to that, Mr. Chairman.

SECRETARY reads: *Provided*, That not to exceed twenty sections of such lands shall be sold in any one year, to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation."

Mr. GRAY. Mr. President, can I say a word?

The CHAIR. Yes.

Mr. GRAY. I have been taken down considerably, but it seems to me when you are discussing Section 16, that some man has got his eye on Section 16 that wants to buy it. I want him to allow this board to sell what it thinks is best to sell, not tell them he has got his eye on some Section 16, like my friend from Alturas, Mr. Vineyard. (Laughter). I don't want the board to be restricted in any manner. The amendment of the gentleman from Latah I am perfectly satisfied with. I am willing that one-half be sold, but the idea of selling just Section 16 I can't understand. If we are going to leave any liberty to the board to say what is best to sell, or what it is to the best interest of the school fund to sell, that is what I want, but the reason for taking Section 16 I cannot understand. I am content

with one-half—I am willing to support anything of that kind.

Mr. AINSLIE. Mr. President, the amendment I offer to the amendment of the gentleman from Latah does not say anything about Section 16 or Section 36 or any other section. It only provides that you can sell twenty sections a year, and another very important provision in that amendment which I think members will notice—one-half the school lands under the amendment of the gentleman from Latah can be sold in one year, and can all be sold to one corporation or syndicate. My amendment to the amendment of the gentleman from Latah provides that only twenty sections shall be sold in one year, and sold in subdivisions of not to exceed 160 acres to any one individual or corporation. Persons seek homesteads in this country. One hundred and sixty acres of land is a very fair farm for a person to make a living on. If you open the door, as the gentleman from Latah opens the door, you help the monied syndicates in putting around your lands a fence to keep population and settlement out. I am in favor of reserving all these lands and selling them under a restriction like the one contained in my amendment, and sell them to persons who will become permanent residents of our territory, instead of making monied men's cattle ranches.

Mr. MAYHEW. I have just one word to say, and that is with reference to the remark of Mr. Gray of Ada county. He says it seems to strike him, by the amendment offered by Mr. Ainslie, that some member has got an eye on some section. Now I am persuaded——

Mr. GRAY. No, not Mr. Ainslie.

Mr. MAYHEW. Well, whoever it was; I don't know who you are alluding to. I thought you alluded to Mr. Ainslie.

The CHAIR. The gentleman will please confine himself to the subject.

Mr. MAYHEW. I am confining myself to the sub-

ject. I was alluding to the last amendment to the amendment. I want to call the attention of the convention to this fact, that the adoption of the amendment just offered by Mr. Ainslie does away with and destroys the effect of any person's eye upon any section. It only allows one person to enter and hold 160 acres of land. I think the amendment is right, and the amendment does cut off and estop any syndicate or any corporation, or any person or set of persons or association of persons from gobbling up more than 160 acres of land.

Mr. ANDERSON. Mr. Chairman, I offered that amendment to allow only Section 16 to be sold in any township, and I did it in order that the best land might not be gobbled up. I don't want any Section 16 in the world. And I make a motion, to cover that point, that Section 36 be substituted for Section 16 in that clause.

Mr. McCONNELL. Mr. President, I would like to say a few words to the question of the adoption of my amendment as offered. If this convention sees fit to adopt this amendment I would be willing to have engrafted in that amendment the provision made by the honorable gentleman from Boise, Mr. Ainslie, that the sale of these lands should be limited to 160 acres to any one purchaser. I heartily agree with him in that, and in regard to incorporating it in my amendment. But I don't see the necessity of restricting the sale of these lands to twenty sections. I accept the amendment "in any one year," especially as I believe the convention will see the necessity of striking out that word "school lands," and making some provision for the protection of other lands before they get through with this. I cheerfully accept that amendment, so far as providing that no purchaser shall be entitled to the title of more than 160 acres. But I do not believe in limiting this board to the sale of only twenty sections in any one year, for I doubt whether it will be able to sell much more than that.

Mr. AINSLIE. The gentleman from Latah figured up that there was not more than 75 sections in the whole territory, and if that is so, it will not take long to exhaust them.

Mr. GRAY. Mr. President, let them fix it to sell one-half in each township, and let them sell that which would be the most advantageous. I myself am willing to trust this board, and if they can sell it to better advantage by selling an entire section for the benefit of the school fund, let them do it. We are not now talking about immigration or anything of that kind, or getting people here. The idea is to sell it for the best interest of the school fund, and I don't say whether you shall sell 160 or 320 or 640 acres. I don't see what the point is, that it is for the purpose of immigration at the expense of the school fund. Let the board say where it can sell it and to the best advantage.

Mr. ALLEN. Mr. President, under the provisions of this act there are two sections set aside for school lands, in 18 counties. Under the provisions of these amendments, in twenty years' time, one section in each township and twenty sections in each year, is 400 sections, or 250,000 acres permitted to be sold, and I believe that is as much as the people really intend should be sold during the first twenty years.

The CHAIR. Is the motion of the gentleman from Bingham seconded, to strike out 16 and insert 36? (Seconded).

The CHAIR. The first question arises on the last amendment made, to strike out 16, as contained in the proviso at the end of the section, and insert 36.

Mr. HAYS. Mr. President, I do not see that this amendment remedies the difficulty at all. The difficulty in designating a section of land, 16 or 36, is this, to my mind. There are a great many people who have settled upon the school lands, and if you designate either section—if you designate 16, perhaps you will find some one on that land, or if you designate 36—

you will find some one on one of those sections who has been there a long number of years, and you can't get title. If it is 36 it makes no difference. Why not leave it blank? Designate the number of sections to be sold, without designating Section 16 or 36. It doesn't make any difference. Let the land commissioners be the judges of that; let them sell any lands they judge may be proper. There is another thing too. I do not believe that the majority of this convention think that these lands should be held for twenty years. I believe they should be sold as rapidly as possible. We must take into consideration that we are in a desert country, and that the water in the various sections of the country is being monopolized as rapidly as possible, being taken up, and these lands are entirely worthless unless you can bring water on them. For that reason I believe it would be better to sell the lands as rapidly as possible, in order that it may be some inducement to outsiders to purchase these lands and bring water upon them. If you do not, if you hold them for twenty years, you will have them forever, perhaps, because you can't get the water—it is not within the territory. I believe it would be better policy to let the land commissioners sell these lands as rapidly as they can, without designating Section 16 or 36—it makes no difference.

Mr. AINSLIE. I would ask the secretary to read that last amendment I offered, as I think that probably the gentleman from Latah and I may agree.

The CHAIR. The first question is with regard to substituting 36 for 16 in the section as amended by the committee of the Whole. (Vote). The noes have it; the amendment is rejected. The secretary will now read the original proviso at the end of the section reported by the committee of the Whole, and then the amendment of the gentleman from Ada, and the amendment to that amendment by the gentleman from Boise.

SECRETARY reads: "*Provided*, That no other land than Section 16 in each township be sold during

the first twenty years, not to exceed twenty sections in any one year, in subdivisions not to exceed 160 acres to any one person, company or corporation." "Strike out all of line 14, Section 10, after the word 'grants,' and insert '*Provided*, That no more than one-half of said lands shall be sold during the first twenty years.' McConnell. "*Provided*, That not to exceed twenty sections of such lands shall be sold in any one year, to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation." Ainslie.

Mr. AINSLIE. Mr. Chairman, after consulting the chairman of the committee, the gentleman from Latah, I believe he is willing to accept my amendment, provided I will substitute 25 sections instead of 20. That probably will settle the dispute, and he will withdraw his amendment. If he accepts that, I will move to amend my substitute.

Mr. McCONNELL. I will accept that.

The SECRETARY. Twenty-five sections, Mr. Ainslie.?

Mr. AINSLIE. Yes.

Mr. GRAY. Why not say half?

Mr. AINSLIE. Because I am opposed to it; that's the reason. Twenty-five sections is enough.

The CHAIR. The question is now upon the adoption of the amendment of the gentleman from Latah. or rather the gentleman from Boise, with the word "twenty" stricken out and the word "twenty-five" inserted, which is accepted by the gentleman from Latah. The secretary will read the proviso as it is now before the convention.

SECRETARY reads: *Provided*, That no more than one-half of said lands shall be sold during the first twenty years. *Provided*, That not to exceed 25 sections of such lands shall be sold in any one year, to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation.

Mr. McCONNELL. Mr. President, I think my amendment should be stricken out, and merely substi-

tute the amendment offered by the gentleman from Boise. I think there is no need of engrafting the language of both amendments in there. My idea was to withdraw mine and let his be substituted for it.

Mr. AINSLIE. That was my understanding.

The CHAIR. That being the case, the secretary will read the original proviso and then the amendment the gentleman offered as a substitute for it.

SECRETARY reads: "*Provided*, That no other land than Section 16 in each township be sold during the first twenty years, not to exceed twenty sections in any one year, in subdivisions not to exceed 160 acres to any one person, company or corporation." In lieu of which is proposed: "*Provided*, That not to exceed 25 sections of such lands be sold in any one year, and to be sold in subdivisions of not to exceed 160 acres to any one person, company or corporation." (Cries of "Question." Vote).

The CHAIR. The substitute is adopted.

Mr. MAYHEW. I now move that the——

Mr. McCONNELL. I desire to strike out the word "school lands" where it was inserted in committee of the Whole yesterday—the word "school," and I will state this, if you will examine down in the section you will find (reading): "It shall be the duty of the board—no law shall ever be passed by the legislature, etc.—" "The legislature shall at the earliest practicable period provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made." Now it would make no difference what grants of land were made to this state hereafter; it would be the duty of the legislature to preserve those grants for their respective objects, but I think adding the word "school lands" as amended yesterday, is taking away any provision for the protection of any of these other lands. This board may go to work and sell the uni-

versity lands, and sell the agricultural lands, without any restrictions, but if we strike out the word "school lands," where it was inserted yesterday, and add the word "school" to the amendment just adopted, providing that no more than 25 sections of school lands shall be sold, I think it will answer the purpose. It would not be the object of this convention to restrict the entire lands of this territory to 25 sections. I offer an amendment that we strike out the word "school" where it was inserted in committee of the Whole yesterday, and insert it in the amendment offered and adopted today, by Mr. Ainslie.

SECRETARY reads: Strike out the word "school" in the second line of Section 10, and strike out the word "such" in what would be the 15th line, or the first line of Mr. Ainslie's amendment as adopted, and insert the word "school" in lieu of the word "such," which makes it read: "*Provided*, That not to exceed 25 sections of school lands shall be sold in any one year," etc.

Mr. AINSLIE. That does not affect the proposition; I was attempting to save the school lands. There might come in applications for the sale of school lands donated by the general government, for the purpose of irrigation. I suppose the legislature will cover that, if we have not in the amendments here.

The CHAIR. It is moved and seconded that the word "school" be stricken out in the second line of Section 10, and inserted in lieu of the word "such" in what would be the 15th line after it was printed, being the first line of Mr. Ainslie's amendment as adopted.

