

Mr. AINSLIE. I don't know whether the convention can make him a member, but they can respectfully invite him to co-operate with it.

Mr. WILSON. He signified his willingness to accept. Vote and carried.

Adjourned until Monday morning, July 29, 1889, 9 o'clock.

### TWENTY-FIRST DAY.

MONDAY, *July 29, 1889, 9:00 A. M.*

Convention called to order by the President.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Brigham, Campbell, Chaney, Clark, Coston, Crutcher, Gray, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Parker, Pefley, Pierce, Pinkham, Poe, Pyeatt, Reid, Sinnott, Shoup, Steunenbergh, Sweet, Underwood, Vineyard, Wilson, Whitton, Mr. President.

Absent: Andrews, Batten, Beane, Beatty, Cavanah, Crook, Hagan, Hammell, Harkness, Hendryx, Howe, Lemp, McMahan, Morgan, Pritchard, Robbins, Salisbury, Savidge, Standrod, Stull, Taylor, Woods.

Journal read and approved.

Presentation of Petitions and Memorials: None.

Reports of Standing Committees: None.

Reports of Select Committees: None.

### COMMITTEE CHANGES.

Mr. POE. I ask that Mr. Reid be placed on the committee on Apportionment in my place, and also on the committee on Schedule, in place of Mr. Howe.

The CHAIR. If there is no objection he will be placed on the committee on Schedule in place of Mr. Howe.

Mr. HEYBURN. It seems to me in making up the committees the same balance of political power should

be maintained. Mr. Howe should not be replaced by any member of the democratic party.

Mr. POE. There is no other member from our county except Mr. Reid, is the reason I requested that.

Mr. HEYBURN. He need not necessarily be from any particular county.

The CHAIR. If the gentleman from Nez Perce makes a motion to that effect we will have something before the house.

Mr. POE. I move that Mr. J. W. Reid be placed upon the committee on Schedule in place of Mr. Howe.

The CHAIR. Are you ready for the question?

Mr. HEYBURN. Do I understand that under the rules of this convention, with the appointing power of the committees vested in the president of the convention, it is competent for any member or any number of members to say who shall be placed upon any committee? I do not so understand it under the rules. Every committee might be changed.

Mr. WILSON. I move to substitute Colonel Ballentine upon that committee on Schedule in Mr. Howe's place.

Motion seconded.

The CHAIR. There seems to be a point of order raised here which I will investigate first.

Mr. CLARK. I refer you to Rule 7, page 17.

The CHAIR. "All committees shall be appointed by the president, unless it shall be otherwise directed by the convention." The chair rules it is in order.

Mr. VINEYARD. It seems to me but simply carrying out the intention of the president of this convention when these committees were formed from the various counties. I approve of the motion to appoint Mr. Reid on this committee as a member of the convention. I think it is right for the reason that the committeeman, who was regularly appointed from the county which Mr. Reid hails from is not able to be here, and will be absent probably to the end of the convention. And I think his place ought to be substituted by a gentleman from

the county he comes from. For that reason I think Mr. Reid ought to have the preference.

Mr. WILSON. There are eighteen counties in this territory, and only nine members of the committee on Schedule; so it does not follow at all that because a member from a given county leaves, that a member of the same county should be appointed on that committee. Of course, I am willing the chair should appoint this committeeman, and if the gentleman withdraws his motion, I will withdraw my substitute and leave the chair to act.

Mr. HEYBURN. I don't understand that there is a vacancy on this committee necessarily. Mr. Howe will doubtless return during the week. He is entitled to retain his place upon the committee, unless he requests to be excused from it. It is not fair to depose him in this way.

The chair put the motion to substitute Mr. Reid in place of Mr. Howe upon the committee on Schedule.

Mr. REID. Mr. Chairman, I hope my colleague will withdraw my name. It is the first time objection has been raised. Mr. Anderson was put on the same committee the other day in place of Mr. Beane, and it has been done from the beginning of the session; but I do not want to serve on any committee against the objection of anybody. Mr. Howe is away, and as the chair and members of the convention know, this is a committee that ought to be full. It has to submit to the convention this question of election, etc., but I hope my colleague will withdraw the motion, it having met with objection. The point raised has been acquiesced in since the convention met; but I do not care to serve on the committee so far as that is concerned, although it has been done repeatedly when members have gone, in order to keep the committees full. I suppose every county ought to be represented in the matter of apportionment. The purpose is so evident that——

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

Mr. POE. I can see no reason why I should withdraw that motion. I see no reasons for any objections being interposed to the appointment of Mr. Reid upon that committee. I don't think any legitimate reason could be given, and therefore I shall not withdraw it.