Mr. McCONNELL. Let me explain, Mr. President. By the adoption of that amendment, by adding the word "school" in the second line yesterday, it cut off the duty from this board of land commissioners of locating and providing for the protection of any other lands only the school lands. It specified that it should be their duty to locate—the land commissioners—to provide for the location of "school lands," and by striking it out, it will read to provide for the location and

sale of all of the lands of the state donated by the general government. (Vote and carried).

The CHAIR. The amendment is adopted.

Mr. MAYHEW. I move that the section be now adopted as amended. (Seconded).

The CHAIR. There were a few amendments incorporated by the committee of the Whole. The secretary will read it now as it stands, ready for action.

SECRETARY reads Section 9 (8).

Mr. POE. Mr. President, before we proceed to that question, I will state here that there was an omission or oversight upon my part in reference to Section 8 (7), the adoption of that.

The CHAIR. That may be brought up hereafter, but the convention is now considering this report. Did you wish to go back to the previous section?

Mr. POE. I wish to move the reconsideration of the preceding section.

The CHAIR. The motion is now for the adoption of this section.

SECRETARY reads: It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. *Provided*, That no school lands shall be sold for less than ten dollars per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction,

for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the sale of timber on the public school lands, and for the faithful application of the proceeds thereof, in accordance with the terms of said grants. *Provided*, That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed 160 acres to any one individual, company or corporation."

Mr. REID. Has that substitute just read been considered in committee of the Whole?

The CHAIR. It has been considered and amended and re-amended in convention.

Mr. REID. I know, the original section; but has the one just read ever been considered in committee of the Whole?

Mr. McCONNELL. Oh, yes.

Mr. REID. Is this a redraft or a new one?

The CHAIR. I would call the attention of the gentleman from Latah to the fact that in striking out this word "school," the limitation now as represented by the price of ten dollars an acre is limited to school lands, which leaves university and all other lands to jobbed off as you see fit. I suggest that the word "school" be——

Mr. TAYLOR. I move that the word "school" be stricken out where it comes in; it is in the fifth line.

The CHAIR. All in favor of that motion say aye.

Mr. AINSLIE. Whereabouts is that?

The SECRETARY. It comes in in the midst of line 5; it reads as follows—after the word "therefor"—*Provided*, That no school lands shall be sold for less than ten dollars per acre."

Mr. HEYBURN. Mr. President, we may possibly be mortgaging the future a little in that. It has been suggested that we may receive a donation of lands for irrigation purposes, and if we do there would be a large portion of them desert lands, and that would cover

all classes of lands to be received from the government hereafter. I think there should be some saving clause. These lands will not sell for ten dollars an acre, in all probability, all of them, and it would not be well to make a general price of ten dollars per acre for all classes of lands to be received from the government at any time in the future. If we strike out those words that will be the effect of it.

The CHAIR. The question is upon striking out the word "school" so as to leave the limitation on the price of all lands at ten dollars per acre. (Vote). The motion is lost. It is moved and seconded that the section as amended be adopted. (Carried). The section is adopted.

The CHAIR. I would like to ask the convention before we proceed further—I don't want to be cut off from my rights as a member of the convention simply because I am in the chair—whether the convention intends that the university lands shall also have no limit as to price. That is the effect of voting down the last amendment.

SECTION 9.

SECRETARY reads Section 10 (9), (11 of the printed copy): "The legislature may require by law," etc. It is moved and seconded that the same be adopted.

Mr. HEYBURN. I move to strike out the word "eighteen" in the third line and insert "fourteen." (Seconded. The question is put and the amendment lost).

The CHAIR. The motion recurs upon the adoption of the section. (Vote and carried). The section is adopted. Section 11; the report of the committee is to strike out the next two sections. The next section, which will be 11 (10), is 14 on the printed copy.

SECTION 10.

SECRETARY reads Section 11 (10). "The location

of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises and endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law."

Mr. McCONNELL. I would like to offer an amendment, Mr. President, which will include the object you expressed a while ago. "*Provided*, That no university lands shall be sold for less than ten dollars."

Mr. SWEET. I second the amendment.

The CHAIR. If there is no objection the amendment will be inserted.

Mr. AINSLIE. I suggest that an amendment be inserted similar to the one adopted in Section 9: "*Provided*, That university lands shall be sold, not to exceed 25 sections in any one year, in subdivisions not to exceed 160 acres to any one individual, company or corporation, and for not less than ten dollars per acre."

Mr. SWEET. I will accept that amendment.

The CHAIR. I think if the gentleman examines the section, he will find this to be the case, that the amendment as adopted in Section 9 (8) limited the sale of all public lands to 25 sections per year.

Mr. McCONNELL. All school lands

Mr. AINSLIE. I suggest that after the word "school" we insert "university," so as to save putting it in another section.

Mr. GRAY. I understand that the two together—you can sell in university lands and school lands altogether not to exceed 25 sections.

Mr. McCONNELL. I would object to that.

Mr. GRAY. That is what I thought. (Laughter).

The CHAIR. The question before the convention now is the adoption of Section 11 (10).

Mr. McCONNELL. I will move that Section 11 (10) be amended by adding the words at the end of

line 8: "*Provided*, That no university lands shall be sold for less than ten dollars per acre." (Seconded).

Mr. AINSLIE. Will you continue it to include the limitation as to quantity?

Mr. McCONNELL. Well, in some respects that would be desirable, whereas in others it would work a great disadvantage to this fund. For instance, where these sections are located in the mountains, in timber lands, no milling company would want to establish a mill of that kind—build a sawmill, for the timber only on 160 acres of land. We must not lose sight of this; while on the open prairie lands susceptible of cultivation, it would be more desirable to have them divided up into small tracts. It might be to our interest in the mountainous districts to sell them in larger tracts. I don't know but it is a good plan to leave it to the legislature—I think perhaps it is.

Mr. GRAY. That is my idea. (Laughter).

The CHAIR. It is suggested that at the end of the section the amendment shall be added limiting the sale of university lands to ten dollars per acre, that is, to provide that they shall not be sold for less. All in favor of the amendment say aye. (Vote and carried).

Mr. MOSS. Mr. President, I move that the word "school" be stricken out of the amendment in line 13 of Section 9 (8). in order that it may be in conformity with the changes in the prior part of it.

The CHAIR. That is out of order without a motion to reconsider; we have already passed it, and there is a matter now pending before the convention to be disposed of first.

Mr. SWEET. I move the adoption of this section.

Mr. AINSLIE. I offer an amendment to the section, at the end of the proviso offered by the gentleman from Latah.

Mr. REID. Mr. President, I would like to make a parliamentary inquiry. Under Rule 55 it says: (reading) "The final vote upon agreeing to each proposition, and upon agreeing to the instrument as a whole shall

be taken by the yeas and nays." Is this the final vote on this proposition?

The CHAIR. No sir.

Mr. REID. The point is this: I do not want to interrupt the business of the convention, but there are one or two amendments offered.

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

Mr. REID. I want to call the ayes and nays on one or two propositions offered in committee of the Whole, and that is the reason I ask. I suppose I have a right to do that.

The CHAIR. I don't think there is any doubt about it at all. There is an amendment offered by the gentleman from Boise.

SECRETARY reads: "And in subdivisions not to exceed 160 acres to any one person, company of corporation."

Mr. McCONNELL. Mr. President, I move to amend by adding to his amendment the words: "unless otherwise provided by law." That will give the state the right to sell these lands in future years without first submitting the question of a constitutional amendment to the people. If you restrict the sale of these lands to ten dollars an acre they never can be sold for several years, until you have the constitution amended, and if the legislature in future years can say that these lands can be sold for less than ten dollars per acre, they can pass a law to that effect, but this in the meantime will remain the act on our statute books as the minimum price to be obtained for these lands, until such time as it is seen they cannot be sold for that price. I think it is better than it is to put that in our constitution and afterwards to have to go before the people and ask

them to adopt a constitutional amendment. (Seconded).

Mr. MAYHEW. Mr. President, I desire to say with regard to the amendment offered by Mr. McConnell, that there is a great deal of merit in the proposition, with this exception. I have been informed, and in fact I have seen heretofore, that the enabling acts of congress admitting different territories into the Union, provide that these lands shall be sold at a minimum price, as I understand. If that is so, we do not know what congress may do in the future in donating lands to this state and about fixing the price of these lands, and if that is the case and congress should do so, then the legislature has no power to interfere with it, and I don't see how the amendment of the gentleman would be of any value.

Mr. McCONNELL. Congress may repeal the law and doubtless will when the time arrives that the necessity for its repeal would be apparent. We can go up to congress with our representations that all the lands which would have been valuable under that act have been sold—that all the lands which will bring that price have already been disposed of, and that we have a large tract, which you all know that we shall have, that will not bring that, and congress will then doubtless repeal that law and give us the right to dispose of it as we see fit, and if we add this ten dollar clause to our constitution we cannot then through our legislature repeal it; that is, we have got to go before the people with a constitutional amendment, and at a considerable expense, and I think it would be better for us to leave it to the legislature, and I think this amendment which I offer to the amendment of the gentleman from Boise should be adopted.

Mr. AINSLIE. The proposition coming from the gentleman from Latah fixes the price at ten dollars, but does not limit the quantity of land to be sold to any one person or corporation. Now large land grants always retard the development of any country. The state of

California labored under that for a great many years on account of those excessive Spanish grants, as they covered the greater portion of the state, and California never developed into the great state that it is today and acquired more population, until these great landholders of the Spanish grants subdivided their grants by selling them out into small farms. The wonderful progress made by the state of California today in the development of its resources and in increase of population is entirely due to the large landholders dividing their tracts up and selling them to small farmers. My object is to take advantage of this lesson, to learn from the mistakes of others, and engraft a system of land laws in this territory that will result in the rapid development of Idaho and increase of its population, but if you place no limitation on the amount of public land to be sold, that any one individual can purchase, we may sell these lands off in large tracts and retard the settlement of the country, and I believe it is to the interest of the territory and of the new state that we should say that no more than 160 acres of these public lands should be sold to any one individual or any company or corporation, and with that object in view—the sole object I have, I offered that amendment limiting the amount that any one person shall take.

Mr. GRAY. I would advise to sell it that way; if it can be sold better in larger quantities, let us sell it in larger quantities.

Mr. AINSLIE. I will answer the gentleman; if a man can pay ten dollars an acre, for \$1,000 he can buy 100 acres.

Mr. GRAY. Well, if you can sell it for more than ten dollars an acre for no larger quantities, I would advise that, but I can't see why you must sell it in quantities of 160 acres; it matters not what the price was, so that it was ten dollars.

Mr. AINSLIE. I would prefer it at ten dollars an acre for 160 acre tracts, than at twelve or fifteen dollars for larger tracts, say 640 acres, because you get

more settlers into the country and derive more taxes and revenue from these lands from the more proprietors, and the more proprietors we have the better for the country.

Mr. GRAY. I understand; it is the number of settlers.

Mr. ALLEN. I think it is well to call attention to the fact that the act of 1881¹ which granted these lands the university lands, to the territory of Idaho, limits the price that they must be sold at to eight dollars an acre, and that the provisions of the legislature, or what the legislature may establish, are subject, it says here in the enabling act² of Idaho Territory, to the limitations and provisions of said act. Will this clause interfere with that? I think it is necessary that the amendment of the gentleman from Latah be passed, in order that the legislature may provide such provisions as may be necessary.

Mr. McCONNELL. I think the enabling act would not be in the way of our adopting this, because they merely restrict us to the effect that we shall not sell for less than eight dollars, but they would have no objections to our getting sixteen or twenty-four if we could.

SECRETARY reads: "In subdivisions not to exceed 160 acres to any one company or corporation," is Mr. Ainslie's, and add "unless otherwise provided by law," by Mr. McConnell.

The CHAIR. The secretary will now read for the information of the convention the entire proviso and amendments, specifying each amendment.

The SECRETARY. I will read what will be Section 14 on the printed copy—Section 11 (10) now: "The location of the university of Idaho, as established by existing laws, is hereby confirmed. All the rights,

¹—21 U. S. Stat. at L. 326.

²—Referring to the provisions of Sec. 22 of the Mitchell Bill. See appendix.

immunities, franchises and endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of and appropriations to the university, under such regulations as may be prescribed by law. *Provided*, That no university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed 160 acres to any one person, company or corporation, unless otherwise provided by law."

The CHAIR. Does the gentleman from Boise accept the amendment of the gentleman from Latah, "unless otherwise provided by law?"

Mr. AINSLIE. I don't like that.

The CHAIR. Then the question is upon the amendment to the amendment, adding the limitation, "unless otherwise provided by law." (Vote). The noes have it. The question is now upon the adoption of the amendment of the gentleman from Boise, which has just been read.

Mr. McCONNELL. Mr. Chairman, I doubt whether this convention understood the last motion; I am sure I did not. I would like to have the ayes and nays on that question.

PARLIAMENTARY DISCUSSION.

Mr. REID. Mr. President, I would like to rise to a parliamentary inquiry. The rule states that when these propositions have been made in committee of the Whole and we report them back to the convention, as has been done, we take them up, section by section, and read them, and then have a vote, yea and nay. What I wish to know is, can any amendments be offered in the convention that were not offered and acted upon in the committee of the Whole?

The CHAIR. My own idea in regard to that is that the rule requires amending to that effect, limiting all amendments in convention to amendments that were

offered in committee of the Whole, but the rule as it reads does not provide that.

Mr. REID. Well, that was the intention, Mr. Chairman.

The CHAIR. I have no doubt it was the intention, but it does not read that way.

Mr. REID. Then these amendments come up in the committee of the Whole, and come back here, and if new ones can be offered, there will be so many amendments that we can never get through; we will be here until winter.

The CHAIR. That is where the difficulty comes.

Mr. REID. My understanding about the committee of the Whole was, that in order to facilitate business a legislative body transformed itself into committee of the Whole, and there amendments were offered, but the previous question could not be called, a vote could not be had by yeas and nays, and motions for delay could not be entertained to delay business, but any member who wanted to amend offered it there and it was voted upon. Then when we went back into the body, whether committee of the whole house or whole convention—I mean, whether it was the house or the convention, when you get back in there the propositions come up in their order and you vote yea and nay on them. I know that is the rule of the house of representatives, but under our rule you have voted upon them whether in the committee or in the convention. I know that when we take up each proposition singly and vote yea and nay, that it will take a great deal of time, but my understanding is that only propositions that were considered in committee of the Whole can be considered in the house, and the question is then only whether you will take a vote, yea and nay, upon it. But I notice here gentlemen offer new amendments, amendments to amendments and substitutes to amendments. We are proceeding in convention just as we did in committee of the Whole, and if we do that there is no necessity of going into committee of the Whole, and so

I make the point of order that we are limited in this body only to vote on those questions which were considered in the committee of the Whole, and that was the reason I made the inquiry awhile ago. There are one or two amendments I desire to call the yeas and nays upon. I refer to Rule 52, and——

Mr. McCONNELL. Read Rule 49, and see if that does not settle the matter.

The CHAIR. There is a matter here that calls for some action by the convention. That particular rule should be modified, so as to make it read as it was intended by the committee on Rules that it should, namely, that when the convention goes into the committee of the Whole and amendments are offered, that then when it goes back into convention, no amendments should be considered in convention except those which were offered in committee of the Whole and rejected, and on this proposition the yeas and nays can be demanded.

Mr. REID. The gentleman from Latah called my attention to a rule which I think covers the very point—the latter clause of Rule 49.

The CHAIR. That is the one I am talking about.

Mr. REID. (Reading): “After being reported, the propositions,” that is the original article, with amendments, “shall be immediately taken up for consideration.” But we have by consent waived that from time to time; “and again be subject to discussion or amendment, before the question to engross for final reading shall be taken up.” But only those propositions which were voted on, and here are brand-new propositions, offered here to different sections. We only consider the propositions, the original propositions and the amendments, that we considered in committee of the Whole. I know that was the intention of the committee on Rules when we made it.

The CHAIR. Gentlemen, we will proceed to finish up on this matter. The question now is upon the adoption of the amendment offered by the gentleman from

Boise, and which has been read two or three times to the convention. All in favor of the the adoption of that amendment to Section 11 (10) say aye. (Vote). The ayes seem to have it. Now Rule 49 says that "after being reported, the propositions, with amendments thereto, of the committee of the Whole, shall be immediately taken up for consideration, unless it shall be otherwise ordered by the convention, and again be subject to discussion or amendment." That is, the whole proposition, and the amendments made by the committee of the Whole, for discussion or amendment. If that language were stricken out, "or amendment," and limit it to such amendments as were offered in committee of the Whole and which were rejected in committee of the Whole, and which the party desires to offer again in convention and get the ayes and nays on, we would get rid of half the labors of this convention. As it is now——

Mr. SHOUP. Mr. President, I will state that the committee on Rules copied that from one of the rules of the last Ohio convention, and that convention proceeded in just the way Mr. Reid stated, in all their proceedings through the entire convention. I have their entire proceedings, and they certainly understood the rule just as the gentleman from Nez Perce has stated. No new amendments were offered at all.

Mr. POE. In order to get at this matter, I will give notice of an amendment to that portion of Rule 49. I believe it can be amended so that the——

Mr. MORGAN. I think it may be done by unanimous consent at once.

The CHAIR. The chair will entertain the motion.

Mr. POE. Then I would ask that unanimous consent be given that Rule 49 be changed so as to strike out all after the word "convention," that this portion be stricken out; "and again be subject to amendments," etc.

Mr. MORGAN. Just say strike out "or amendment." That will cover it.

The CHAIR. You will cover that by striking out

the words "or amendment." But there should be a provision allowing amendments rejected in committee of the Whole to be offered in convention, so that they can call the ayes and nays.

Mr. REID. I understand they can call those up anyway. That is a part of the report which is up for discussion, and under another rule which says we can call for the ayes and nays.

The CHAIR. That is only the amendments reported.

Mr. REID. The report covers all amendments offered, beyond a doubt.

The CHAIR. "The propositions with amendments thereto;" that is, the amendments adopted in committee of the Whole. But there may be amendments offered in committee of the Whole and rejected. And when you get into the convention, under the rules of the house of representatives, which ought to prevail here, you take up the section with the amendments made to it, and you can take up of such amendments only those accepted in committee of the Whole.

Mr. AINSLIE. That is the position I take on the construction of that rule, but in order to make it more certain, you might say, "subject to discussion or amendment as proposed in the committee of the Whole." That would cover it.

Mr. SHOUP. Mr. President, would it be in order then to move to strike out any section in the report?

Mr. MAYHEW. That has been done and voted down in the convention this morning. My friend from Ada, Mr. Gray, moved to strike out certain amendments that were made in committee of the Whole.

Mr. SHOUP. What I mean is this. A section may have been adopted in committee of the Whole, and there might not be any amendments offered at all. Then would it be in order to strike out any such section in the convention?

The CHAIR. Under the rule as it now stands, unquestionably it would be; the whole thing comes up

again; but on the proposition as suggested by the gentleman from Boise, it would not be. All of these sections are supposed to be carefully considered in committee of the Whole, and when reported they stand for approval or rejection; also the amendments which have been offered in committee of the Whole and accepted and passed there, they are not subject to amendment. But the amendments which have been offered in committee of the Whole and rejected may be again offered in convention and the ayes and nays called. The whole object of going into committee of the Whole is to discuss the whole merit of the proposition there, and going back into convention is simply to take the vote on the things which the committee of the Whole agreed upon, and also to take the vote on amendments offered in committee of the Whole and rejected, by which you can put the members of the convention on record. If there is no objection, gentlemen, the chair will by unanimous consent direct that this change in the rule be made.

Mr. GRAY. I object.

NOTICE OF MOTION TO AMEND RULE 49.

Mr. AINSLIE. Since there is objection, I will give notice of motion to amend this rule.

SECRETARY reads: I hereby give notice that tomorrow I will move to amend Rule 49, by inserting after the word "amendment" in the next to the last line, "as proposed in committee of the Whole." Ainslie.

The CHAIR. The secretary will proceed.

Mr. TAYLOR. I move the adoption of Section 11 (10), as amended. (Carried).

SECTION 11.

SECRETARY reads Section 12 (11).

Mr. SWEET. While I am in favor of that section as adopted, I am under the impression that it is in direct conflict with the United States law. That provides that we shall not sell more than one-tenth of the land in any one year, and we have already said that we would sell half, and we can't change any law of congress.

Mr. MAYHEW. What was that? I didn't understand it.

Mr. SWEET. If you will permit me I will read the section from the United States statute on university lands, which I think is in direct conflict with the one just adopted. It says: (reading) "That there be, and are hereby, granted to the territories of Dakota, Montana, Arizona, Idaho and Wyoming respectively, seventy-two entire sections of the unappropriated public lands within each of said territories, to be immediately selected and withdrawn from sale." Now I pass on to where it provides for the disposition of the lands: "*Provided, further,* That none of said lands shall be sold at less than the appraised value, and in no case at less than two dollars and fifty cents per acre. *Provided,* That the funds derived from the sale of said lands shall be invested in the bonds of the United States and deposited with the treasurer of the United States; that no more than one-tenth of said lands shall be offered for sale in any one year; that the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund; that no part of said fund shall be expended for university buildings, or the salary of professors or teachers, until the same shall amount to \$50,000, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to \$100,000, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities."¹

Mr. REID. I would ask the gentleman if it is not a fact when the enabling act was passed, that in addition to these 72 sections they would give us 50 more, and vest the title absolutely in the state of Idaho? Then we had better have the provision in. These gentlemen were willing to help us while we were in our swaddling clothes, but now when we come in they make further

¹—Act of February 18, 1881; 21 U. S. Stat. at Large, 326.

provision in addition to that, with the right to that that is already fixed as a matter of law.