The CHAIR. It is moved and seconded that Mr. Reid be placed upon the committee on Schedule in place of Mr. Howe. To that an amendment is offered by the gentleman from Ada that Mr. Ballentine be placed on said committee in place of Mr. Howe. (Vote). The noes seem to have it; the amendment is lost. The question recurs upon the motion to place Mr. Reid upon the committee in place of Mr. Howe.

Vote and carried.

#### ARTICLE III., SECTION 24.

Mr. CLARK. Mr. President, at an early stage of the convention we adopted an article on the subject of temperance, about five or six lines. I would ask that that be referred to the committee on Engrossment, and be put on its final passage immediately following the report on Legislative Department this afternoon, in the committee of the Whole, and in the whole house, both. (Seconded).

The CHAIR. It is moved and seconded that the section which was adopted by the convention some time ago relative to temperance be referred to the committee on Engrossment with a request to report the same for final action this afternoon.

Vote and carried.

#### LEAVES OF ABSENCE.

Mr. BRIGHAM. I would like to ask indefinite leave of absence after six o'clock this evening. I have been away some time and it is a very busy season, and I cannot possibly stay any longer without sacrificing my own business more than I ought to.

#### COMMITTEE CHANGE.

Mr. KING. I move now that Judge Mayhew be

appointed on the committee on Schedule in place of W. W. Woods. Mr. Woods is sick and absent and will not be here again during the session, in all probability.

Seconded. Vote and carried.

Mr. MAYHEW. Mr. President, I decline to accept the position.

#### LEAVES OF ABSENCE.

The CHAIR. The gentleman has been substituted on that committee, in place of his colleague, Major Woods. Mr. Brigham asks indefinite leave of absence. Is there any objection?

Mr. CHANEY. Mr. President, I think we should call a halt on giving indefinite leaves of absence to members of this convention. To our utter dismay, we found ourselves without a quorum recently, and so far as the business transactions of my friend and colleague are concerned, I don't think they are so terribly urgent, no more so than the ordinary member.

The CHAIR. An objection has been made, the chair cannot excuse the gentleman unless the convention by a vote so orders. What is your pleasure?

Mr. SINNOTT. I move a vote be taken whether Mr. Brigham be excused or not. (Seconded).

Vote and carried. An indefinite leave of absence granted the gentleman from Latah.

The CHAIR. The chair is informed by the secretary that it is absolutely necessary for him to be absent from the convention today, and requests to be excused.

Mr. REID. I move he be excused. (Vote and carried).

#### PUBLICATION OF PROCEEDINGS.

Mr. WILSON. Mr. President, I have been appointed on a committee to arrange for and supervise the publication of the shorthand reports, or rather, the records of this convention. I would ask that some arrangement be made for the payment of this expense. Probably the best way would be that the special finance committee,

appointed by yourself some time since, be instructed to raise the money for this expense. Therefore I move that that committee be instructed to make arrangements for raising the necessary funds for this expense. (Seconded).

Mr. MAYHEW. I would like to inquire what the gentleman means by publication.

Mr. HEYBURN. If the gentleman will permit me, as the maker of that motion the other day, I did not include publication, but simply to have the notes transcribed, and then they will be ready for publication when ordered.

The chair put the motion. Vote and carried.

#### RESOLUTIONS RELATING TO STATE ELECTION.

Mr. AINSLIE. Mr. Chairman, I believe under the rules, the resolutions I introduced on Saturday come up in regular order now. I believe the resolutions asked that they be referred to the Judiciary committee. Under the rules I suppose the proper committee would be the committee on Schedule. I am ready to take them up today if it is desired; if not, to go to the committee. I understood it was suggested by some member not to be heard on this today or tomorrow. I am not disposed to press the matter at all. I move they be referred to the committee on Schedule. (Seconded).