Mr. SWEET. I understood we had provided for the sale of the lands we have already had.

Mr. REID. I am just asking for information.

Mr. SWEET. If we are undertaking to provide for the sale of the land we already have, and have a provision that is in direct conflict with the provisions in this act here, certainly our provision cannot prevail.

Mr. REID. If congress accepts our constitution which would be proposed to them, and admit us without amendment—if they accept it and pass an enabling act and accept the conditions we put in as to future grants of land, it will be in effect a repeal of that statute, so far as it extends to that.

Mr. SWEET. If it be a fact that their acceptance of our constitution will repeal this act, I have no objections to it.

Mr. HEYBURN. Mr. President, it seems to me that we have been adopting the section under Rule 50, but that we are now considering this on final reading, are we not?

The CHAIR. No sir.

Mr. HEYBURN. Under what provision are we considering this bill, I would ask? We are not in committee of the Whole.

Mr. AINSLIE. Under Rule 52 (reading from rule) After we get through with these amendments to the bill as reported by the committee of the Whole, then the question comes up as to its engrossing and final reading. See Rules 54 and 55.

Mr. HEYBURN. Then I understand that we have to consider these matters three times; once in committee of the Whole, then in convention, and once again in convention.

Mr. AINSLIE. That is the way it is under the rule.

SECRETARY reads Section 12 (11), (which is 17 on the printed copy). "The permanent educational

funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. *Provided*, That no loan shall be made of any amount of money to exceed one-third of the market value of the lands at the time of the loan, exclusive of buildings."

It is moved and seconded that the same be adopted.

Mr. HEYBURN. It seems to me that after the reading of the act of congress which we have just heard that grants these university lands, which provides specifically where these funds shall be invested and just how it shall be cared for, that it is rather absurd for this convention to make a provision that, notwithstanding the act that grants us the lands says the funds must be invested in securities of the United States with the United States treasurer, that we shall provide that it shall be invested with the farmers of Idaho Territory. It seems to me that is something very absurd, to pass such a provision as that, in view of the fact that the provision is a part of the granting act, one of the conditions of the grant of lands, that we shall invest this money in that way. That was the amendment the convention rejected, or the committee of the Whole did, that these bonds of the United States should be included as one of the means of investing the money. We find that congress said it shall be the only place where the money can be invested. It seems to me it is time for the convention to stop and think for a minute.

It is moved and seconded that the section be stricken out.

Mr. McCONNELL. Mr. President, I hope that motion will not prevail. If the gentleman wants to add his amendment, which was offered this morning, again, to include that one class of security upon which this money can be loaned, I don't think the convention has any objections. They had no objections this morning to that particular clause, but there were other objectionable features engrafted in it; hence it was rejected. I

think if the amendment was offered now, to add "or United States bonds," it would cover this section which has been read pretty well, and remedy any defect in the section, but we must certainly provide some security upon which these funds can be loaned, and if you strike it out there is no security in the future for these funds. They might be loaned around to Tom, Dick and Harry all over the country. Any man who wants to start a store who is in favor with the board of land commissioners, or wants to start a saloon or run for the legislature, or wants to be elected governor—he can go to work and get a loan. There will be no restrictions at all if you strike this out.

The CHAIR. One thing, gentlemen, we must not overlook. A motion to strike out the entire section will carry with it also the school funds, that are not obnoxious to the criticism made to the university lands.

Mr. MAYHEW. In order to get at that correctly——

Mr. WILSON. I move to strike out the words "and university" in Section 16 (11).

Mr. HEYBURN. Let's have it read with those words out.

SECRETARY reads: "The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state, or on state bonds, under such regulations as the legislature may provide. *Provided*, That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings." The word "university" is not in it at all.

Mr. SWEET. I move that the words "or United States bonds" be added after the word "state."

Mr. HEYBURN. I would ask the gentleman who had in his possession the university bill to read the granting part of it, the granting clause. I want to see the language of the grant.

Mr. SWEET. This act applies to university lands only.

Mr. HEYBURN. I understand it; I would like to hear the granting clause. I understood the act to grant lands to Montana, Dakota, Wyoming and Idaho for university purposes.

Mr. SWEET. (Reading): "Be it enacted by the senate and house of representatives of the United States of America in congress assembled: That there be, and are hereby granted——"

Mr. HEYBURN. That is sufficient. Now Mr. President, that is a grant that has attached. Those lands belong to the territory. The grant has attached, subject to those conditions, and there is no use in saying, in the face of that grant, that this board may at its own discretion invest these monies in state bonds or loans either, because they can't do it without violating the provisions of that act, and no constitution that we can make can override an act of congress that is now in force. That will be admitted, I think, by every gentleman in the convention.

Mr. SWEET. Is it not a fact that the section under consideration now does not apply to university funds? It is provided in the section with regard to the university that the regents shall invest the funds as directed by law.

Mr. HEYBURN. If I understand the bill which has been read, does it not in the first line contain a reference to the university funds?

The CHAIR. All the educational funds; that includes the funds of the university.

Mr. HEYBURN. So I understood it, and if it is open to that construction, then we are doing an absurd thing in providing this way, and we had better take it and separate this matter as it should be, at this time.

The CHAIR. Will the gentleman make a motion to lay this matter on the table?

Mr. HEYBURN. Mr. President, I move that this section, with its amendments and substitutes, be printed and laid upon the desks of members, to be taken up for

consideration at a future time. (Seconded and carried).

Mr. REID. Mr. President, I take it that we can call the yeas and nays on these amendments to this bill, that were proposed in the committee of the Whole.

The CHAIR. You can call them at any time; any two can call them.

Mr. REID. Under the ruling of the chair this was not a final reading.

The CHAIR. No, it was not. I understand the yeas and nays can be called by any two members, supported by one-fifth, on any proposition or any motion or amendment at any time.

Mr. REID. Then I call for the yeas and nays on the amendment submitted by the gentleman from Ada, Mr. Clark, to the 8th (6th) section.

The CHAIR. The gentleman is too late, because the motion has been adopted to postpone the further consideration of it at this time, and that the bill as amended be printed for the information of the convention.

Mr. REID. I withdraw it, in consideration of the understanding that I may have it at some time in the future.

SECTION STRICKEN OUT.

Mr. PINKHAM. I call the attention of the convention and the president to the fact that when Section 3 was read it was not accepted by the convention, or it was not put to final vote. I therefore ask permission at the present time to strike out Section 3 as amended, for the reason that it is merely a repetition of Section No. 1, and has no place in this article.

The CHAIR. Unless the gentleman moves to reconsider the vote by which the further consideration of this bill has been postponed for the present, the motion is out of order.

Mr. PINKHAM. It can be considered when it is called up again.

Mr. AINSLIE. I think there would be unanimous consent to strike it out.

The CHAIR. If there is no objection, the chair will entertain a motion to strike it out.

Mr. PINKHAM. I wish to call attention to Section 1. It reads, in the latter part of it, that the legislature of Idaho shall "establish and maintain a general, uniform and thorough system of public free common schools." Section 3 as amended reads as follows: "The legislature shall as soon as practicable provide for the establishment and maintenance of a thorough and uniform system of free public schools." I move to strike it out. (Carried).

The CHAIR. And the bill as postponed, is postponed with that stricken out. What is your pleasure?

ORDER OF BUSINESS.

Mr. SHOUP. I move that the report of the committee on Bill of Rights be taken up.

Mr. SHOUP. With the consent of the convention I will withdraw the motion.

Mr. REID. I move that the convention resolve itself into committee of the Whole, to take up the next thing on the calendar. I yield by request of the gentleman from Shoshone.

Mr. HEYBURN. Mr. President, I would move that the Bill of Rights, as it has been amended and reported by the committee of the whole, be printed. There are a great many amendments, and it will be impossible for any member intelligently to follow the consideration of that bill with its many amendments unless he has it before him on his desk. (Seconded).

Mr. MORGAN. I would like to inquire when it can be printed. The report of the committee on Legislative Department was ordered printed two or three days ago and is not here yet. I am afraid we are not going to get to the consideration of these things.

Mr. HEYBURN. I understand that that work was delayed by the report of the Judiciary committee and

some other committee, which by the way is now finished, and I think the printing office is relieved of some of its pressure.

Mr. ALLEN. I would state for the information of the gentleman that I think it will be ready tomorrow morning.

Mr. HEYBURN. Yes, I have a proof of it now, and I think there will be no difficulty about it.

The CHAIR. It is moved and seconded that the report on Bill of Rights be ordered printed. (Carried). It is so ordered.

Mr. POE. Mr. President, I move that we now resolve ourselves into committee of the Whole for the purpose of taking further consideration of the matter that was before them this morning, that is, the report of the committee on Public and Private Corporations. (Seconded and carried).

COMMITTEE OF THE WHOLE IN SESSION.

Mr. POE in the Chair.

SECTION 5, ARTICLE 11.

The CHAIR. Section 5 was under consideration.

Mr. SAVIDGE. I have an amendment.

SECRETARY Reads: Amend Section 5 by striking out the words "regulate and control" in line 3, and insert the word "establish," and also in the same line strike out the word "the" and insert the word "reasonable." Also in line 4 strike out the word "as" and insert the words "or other."

Mr. MAYHEW. What is the object of that?

Mr. SAVIDGE. I don't know as it makes any special or great difference. The striking out of the words "regulate and control" and inserting the word "establish" simply fixes a little more definitely and permanently the law in that regard. And in the fourth line to insert the words "or other" in place of "as;" I think that that regulation should apply to all common carriers as well as railroads or express companies.

Mr. MAYHEW. I have no objection to the last

amendment; but I do not understand that it gives it any greater force or meaning by the word "establish." I think, Mr. Chairman, that the words "regulate and control" have a stronger and more extended meaning than the word "establish." However, I am not tenacious about it; but these words "regulate and control" carry this meaning, that the legislature from time to time may regulate and control the rates of fare, etc., of common carriers. But for the word "establish," I don't think that would be proper. I am rather inclined to think that the language used now in the section is in better terms than the single term, as the gentleman's amendment has it.

Mr. MAXEY. I have an amendment. Amend by inserting "within or" between the words "connect" and "at" in the seventh line of the fifth section, and add at the close of the section "within the state." (Seconded). If the gentlemen will observe, it would read "within" before the word "state," and close the section.

Mr. MAYHEW. I do not understand it now.

The CHAIR. How does the section read with both amendments?

SECRETARY reads: All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers, and subject to legislative control, and the legislature shall have power to establish by law, reasonable rates of charges for the transportation of passengers and freight by such companies or other common carriers from one point to another in the state. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state, and to connect within or at the state line with railroads of other states and territories. And every railroad company shall have the right with its road to intersect, connect with or cross any other railroad within the state.

Mr. SAVIDGE. I have just handed up an amendment to follow the word "railroad" in the ninth line as

follows: Amend section five by inserting after the word "railroad" in line nine the words "under such regulations as may be prescribed by law, and upon making due compensation." (Seconded).

Mr. MAYHEW. I think we had better call a halt on this, and take up these amendments as they are offered.

The CHAIR. The one now is the amendment offered by Mr. Savidge to make amendments in lines four and five.

SECRETARY reads: The amendment is to strike out the words "regulate and control" in line three and insert the word "establish."

Mr. MAYHEW. Now, let us have that.

Mr. POE. Do you desire to vote upon them separately?

Mr. MAYHEW. Yes, I call for the vote upon them.

Mr. AINSLIE. There is no second to that motion. (Seconded).

Mr. AINSLIE. I propose to stand by the action of the committee. The committee has used the term "regulate and control by law." Now, then, I think we would make a mistake by amending the provisions of the act passed; but if you insert the words "establish by law," it appears to me that would make it permanently regulated by the legislature, and would be so looked upon by the transportation and express companies; while the words "regulate and control" leave it in the power of the legislature, through a board of commissioners to supervise these rates of transportation or express companies and all common carriers. If you put the word "establish" in there, it appears to me it would prevent the legislature, after passing one bill, from ever regulating the matter afterwards; and I think we had better keep to the language of the committee.

The chair put the question and the amendment was lost.

SECRETARY reads: Also in the same line three strike out the word "the" and insert the word "reason-

able," which makes it read: "by law reasonable rates of charges."

The chair put the question and the amendment was lost.

SECRETARY reads: Also in line four strike out the word "as" and insert "or other," to make it read "passengers and freight by such companies or other common carriers."

The chair put the question, and was unable to decide and a rising vote was called for.

Mr. CLAGGETT. Mr. Chairman, I believe I can call attention, before the vote is taken, that the convention evidently does not understand the force and character of this amendment. By striking out the word "as" the way it is now, the legislature has the power to establish rates of freights and fares on all railroad and transportation companies and fix them as common carriers. If you strike it out, you leave that all out, "transportation of passengers and freights by such companies or other common carriers." It is as common carriers that the transportation of all companies is done. The language is correct the way it is now. I am speaking of the amendment we are now voting on.

Mr. MAYHEW. The amendment offered was rejected by the committee striking out the word "establish."

The CHAIR. I understand that; that is what I am saying. The question now is upon the amendment which proposes to strike out in line four the word "as" and substitute in its place "or other." (Vote).

A MEMBER. It has been voted on once.

The CHAIR. I understand that, but the gentleman called the matter up and I propose to give the convention another opportunity to vote upon it. All opposed say no. (Vote). The amendment is lost.

A division was called for and a rising vote taken, which resulted 20 for and 20 against.

Mr. MAYHEW. How does the chairman vote?

The CHAIR. I will sustain the amendment. The

next amendment is Mr. Maxey's to amend by inserting "within or" between the words "connect" and "at" in the seventh line of the fifth section, and add at the close of the section "within the state."

Mr. MORGAN. I call for a division of the question.

The CHAIR. The first proposition is to insert "within or" between the words "connect" and "at," so that it reads "any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any designated points within this state, and to connect within or at the state line with railroads of other states."

Mr. MAYHEW. The amendment is acceptable so far as the chairman of the committee is concerned, but I suppose the committee desires to take a vote on it.

Mr. BEATTY. Mr. Chairman, "Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated point within this state, and to connect within or at"—that is, within the state line or at the state line, is the way that reads; to connect within the state line or at the state line. If there is any meaning to that I would like to get at it; but that is the construction of it. I suppose the design is to make it apply to a connection some place within the state; but put in that way it means to connect within the state line or at the state line.

SECRETARY reads: To amend by inserting "within or" between the words "connect" and "at" in the seventh line.

Mr. MAXEY. I will just state, Mr. President, that it is not supposed that railroads will confine themselves by connecting at the state line. If you make railroads connect at the state line in passing through our territory——

Mr. AINSLIE. (Interrupting) I think I can see the force and necessity of that amendment. Here is the Oregon Short Line running through this country, for instance. Suppose they want to build a railroad up

to my county and to Nampa, it would give them the right to connect with this Oregon Short Line at Nampa. If you have got to connect right at the state line, they could not connect with it unless they went down to the state line. It gives them the right to connect with any other lines or branch roads. I think it is a very proper amendment.

The CHAIR put the question and the amendment was carried.

SECRETARY reads: And add at the close of the section "within the state." ("Question").

Mr. SWEET. I just want to inquire the object of adding "within the state." Of course we cannot legislate outside the jurisdiction of the state.

Mr. MORGAN. This does not extend beyond the state line.

Mr. MAXEY. Simply because we have no jurisdiction outside the state.

Mr. SWEET. Well, that doesn't say we do.

Mr. MAXEY. The section reads: To intersect and cross any other railroad. Now, shall we cross some other railroad outside the state?

Mr. MORGAN. Then you see this law has no operation outside the state.

The CHAIR put the question and the amendment was lost.

SECRETARY reads: Amend Section 5 by inserting after the word "point" the word "within," and after the word "another" insert the word "point."

The CHAIR. What line is that in?

Mr. SHOUP. The amendment is offered because the bill reads "from one point." Of course that might be any point outside the state; but since the gentleman from Bingham has explained that we could not be understood as legislating outside the state, I will withdraw the amendment.

The CHAIR. The amendment is withdrawn. It is moved and seconded that the section be adopted.

Mr. CLAGGETT. I offer an amendment, Mr. Chairman.

Mr. BEATTY. There was another amendment of Mr. Savidge, I think to add "under such regulations as may be prescribed by law, and upon making due compensation," at the end of the clause. I had a similar amendment to that, and his was introduced, and I withdrew mine.

The CHAIR. I understood we voted upon that.

The SECRETARY. No, there is another one still.

The CHAIR. What was it?

SECRETARY reads: Amend Section 5 by inserting after the word "railroad" in line nine "under such regulations as may be prescribed by law, and upon making due compensation."

The amendment was adopted.

SECRETARY reads Mr. Claggett's amendment: Amend Section 5 by inserting after the word "line" in line 7 as follows: "or at any point within the state."

Mr. CLAGGETT. The chairman will see that it has limited the right to connect with a foreign railroad right at the state line.

Mr. AINSLIE. That has been corrected by the amendment heretofore made when the words "within or" were inserted.

Mr. CLAGGETT. Well, if that is so it was done when I did not observe the fact. I will withdraw the amendment.

The CHAIR puts the question of adopting the section. Carried.

SECTION STRICKEN OUT.

Section 6 was read, and it is moved and seconded that it be adopted.

Mr. SHOUP. Mr. Chairman, I move to strike out the section.

Mr. AINSLIE. I would like to have the chairman of the committee explain one provision in the last line, "neither shall in any manner" etc. The question is whether that would exclude a railroad company run-

ning from the Oregon Short Line up into these mining counties from uniting its business in such shape as where they are shipping goods from San Francisco or Chicago, whether the charge of a through rate from Chicago or San Francisco to Idaho City or Owyhee, would be considered as uniting their business with the Oregon Short Line, if there is a separate company on the line. If it does, it would interfere to some extent, I think, and I would like to hear the chairman on that.

Mr. MAYHEW. My understanding of that Section 6 is this. You must read the whole section in order to understand the meaning of the entire section. (Reads the section).¹ Now that is where a through railroad may be running parallel with a competing line; that they shall not consolidate their stock. It does not mean, as I understand, that a person shall not, if he so desires, build a railroad from any point on the Oregon Short Line or any other line to some point where there is not a parallel line. That would only be an independent line, although a company could buy that line of them and all become the property of one company. But here you will find the language of this is "parallel or competing line."

Mr. GRAY. I cannot see the object of that section. Railroads can do what they have a mind to do. We can control by legislation the amount they may charge, for that has been decided. But as to how they can control their own property, I do not think it is our business to attempt in this constitution to control their business or their property. When we have a right in the legislature to fix rates, we may do that. Whether they unite their stock or their roads, it does not appear to me as if it is a right that belongs in any way in the constitution, if it is in the statutes.

Mr. MORGAN. If it is in order I move to strike out Section 6 entirely.

¹—Not given in the notes, but for the sources from which it was taken, see p. 889,

The SECRETARY. There is a motion on this desk by Mr. Shoup to strike out all of Section 6.

Mr. MORGAN. I second that motion.

Mr. AINSLIE. I would like to hear the gentleman who makes that motion give some reason for it.

Mr. SHOUP. Certainly. Mr. Chairman, the principal reason is, I don't think it is of any account. The interstate commerce bill provides that no railroad shall form a pool, but they do not go anywhere near as far as this goes. This can have no effect on any line outside of this state, but does prevent persons from selling out, one railroad from selling out to another; and not only prevents railroads doing so, but prevents stage companies or corporations engaged in any business as common carriers from doing so. I think we have no right to provide in our constitution that nothing of this kind can ever be done. Suppose there was another road built from the town of Nampa to Boise City, and it is found to be impossible for both of those roads to make a profit—cannot make it pay. The people of this county may be the owners of one of those roads, and they find by consolidating those two roads it requires no more expense to run one than the other, that one can be placed on a paying basis, and yet they are debarred from doing it. A stockholder will have no opportunity of selling his stock for the simple reason it is of no account. But if those roads are consolidated, then the stock may be worth something, while as they are, neither road is worth anything. I don't think we have any right to legislate to whom any man shall be forced to sell his property or to whom he shall not be allowed to sell his property; and I think it is bad policy to have any such section in the constitution of our state.

Mr. SWEET. I would like to ask the chairman of the committee on Corporations one or two questions in relation to the matter. If I understand the fifth section, it provides, as an illustration of the principle, that our state legislature may say what the tariff shall be

upon freight and passenger travel, say between Huntington and Pocatello, does it not?

Mr. MAYHEW. Yes.

Mr. SWEET. Or any other place.

Mr. MAYHEW. Yes.

Mr. SWEET. It gives the legislature power to say what the tariff shall be upon freight or passengers anywhere within the territory?

Mr. MAYHEW. Yes.

Mr. SWEET. Therefore, if the legislature has the power to say what the freight rates shall be, I do not see what difference it makes how many lines of railroad there may be running between two given points. I would like to understand that, and if there be any additional protection in this clause, I am ready to vote for it; but so long as the state has control of the tariff, I do not see that we gain anything by it. Now, the last clause, "neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation;" it seems to me the point raised by Mr. Ainslie is still open to doubt in that respect, for instance, supposing a railroad were to stop at Mullan, and an independent line should build a railroad from Mullan to Missoula, it seems to me this would prohibit uniting the business of those two companies. Or if a railroad was built from Wallace to some other point, I do not see how the two could unite if they were separate companies. I would be obliged if the chairman would enlighten me on the question.