Mr. GRAY. I would rather they would go to the Judiciary committee. It is a larger committee, and a committee of men that probably understand the question better than this Schedule committee, and I would like to have it, if it is agreeable to the gentleman from Boise. Why I opposed on Saturday bringing this up, I wanted every man to be heard or to have an opportunity. A good many have gone away. Let them be here to express their views on this matter.

Mr. AINSLIE. I never noticed the rules until I was examining them here, and I see that the duty of the committee on Schedule is to provide for these things.

Mr. HEYBURN. Mr. President, I want to under-

stand what we are voting on. Do I understand that the motion is that the whole matter be referred to the committee on Schedule without instructions or that——

Mr. AINSLIE. Without instructions.

Mr. HEYBURN. Then in order that that may be plain, I move to amend by stating that they shall be referred without instructions.

Mr. AINSLIE. Certainly, I accept that amendment.

The question is put by the chair. Vote and carried.

#### ORDER OF BUSINESS.

Mr. REID. I move that the convention resolve itself into committee of the Whole on the regular order of the day, which I believe is finishing the report of the committee on Public and Private Corporations.

The question was put by the chair.

Mr. MAYHEW. The committee of the Whole has taken up the consideration of the article on Public and Private Corporations and passed upon it. I offered an amendment by consent of the committee on Public and Private Corporations in relation to trusts. That matter came up the other day and was by my own motion or some other member to be taken up in consideration that that new section be considered in the convention. Now, the convention has gone all through that in committee of the Whole, and I do not see the necessity of going back into committee of the Whole.

Mr. REID. That is right. That amendment was acted upon in committee of the Whole, and I will change my motion, and move that the next order of business be consideration of the report of the committee on Salaries of Public Officers; and I hope the convention will proceed with that, because the chairman of the committee is here.

The CHAIR. Does the gentleman desire now to take up the matter of Public and Private Corporations?

Mr. REID. I withdraw my motion as to resolving the convention into committee of the Whole on the

consideration of the report of the committee on Public and Private Corporations, and make this motion, that the convention resolve itself into committee of the Whole and take up the report of the committee on Salaries of Public Officers, which is the first regular order on the calendar. And the reason that I request that is that the chairman of the committee, Mr. Poe, is here now, but he will go off this evening. It is in the regular order and it will not be skipping any part of the calendar, and I hope the convention will take it up at once, so that we can act upon it while the chairman is here.

The CHAIR. The first regular order is the report of the committee on Public Indebtedness.

Mr. REID. That will be the regular order; I will give way, to take that up and dispose of it first, and then proceed with the report on Salaries.

The CHAIR. Very well. It is moved and seconded that the convention go into committee of the Whole, for the purpose of considering first the report of the committee on Public Indebtedness, and after that, on County Organization.

Mr. REID. Salaries of Public Officers.

Mr. HEYBURN. I would like to include also—I understand we have not acted on the section that was ordered printed and laid on the members' desks providing for the investment of school funds—I would like to include that also.

Mr. REID. I accept the amendment. (Vote and carried).

#### COMMITTEE OF THE WHOLE IN SESSION.

Mr. Shoup in the chair.

#### ARTICLE VIII.—PUBLIC INDEBTEDNESS—PROPOSED SECTION.

The CHAIR. I am informed that that report has been acted upon, but was laid aside in order to enable the gentleman from Shoshone, Mr. Claggett, to offer an amendment or an additional section. The additional section may now be read.



Mr. CLAGGETT. I will read it myself as it is in pencil and not very plain.

Section ——. All taxes levied and collected in any county for county purposes, and all county levies from whatsoever source derived, except those for school purposes, shall, after deducting therefrom the amount belonging to the state, be paid into and constitute a fund called "Current Expense and Redemption Fund;" and all county expenses except for school purposes shall be paid out of said fund in cash. Whenever the market value of county warrants of such county at date of issue shall be less than ninety-five cents on the dollar, all moneys remaining in said fund after the payment of said expenses shall be set apart for the redemption of all unpaid county warrants of such county. And the person or persons who shall, on public advertisement therefor, offer county warrants of said county, principal and interest included, for redemption at the lowest rate or smallest number of cents on the dollar shall be preferred in such redemption. The legislature shall by law enforce the provisions of this section.