Mr. MAYHEW. If the gentleman will observe the reading of this section where it says that two parallel or competing lines shall not pool their interests or consolidate their stock or franchises with one another, he will be enlightened. In the discussion of this matter before the committee the committee concluded that this was an important and a good section in order to prevent parallel or competing lines from consolidating their interests, where these competing lines may be established or built. That is the object of this section. Now,

so far as I am concerned and understand this railroad business—I was not as familiar with it as I would like to be, and depended solely upon those parties that were, members of the committee that were railroad attorneys and men connected with the railroads. The committee at the time having this under consideration agreed that that section was a necessary section, and it was taken into consideration in relation to railroad matters as to competing lines. So far as my understanding of it goes, the purpose and object of this is to prevent two railroad lines, if they are running parallel or are competing lines, from consolidating their stock in order that they may control the freights over the competing line, or in other words that the two lines may consolidate so that they may have a larger amount from freight and fares. That is the purpose of this section.

Mr. SWEET. I so understand that, Mr. Mayhew; I should so interpret it. But what I do not understand is, what difference it makes if they do consolidate, provided the state says how much they shall receive for carrying the freight.

Mr. MAYHEW. Yes, I understand the gentleman on that. The position assumed by my friend Sweet is that so long as the state legislature has the control of it then this section is not necessary in this article. As long as the legislature has the power to regulate freight rates. That was the object, as I stated, of the committee in adopting it.

‘Question, question.’

Mr. PINKHAM. I shall take issue with both of my friends on this question. I have had occasion in former years to examine into the workings of this system and study well what the intention and purpose of the legislature was that enacted laws under the sections of the state constitution. The legislature has power to appoint a board of commissioners to carry into effect what laws may be passed by that legislature in regulating freight and passenger charges upon a railroad. It is done expressly for the purpose of preventing unjust

discriminations in favor of one section of the country against another section of the country. It equalizes the charges for freight and passengers within the state. But what this Section 6 is intended to cover is to prohibit railroad companies—for instance, taking this line of railroad that passes within twenty miles of this place—from unjustly discriminating between local points. Suppose you get a through rate on freight from Omaha to this point. I venture to say the railroad will stop that freight at Pocatello where it enters this state, and re-bill it to this point under the local charges as fixed and regulated by the legislature of the territory. That is what this action is intended to cover. To prohibit it from rebilling acts and unjustly discriminating against this point, for instance, in favor of Nampa. Suppose they charge a rate through from Omaha to Nampa or to this point: they bill it to this point. They send it to Nampa for \$4.00 a hundred; they can only deliver it at Nampa for \$4.00 a hundred. How is this railroad company, which has a hundred pound classification, going to get its tariff or charges for freight out of goods that are delivered for the inhabitants of Boise, at Nampa? They can put on a tariff just to suit themselves, and no person can complain of it, and for that reason this section is intended to cover that one object to prevent pooling, and prevent two parallel lines of railroad from pooling and discriminating in their charges against one local point in favor of another local point.

Mr. MORGAN. I am opposed to this section entirely as it stands or any other similar section. The great need in this country, it seems to me, is railroad lines, and whether they are competing lines or not, I do not care, so we can get the railroads. I would be glad to see a half a dozen parallel lines running across this territory from east to west and north and south, but suppose some of these railroads should not be able to support themselves; suppose there should not be sufficient business to enable them to operate their roads,

shall we then say that they shall not unite with another road that is stronger and thereby enable these railroad companies to give facilities to the different parts of the territory? Suppose a railroad company starts to build through this country from some point in Oregon and runs up the Boise river out on the Camas Prairie and into Wood river, and it should build a portion of the way, say half way, through this territory, and its funds should be exhausted, and the Oregon Short Line company or the Union Pacific company should be willing to consolidate with that company and take its stock, its rolling stock upon it, and run through this territory and furnish facilities for the Boise valley and the Wood river country, and for all this country through here—shall we say they shall not do this? Gentlemen, I am in favor of starting a dozen railroads through this territory, if there is sufficient country to support them hereafter or now. And if any of them are weak and unable to support themselves, I want to leave it within the power of those railroads to connect themselves with stronger lines with the Northwestern company or the Northern Pacific line, and if it is a competing line with the Oregon Short Line and the Union Pacific, let them have the opportunity to connect with either of those companies or consolidate their stock with them, and thereby enable them to furnish facilities to the people of this territory. I am opposed to it. If we had a dozen lines of railroad now running through this territory, and all of them strong and able to support themselves, then we might say that they should not consolidate with one or another; but in my opinion this territory has not got to the position where it should say that railroads should not consolidate, or that competing lines should not unite together, or that they should not pool their earnings.

Mr. AINSLIE. I have an amendment to offer which I think will probably remove some of the objection.

SECRETARY reads: To amend Section 6 by adding after the last word in line 5 the following: "or company

owning or having under its control a parallel or competing line."

The CHAIR. It is moved and seconded that the same be adopted.

Mr. CLAGGETT. I hope this section will be stricken out, and that the motion to that effect will prevail. The question which was so aptly put by the gentleman from Latah (MR. SWEET) has not been answered upon this floor, and it cannot be answered, in my judgment. We are a young country, and what we want of all things is local lines of railway. We do not care whether they are competing lines or not competing lines. I wish to call the attention of the convention to the substantial fact that, excepting the matter of terminal points, there is no such thing as competition between parallel railroads. The amount of money which it costs to build a railroad is so great that whenever one of them is built upon the line no other railroad will be built; if it is a parallel line, it will be so far away that except at terminal points you will never get the benefit of it; and what we want to do is to encourage railroad building in the state. Suppose there should be two parallel lines, competing as you say, and one of them cutting the throat of the other; what objection is there to allowing them to consolidate or pool within the limits of the state? Interstate traffic is regulated by national law. Provided, as contained in the preceding section—whether they are run as two competing lines or consolidated under one management and large expenses saved, and thereby made a profitable investment to the railroad company—I say, providing the state has the power to fix the rates and charges upon both or either. The provision contained in the preceding section is all we want, and it seems to me we do not want to go to work and say that a railroad company shall not, within the limits of this state, regulate its own business, provide for its own stock, pool its own profits, and unite its business with the business of any other railroad, notwithstanding the fact that the legislature has full control over

all these charges in the end. The preceding section does away with the necessity for the one under consideration.

“Question, question.”

Mr. AINSLIE. Mr. Chairman, the position taken by the gentleman, who preceded me on the question of Section 5 providing that the legislature may regulate rates, does not meet the point contended for by this section. We all know, and no person who has paid any attention to this subject but what knows, that the legislature generally fixes a maximum rate, and they can charge as much lower than the rate fixed by the legislature as they see proper. As long as we have competing lines, there is a probability that the rates fixed by the legislature will not govern; will not govern them so far as rates and charges to the traveling public or to the shipper of merchandise. If there are competing lines they will both compete for the business, and the public will receive the benefit of the competition. If you allow competing lines to consolidate, then the big fish eat up the little ones, and the rates are crowded up to the maximum allowed by the legislature. As long as you have competition, two companies can so regulate their affairs that they can make dividends or interest upon the amount of money invested in their roads; or express companies the same way; or stage companies the same way. They are not going to run a road and lose money on it any great length of time, and if one road is trying to kill out another and they are losing money, the sooner one of them is killed the better, if they cannot keep both roads running and do justice to the country. I say that where there is enterprise enough to build a road between two given points, there is no second individual going to put up his money in a second enterprise unless he is satisfied there is business enough to pay interest on the investment. We all know that when competition arises there are some hogs that want to get everything. We have Jay Gould, who gobbled up a railroad and telegraph line, and the telegraph line is like a devil fish, gobbling up everything within

its reach, and outraging the people by its charges. Now, Sir, if we have competing lines between two points, both roads can run and earn a fair dividend or interest upon the money invested. If you allow one competing line to buy out the other, the one that has the largest capital may run its road a little while, and then force the other to sell it. I am in favor of the section with the amendment offered by me to the effect that this shall apply only to competing lines: "neither shall in any manner unite its business or earnings with the business or earnings of any other railroad, corporation or company, owning or having under its control a parallel or competing line."

Now, Sir, the time for the people to protect themselves is in the beginning before these wrongs come upon us. Right here we are endeavoring to enter upon the threshold of statehood, and it is the time for us to incorporate in our organic act all those safeguards that will protect the interests of the people hereafter. If we do not insert these articles in the constitution today simply because we have no competing lines of railroad, it will be impossible to insert them in the constitution hereafter when we are overpowered by the influence and money of those corporations that build their lines within our state. I say, the time is *now* to put the safeguards in the organic law. We have not too many railroads now, but by putting this amendment in as proposed by me, you can build a railroad from here to Owyhee, to Rocky Bar, to Idaho City or anywhere, and anybody competing on these lines under this provision of the proposed article will not affect it at all. Now, I say, is the time for the people to stand on guard against the encroachments of these powerful corporations, and not leave themselves at the mercy of them.

Mr. BEATTY. Mr. Chairman, the gentleman from Boise says "Now, is the time to guard against encroachment of the railroad companies upon the people." It seems to me that we are acting upon the theory that now is the time to keep railroads from coming here. It

looks to me that many of these provisions have that tendency. We are undertaking to protect the people against what we haven't got. We are undertaking to make provisions here for that which we never will get, in my opinion, if we adopt such measures as this. I take it there is time enough for us to enact these stringent provisions when we get something to legislate upon, when we get the railroads in the country. As we are now situated we have but one corporation in this territory. Shall we now, by placing in our fundamental law provisions that will be discouraging to the building of railroads, leave our state for all time in the hands of this one corporation? The Union Pacific Railroad company now owns all the railroads substantially in the southern part of this territory. The only other company is the one which runs across the northern part of the territory. Now I say, Sir, if we undertake to adopt into our fundamental law substantially all the provisions that are in this bill, my belief is that we discourage capitalists from building railroads here. Why, they talk about building a railroad from here to Rocky Bar; talk about building railroads from this point to any other point in the territory. Who is going to build them? Are the people of Idaho, or are they going to be built by capital that comes from abroad? Every sensible man sees at once that if we have railroads built here it will not be by our own people; we haven't the money; the money has to come from abroad. We all know how timid capital is; you invite eastern capitalists to come in here and build railroads, and they will commence to look over your laws. The first thing they will find is that we have adopted stringent measures to operate their roads for them. We have adopted stringent provisions to show that we will operate their business; we shall tell them how much they can charge for passengers and freight, and then go further and say they shall not unite competing roads, that they shall not even—as this last clause says here, “neither shall it in any manner unite its business or earnings with the business or

earnings of any other railroad corporation." Now, we tie them up so that one railroad company cannot even connect with another line. Under the provisions of this section I undertake to say that the Union Pacific Railroad company cannot connect with this little line over here from Nampa to this place.

Mr. AINSLIE. My amendment obviates that difficulty.

Mr. BEATTY. Possibly, but my main objection to this legislation is this: We are legislating, in my humble opinion, in a way to keep out of this territory the very thing we need. Is there a man living in the uttermost parts of this territory that does not want a railroad to reach his home? Do my friends of the southwest part of the territory, living sixty or seventy miles from a railroad always want to be cut off, and live in that condition? Don't we want any more roads to come in here to compete with the lines we have now? If we do not, this section in my humble opinion is making the very provision to keep those companies out.