Mr. REID. What report do you propose to add that to.?

Mr. CLAGGETT. It is an additional section to the report of the committee on Public Indebtedness.

The CHAIR. Is there any second? That will be Section 5, as Section 4 was struck out. The question is upon the adoption of this section. Are you ready for the question?

Mr. HEYBURN. Mr. Chairman, I realize that there is a necessity for some action to relieve counties which are situated in a certain way in regard to their public indebtedness, from those difficulties; but I am somewhat inclined to doubt the fairness and justice of this method, and these are my objections to it. We will say for instance that a county has issued \$10,000 of scrip, which is outstanding; that the revenue of that county is fixed; the purchaser of that scrip, knowing what the probabilities of payment are, buys the scrip relying upon the fact that the county funds will be used for the payment of the scrip, applied to its payment; and then afterwards, the county commissioners,

if they are given this power at this time to take the fund that the purchaser of that county scrip relied on to pay his scrip, and defer payment or possibility of payment of that scrip for an indefinite time, it works a hardship and an injustice to the owner of that scrip. It seems to me there ought to be some method by which this could be done that would not be subject to that objection. For instance, in our county we have outstanding something over \$65,000 of county scrip. Now in October next a large amount of that scrip is expected to be paid off by the taxes that will be collected from the levies of the county. Now, suppose that between now and October the county commissioners, instead of paying off that scrip, or providing for its payment, shall take this money to pay up outstanding indebtedness of the county. Isn't it working an injustice to the parties who naturally and of right calculate on their scrip being paid at that time? That is the question that submits itself to my mind.

Mr. REID. If the gentleman who introduced this amendment will not object, it would come in as well at the end of the report on County Government as here. It is a very important matter. At present I am not ready to act upon it. It is going to interfere greatly with our present method of doing county business. In other words, it seems to me I like the idea and the end he aims at, but whether or not we are going to give the county the power—the point I want to guard against—to issue its scrip, and then go on the market and buy it in at a less price than the face of it, at the same time holding power to levy taxes to pay it—whether or not it would not intimidate or compel or rather bulldoze people into taking less, is an important question to consider, and in order that we may consider it well I ask the gentleman to withdraw it for the present, at least, withdraw it as a part of this report, and propose it as an additional amendment to the report on Counties and County Organization, and let it be printed, and then when County Government comes up it can as well go

in there, and if that is not the place for it, the committee on Revision can put it at the end of that section very easily when the convention adopts it, or some substitute or amendment for it. But in order that we may have it printed and speculate over it a little and study it out, I would ask him to introduce it as an additional section to the report on County Organization, and have it printed and laid on our tables in the morning.

Mr. CLAGGETT. I have not the slightest objection to that; in fact, I would prefer to have that course taken. All I want in connection with the matter is that the convention shall take some decided action.

Mr. REID. The gentleman does not understand me as opposing it?

Mr. CLAGGETT. No, I do not. All I want is that the convention take some decided action so far as the government of counties is concerned, so that we may stop this absolute ruin of county finances by the present system, or lack of system under which the territory has been operated. And at the suggestion of the gentleman I will ask leave to withdraw this, and have it ordered printed, with leave to present it as an amendment to the bill to which the gentleman refers.

The CHAIR. Wouldn't it be better to have the amendment referred to the committee on Counties?

Mr. REID. That would just delay it, Mr. Chairman.

The CHAIR. Very well.

Mr. REID. The committee on County Government in the meantime, as well as others, can look over it, and this is the most expeditious way. It can be done by consent.

The CHAIR. If there is no objection, it will be so ordered. The next business in order is the consideration of Report No. 13, report of the committee on Salaries of Public Officers.

Mr. HEYBURN. I would suggest that the next business is Section 17 (11) of the report on Education, and School and University Lands. That was acted upon by

the convention, but Section 17 (11) was referred back to the committee of the Whole for consideration, ordered printed, and is now before us.

## ARTICLE IX., SECTION 11.

The CHAIR. The secretary will read it.