Now, I am in favor, for one, of throwing out every encouragement possible to capital abroad, to get it to come here and build our roads and develop our territory. If it becomes oppressive and the government of the United States cannot control it by the laws it has already passed and which I believe it will pass in the future, we can then take hold of it in the state. My friend from Boise says now is the time to scotch them, now is the time to fix them so they cannot take advantage of the people. Is it possible the people of this future state will not have power enough, wisdom enough and independence enough to control these corporations and railroad companies when they become oppressive? I imagine if the time ever comes when they become so oppressive that we cannot endure it, we will rise up in our might and control and regulate them. I say, let us leave our organic law so our legislature can control these things, and let us not discourage capital from

coming in and investing with us, and developing our resources.

Mr. MAYHEW. I do not desire to impose on the committee by making two or three speeches on this proposition, but I desire to call the committee's attention to this. When there are competing lines there is always competition, and they will carry their freights lower in order to get the traffic, and in fact it creates a greater amount of business in the way of both passengers and freight; it has a tendency to create travel, and it is a matter of convenience to the people throughout the territory to have competing lines. Now, the idea and the purpose of this section is to prevent these competing lines, after they have been built, from pooling their interests and their stock with one another so as to make it a burden upon the people. Where there is competition in all trades, there we find articles cheaper, manufactures cheaper, travel cheaper, as it is in this instance, and everything of that kind goes on at a cheaper rate. What the people want in this section of the country is cheap rates, if they can obtain them, over these railroads, and cheap fares traveling over the roads. It is not worth while talking to me or anyone else that these railroad corporations are going to build competing lines unless they find out that they can obtain a profitable business in that transaction. I say after these roads are built, if they are permitted, after competition has caused competing lines to be established, to allow them to join their stock and sell out to one another, defeats the very enterprise that we are trying to protect. After these competing lines are built they shall not sell out and pool with one another.

I don't think the comparison made by the gentleman from Custer is a parallel case, when he speaks of stage lines and such things as that. There may be some corporations running stage lines throughout this territory that this provision might affect, and if it does affect them I am altogether in favor of having that effect made by this provision. I cannot understand, further, Mr.

Chairman, how the gentleman can argue that we are willing to sacrifice and make any sacrifice to get railroads in here. I have this to say. As the territory will develop its resources and become settled up, these railroads will be built in this territory notwithstanding any invitation or encouragement on the part of the territory. The purpose is to prevent these railroads when they are built or being built from holding a mortgage over the people of this territory. Now, Mr. Chairman, I will ask you to look at the railroads as they are now in operation, and I ask you, have we any statistics or report by which we can say these railroads are not making a large profit by their transactions, by their traffic and by their freight and fares over those roads? If I thought for a single moment it would have a tendency to prevent any capitalists from coming into this territory I should not be in favor of this section; but I look upon it from the other end, as was said by the gentleman from Boise, Mr. Ainslie, that now is the time, at the very infancy of our statehood when we are about to bud into statehood and take our place in the Union as other states—it is now the time that we should have these safeguards thrown around the people, and not leave it to some future legislature or future convention to be called—for what purpose? For the purpose of engrafting into the constitution of this territory or of this state similar provisions to prevent an evil that has grown up, that we should have prevented in its incipiency. If we are going to permit these railroads to come in and bind us hand and foot, if that is what the gentlemen are in favor of making sacrifices for, then I am in favor of this section remaining in this article.

Now, I do not believe, Mr. Chairman, that we are doing any injustice to any foreign capital or any injustice to any railroad company in incorporating this provision. I see this same article is in the other states

and territories that are now framing their constitutions¹ and asking for admission into the Union or are about to be admitted into the Union. The same provision is in Colorado,² and it seems there that ever since it became a state, since it was admitted into the Union and they made a constitution for that state, there has been a great number of railroads built throughout that state, in different sections of it, and which are competing lines. And it is a protection to the people. I, for one, Mr. Chairman, think it is necessary to protect ourselves against a railroad corporation. I am not in favor of tearing down railroads, although some gentlemen perhaps on this floor think that is my object and purpose throughout; but it is not so. I am willing to give every encouragement to the railroads to build into this territory and state; but I am not in favor of the railroads having the absolute control of the state in the future.

Mr. Chairman, we can see that not only these large and stupendous corporations have the control of states and great interests of the state, but we can see they have almost got control of the United States; they almost control all the political sentiments in the different states and territories of this Union; and I say it is a dangerous precedent to establish in this territory as we are now budding into statehood, to encourage the railroads in such manner as proposed by the gentleman from Alturas. It seems by the very language he uses and from the manner of his address before this committee and this convention, that he would be in favor of sacrificing everything in this territory for the purpose of building up these corporations. I say, Mr. Chairman, that I think it is a dangerous precedent, and I think if you look at this section carefully that when those roads are built, it prevents them from pooling their stock and from joining together in the manner as provided in this

¹—Art. 15, Sec. 6, Mont. Const. 1889; Art. 16, Sec. 14, S. Dak. Const. 1889; Art. 7, Sec. 141, N Dak. Const 1889; Art. 10, Sec. 8, Wyoming Const. 1889.

²—Art. 15, Sec. 5, Colo. Const. 1876.

section, to prevent them from infecting and destroying the very vitality of the people of this territory or the coming state.

“Question, question.”

Mr. GRAY. Oh, aren't you done?

Mr. MAYHEW. No, I am not done, but as my remarks are becoming irksome to my distinguished friend I will discontinue them.

Mr. CLAGGETT. Mr. Chairman, I said “question” under the supposition that the gentleman had taken his seat; my back was to him.

The question was put by the chairman on Mr. Ainslie's amendment.

Mr. MORGAN. Is not the substitute in order first to strike out the whole section?

Mr. CLAGGETT. Under the rules all motions and substitutes are to be put first.

Mr. MAYHEW. Action should be upon the amendment first. It was not a substitute.

The chairman puts the question on Mr. Ainslie's amendment.

The CHAIR. The chair is in doubt. (Rising vote shows fifteen voting for and twenty-four against). The amendment is lost.

The chair puts the question to strike out the section. A division was called for and a rising vote taken, showing twenty-seven for and fifteen against, so the motion was carried and the section stricken out.

Mr. MAYHEW. I now desire to give notice that when this matter goes back to the house I shall call the ayes and nays on the section.

SECTION 6.

The SECRETARY reads Section 7 (6).

Mr. WILSON. Mr. Chairman, I have an amendment.

Mr. KING. I ask to amend——

The CHAIR. It is moved and seconded that the same be adopted as read,

The SECRETARY reads: I move that the words "similarly situated" be inserted after the word "corporation" in line 1 of Section 7 (6).

Mr. WILSON. Mr. Chairman, I will state my reasons for that amendment. Similar words are found in the interstate commerce law to affect that same question. Section 2 of the interstate commerce law reads as follows:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."—[24 Stat. L. 379].

Now, I notice this section does not contain those words "similarly situated," and the reason why I have inserted them is this: That a railroad company could not enter into a contract to transport perishable goods at a given time after the goods are delivered at the station for transportation. For example, in Boise City a great deal of fruit is raised. That fruit has to be shipped at once. Shippers must be able to enter into a contract with the railroad company that that fruit shall be shipped one or two days after it is delivered at the station; otherwise it might perish and be lost. A great deal of produce transported by railroads and other common carriers is not perishable; for instance, ores, wool, hides, lumber and such articles. Unless these words are inserted therein, a common carrier could not contract with a shipper to deliver perishable goods prior to the delivery of goods not perishable in character. In other words, if ore or lumber, or goods not perishable in their nature was delivered at the station first,

and the railroad company did not have cars to transport it, and on the following day fruit, butter, eggs and other articles of a perishable nature are delivered, the shipper might be compelled to leave his goods there until they perished because you cannot compel a transportation company to do that which is impossible. The same rule would apply as to live stock. Under this section no preference in transportation could be given to individuals "similarly situated." For instance, fruit growers are similarly situated. No preference could be given to one over another, but I apprehend that a fruit dealer and a lumber dealer are not similarly situated, and therefore preference might be given to the fruit grower over the lumber dealer. The same rule would apply in shipping live stock. I suppose there are three thousand head of cattle shipped from Nampa, and the railroad company would never have cars to do it unless they entered into a contract to do it at a certain time, and the loss in some cases would be irreparable to the stock shipper. So I think, unless those words are inserted, the railroad company cannot discriminate between persons who are shipping perishable goods and persons not shipping perishable goods. I think they ought to be allowed to discriminate that far.

Mr. MAYHEW. I would like to have the gentleman's opinion on this: "And no undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class."

Mr. WILSON. I will answer the gentleman. There can be no discrimination in transportation of freight of the same class. One fruit grower cannot have discrimination in his favor as against another fruit grower; but I would allow discrimination as against shippers shipping perishable articles, and shippers shipping not perishable articles. If any objection can be made to those two words, I would like to hear them.

Mr. CLAGGETT. I don't think the insertion of those two words reaches the question the gentleman has

proposed here; that is, to allow the railroad company to discriminate as between different classes. There is this provision in here, as between passengers and freights of the same class, there shall be no undue or unreasonable discrimination; but what he proposes to get at is to allow discrimination as between freights of different classes and his amendment does not reach the point. I think they would have the power now under this section. All constitutions and statutes have to receive reasonable interpretation. I will offer an amendment if it is in order, that the words "undue or unreasonable" in line 3 be stricken out, so that it would read, "no discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class." I don't think there would be any discrimination. One man presenting one kind of freight, and another man the same kind of freight, I don't think the railroad company would have any discretion in the business.

Mr. WILSON. The objection I made would not be answered by striking out those words. I am in favor of striking those out too; but I am in favor of discrimination between two classes of a different character, where one is perishable and one is not perishable. If you put in the clause suggested by my friend Ainslie, rejecting or reserving the right in case of perishable articles, it will not exactly meet this difficulty, because as I stated in the case of live stock, which is not a perishable article, yet the loss would be in some measure irreparable, because there would be nothing to eat out in this sagebrush waste. If the words there suggested will not do any harm——

Mr. AINSLIE. I will offer an amendment which I think covers it.

The CHAIR. Well, have the amendment read; there is an amendment offered to Section 7 (6).

Mr. AINSLIE. My amendment is a substitute for that of the gentleman from Ada.

The CHAIR. I do not understand that a substitute for an amendment is proper.

SECRETARY reads Mr. Ainslie's amendment: After "state" in line 3 add "except that preference may be given to perishable goods."

Mr. WILSON. The objection to that is, it would not meet the case I cited of live stock.

The question on Mr. Wilson's amendment was put to a vote and the chair being in doubt a rising vote was taken and the amendment was adopted.

SECRETARY reads Mr. Ainslie's amendment: After "state" in line 3 add "except that preference may be given to perishable goods."

Mr. AINSLIE. I will ask the secretary to change the word "goods" to "property."

Mr. MORGAN. The amendment offered by Mr. Wilson has been adopted. Do you want this to go in?

Mr. AINSLIE. I don't think it would do any harm. The question is put and Mr. Ainslie's amendment adopted.

Mr. CLAGGETT. I have an amendment.

SECRETARY reads: Strike out in the third line the words "undue or unreasonable." (Seconded).

Mr. SAVIDGE. Mr. Chairman, I believe that those two words should not be stricken out, for the reason I think corporations the same as any and all other individuals should be allowed to use ordinary and reasonable discrimination with their patrons; and I believe it is done with every class of persons. I think professional men all discriminate; merchants discriminate; for instance, a lawyer sometimes performs services for a customer that always comes to him for a less amount than he would a stranger. I believe that a railroad or any other corporation should be allowed to carry freight for a less rate, or at least discriminate reasonably, not unduly, but reasonably in such an instance as that. I am not especially tenacious about it, but I believe the words are proper there and should be retained.

Mr. ANDERSON. Mr. Chairman, I have an amendment.

"Question, question."

Mr. CLAGGETT. Mr. Chairman, it seems to me those words ought to go out. It will then read: "no discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class." It does not seem to me that a railroad company should have the power of saying that "I will discriminate, I will furnish A with better facilities than I will B." I say it is reasonable; it is not undue or unreasonable, because that lies in the whole proposition with regard to building up one man or one firm in business and giving him superior rights which another is denied; building up one locality at the expense of another locality. It is really under that power of discrimination that nearly all the antagonism has grown up in the United States, which exists today, more than any other one thing against the business of corporations.

The question was put and on the vote a division was called. On the rising vote there were 15 for and 19 against and the amendment was lost.

Mr. BEATTY. Mr. Chairman, I understood we were voting to strike that clause out.

The CHAIR. We were, but only 15 supported it.

Mr. BEATTY. I thought you were putting the motion over again. I voted to strike it out. I don't wish to be understood as voting to leave the railroad company the right to make any discrimination.

Mr. CLAGGETT. Mr. Chairman, I call for the ayes and nays. (Seconded).

Mr. CLAGGETT. On second thought I will withdraw the motion and renew it in convention.

SECRETARY reads Mr. Anderson's amendment: After the word "persons" in line 7 Section 7 (6) insert "no railroad or transportation company shall issue free passes to the members of the legislature to come and go from a session of that body." (Seconded).

Mr. CLAGGETT. I move to amend that amendment by striking out the word "no" and inserting the word "all," and I want to speak to that. That means that *all* transportation companies shall furnish them and fur-

nish them as a matter of law, and take away the whole abuse of giving or withholding them. They settled that question in the state of Vermont years ago, making it a legal obligation on the part of all transportation companies, railroads or otherwise, holding charters under the laws of the state, to furnish state officers and members of the legislature, when going upon their official business, free passes; for the simple reason that they always do it anyhow as a matter of influencing the freedom of their opinions; and if they could afford to do it for that reason, they could afford to do it independent of that reason. Therefore I move to strike out the word "no" and put in the word "all." (Laughter).

Mr. MORGAN. The section will not read right if that is all the amendment the gentleman makes. I call his attention to the fact that inserting the word "all" makes it read as follows: "all railroad companies shall be."

Mr. CLAGGETT. I was speaking of the amendment.

Mr. MAYHEW. I think it is right, because they could be sent as express matter.

Mr. CLAGGETT. I offered this as an amendment to the last amendment proposed to the effect that no railroad company shall furnish passes to members of the legislature, and striking out the word "no" and putting in the word "all" changes the whole business and presents the opposite theory, and I believe the opposite theory is the correct one.

The CHAIR. The amendment offered by Mr. Anderson is this: After the word "persons" in line 7 insert "no railroad or transportation company shall issue free passes to members of the legislature going to or coming from any session of that body." Mr. Claggett proposes to strike out the word "no" and insert "all." The amendment then as proposed by him would read: "All railroad companies or transportation companies shall issue free passes," etc

Mr. MAYHEW. I am opposed to the amendment of

Mr. Claggett, and I am also opposed to the amendment offered by Mr. Anderson. I think if any member of the legislature elected will desire and wish to obtain a railroad pass from any railroad company going to and from his place of residence to the capital or wherever the legislature may be held, they will tender him a pass, and if he desires to accept it, I don't think it should interfere with their offering it or his accepting it. I think it would be the best not to have either of the amendments proposed in this constitution. If it should be necessary in the future, or if the legislature should think it was necessary to make such a law as that, well and good; but to have it in the organic law that a railroad company shall not issue passes, I would not approve of it, although I see in some constitutions such a provision has been incorporated to the effect that no judges nor other officers of the state, including members of the legislature, shall accept passes. And in these constitutions it provides two penalties, one for offering and the other for accepting. I believe that you could not prevent by law very well these railroad companies from tendering passes to members of the legislature, nor could you prevent men from accepting them, even if you affixed a penalty. I don't think members of the legislature are any better than any other of the ordinary people of the community where they are elected, and I think that if a member of the legislature thinks he can in honor to himself accept a pass from a railroad company he should have the right to do so, and if the company desires to issue passes to him, I have no objections. This is a matter that lies altogether with the acceptor of the pass. My opinion has always been that the railroad companies in issuing their passes generally do not do it because they like the individual member of the legislature, they do not do it because they are acquainted with the member of the legislature, but if they do it at all, it is for one or two reasons: One is that in their courtesy towards the member of the legislature, and thinking that the man

who is a legislator does not get per diem sufficient to support him while at the seat of government, and that his mileage is not sufficient to pay his fare, they tender free transportation. That is one reason I suppose the railroad companies offer these passes. At least, that is the reason they have always given me a pass as a member of the legislature, because they are satisfied that the members do not receive enough per diem, and in their courtesy and generosity they have offered these passes, and in the eagerness of the members of the legislature to keep their cash in their own pockets they have always accepted them. I think therefore it would be improper to put either one of these amendments in the constitution. If the legislature in the future desires to control this matter by law, well and good. They would be the best judges of that matter; but I will say that there is no doubt but what the members of the legislature will accept these passes, or the majority of them. However that may be, I believe in allowing a man the right to exercise his own discretion and judgment upon these matters. I have been in some legislatures where I have seen very strange actions so far as railroads are concerned. I have been in the legislature where the members have voted as high as \$3,000,000 and \$4,000,000 of their bonds to the building and construction of railroads. And that matter has been submitted to the people of the territory where the law was passed, and the people generally voted it down.

And I will say in addition to that, Mr. Chairman, that I don't know why the railroads offer these passes, other than that they may have the good will of the members of the legislature. I say further in addition to what other states have done, I have seen measures introduced in the legislature before now—for instance, commissions and boards of commissioners, whose duties it should be, when a law had passed to regulate freights and traffic and the rates upon freight—I have seen the entire members of the legislature all in favor of that law, but it did not happen to come up suddenly or

within a few days, and when it did come up every member of the legislature, with the exception of one or two, was opposed to that law. I could never understand what this influence is, how it was brought about, nor how it is these railroad corporations have such a wonderful influence upon members of the legislature. I have seen these things in the legislature; I have unfortunately been a member of the legislature heretofore, and I can say faithfully and truthfully that that is the case, and I am satisfied that other men have made the same observations and know that that is the case. Now I am in favor of keeping the legislature, so far as possible, free from any influence of any kind, and while I am in favor of doing that, I think the only manner of doing it is to let it be with the conscience and honor of the members themselves. I am opposed to any provision in the constitution preventing railroads from granting passes; and I am opposed to a railroad being compelled by law to grant them. If these amendments go in there, there is no penalty fixed by them. Suppose the railroad company does not grant them. If this amendment of Mr. Anderson's should be adopted, is there anything in the provision of that section, or in the body of this article, or in the amendment offered by the gentleman that makes any penalty upon a railroad company issuing these passes? Suppose on the other hand that the law requires railroad companies to give to all members passes; is there any penalty to their refusing to do so? They can do as they please under the amendments proposed by the gentleman from Shoshone, and the gentleman from Bingham. Individually, Mr. Chairman, I am opposed to either one of these amendments.

Mr. ANDERSON. Mr. Chairman, the object in offering this amendment is so clear that I will say very little about it. It is in the interest of pure legislation. This body is acting as an independent body. It is in a position now to enact provisions by which future legislatures shall not be permitted to accept passes from railroads. Future legislative bodies when assembled,

when they get together, and each one of those men has a pass in his pocket from a railroad company, will not feel like voting against any measure that railroad company may have before that assembly. I am simply proposing to forestall any arrangement by which a bribe in the way of a ticket can be given to future legislators.

Mr. CLAGGETT. The only way it can be done, Mr. Chairman, is by adopting the amendment which I suggest. The only objection that can be urged to this amendment is, and it is a legitimate objection and I shall vote against it myself and also the amendment that it is amending, on the ground that no such matter should be put in any constitution, but should be left to the legislature. When you come to inquire into the matter of the proper manner of getting at the very abuse that the gentleman who made the original amendment seeks to cure, there is but one way of correcting it, and that is to make it obligatory by law upon these companies to furnish the officers of the state and the members of the legislature these passes as a condition with regard to their franchise. If you leave it and simply say you prohibit it, they will give them to their friends and refuse them to their adversaries, and the men, upon whom the people rely to look after their interest as against the corporations will be discriminated against by the corporations. The only way you can get at it is to adopt the same rule as was adopted in Vermont, which is to make it obligatory upon all of them, and make it the rule. In withdrawing my amendment, I wish to say I simply offered it for the purpose of eliciting a little discussion; but I shall vote against the other amendment for the reason it ought not be put in the constitution.

The CHAIR. The question is now upon the amendment offered by the gentleman from Bingham; after the word "person" in line 7, Section 7 (6), insert "no railroad or transportation company shall issue free

passes to the members of the legislature going to or coming from a session of that body.”

“Question, question.”

The question is put by the chair.

Mr. ANDERSON. Aye. (All other members: No).

The CHAIR. The amendment is lost.

Mr. MAYHEW. Mr. Chairman, it is six o'clock, and I move that the committee rise, report progress, and ask leave to sit again. (Seconded and carried).

CONVENTION IN SESSION.

Mr. CLAGGETT in the Chair.

Mr. POE. Mr. President, your committee of the Whole, having under consideration the question of Public and Private Corporations, beg leave to report progress and ask leave to sit again.

The CHAIR. If there is no objection the report will be received and it is so ordered.

On motion duly seconded the convention adjourned until 9:00 o'clock tomorrow morning, Thursday, July 25, 1889.

EIGHTEENTH DAY.

THURSDAY, *July 25, 1889, 10:00 o'Clock A. M.*

Convention called to order by the president.

Prayer by chaplain.

Roll-call: 32 present.

The CHAIR. There not being a quorum present, it is impossible for the convention at this time to transact business.

Mr. McCONNELL. I suggest that the sergeant-at-arms be instructed to notify the democratic members who are in caucus that we are now in convention and ready to proceed to business.

Mr. HEYBURN. I second the motion.

The CHAIR. If there are no objection it will be so ordered. (After a few minutes). The sergeant-at-arms informs the chair that the democratic members desire a few minutes more time.