SECRETARY reads: Section 17 (11). The permanent educational funds belonging to the state shall be loaned on first mortgage on improved lands within the state, or on state or United States bonds, under such regulations as the legislature may provide; *Provided* That no loan shall be made of an amount of money exceeding one-third of the market value of the real estate at the time of the loan, exclusive of buildings.

Mr. WILSON. Mr. Chairman, there is a little difference between the reading of the secretary and this section as printed and laid before us. The word "farm" in line 3 after the word "improved" appears in the printed copy.

The CHAIR. I will ask what gentleman introduced this substitute.

Mr. HEYBURN. Mr. Chairman, I understand that the clerk is now reading the substitute that was offered before this. This section as it stands (in the printed copy) was practically passed by the committee, or reconsidered in some way, either under motion or by general consent, and it was proposed to amend it by inserting after the word "funds" in the first line "other than university funds," so that it would read, "The permanent educational funds, other than university funds, belonging to the state, shall be loaned on first mortgage on improved farms:" and it was moved to strike out the word "farms" and insert the word "lands," and then it would continue "within the state, or on state or United States bonds, under such regulations as the legislature may provide; *Provided*, That no loan shall be made of an amount of money exceeding one-third of the market value of the lands;" and it was proposed to strike out "real estate" and use the word "lands," inas-

much as land was made the basis of the value, and it was for that purpose of considering those amendments that these matters went back to the committee of the Whole. And the section as printed is the section that was referred back to the committee of the Whole for amendment.

In order to bring the matter before the committee, I move that there be inserted after the word "funds" in th first line the words "other than university funds." (Seconded).

Mr. MAYHEW. I think in order that we may get at this properly, the proper method would be to strike out of the original article Section 17 (11), and adopt this as a substitute, and by adopting this as a substitute we can go on and amend it.

Mr. HEYBURN. It was adopted as a substitute.

Mr. CLAGGETT. Yes, it was adopted as a substitute and then referred to the committee of the Whole. There were so many amendments we wanted it printed.

Mr. MAYHEW. I second the motion, to insert the words suggested by the gentleman.

SECRETARY reads the amendment: Insert after the word "funds" in the first line "other than university funds."

Mr. HEYBURN. Mr. Chairman, I don't know whether or not the members of the convention have carried this matter over in their minds. But before the adjournment the other day the act of congress granting us university lands was read, providing exactly how the money should be invested, not leaving it for the territory to say how it should be invested, and absolutely vesting those lands in us at the time of the grant. It was not a conditional grant to attach in the future, but an absolute grant as of that date, and says in specific terms just how the university funds shall be disposed of. So the object of this amendment is, while we are providing for the investment of educational funds, to except that fund from it, because it is already provided for by the act of congress, and not subject to change by us.

Mr. HARRIS. I offer an amendment to the section.

SECRETARY reads: I move to strike out the words "one-third" and insert in lieu thereof the words "one-half."

Mr. MAYHEW. That does not affect the amendment; it is not an amendment to the amendment.

Mr. HEYBURN. The question is on the first amendment.

Mr. McCONNELL. Please have the first amendment read.

SECRETARY reads the amendment offered by Mr. Heyburn:

Insert after the word "funds" in the first line the words "other than university funds."

Mr. McCONNELL. I am opposed to the adoption of this amendment. I think it will be urged as a reason for its adoption that congress has provided for the loaning of university funds. I do not see why there should not be the safeguards placed on university funds that are placed on any other educational funds of the state. We have provided in our act that these funds shall be under the control of the Board of Regents. I think if this amendment is voted down, which it should be, and another amendment, which I will offer, is accepted, which will read like this: "Under such regulations as congress or the legislature may provide," it will do away with any difficulty that may arise, from the fact that congress has provided that these funds shall be invested in United States bonds. And then all the safeguards that are placed around our school fund will be also around the university fund. I believe that would be all required here to make it entirely safe. It would then read "The permanent educational funds belonging to the state shall be loaned on first mortgage or improved farm lands within the state, or on state or United States bonds, under such regulations as congress or the legislature may provide." I think that would be a very safe provision. If those amendments will be voted down, I

will offer this as a further amendment, which I think will satisfy everybody.

Mr. HEYBURN. Mr. Chairman, I have sent down for the University Lands Act, which will be here doubtless in a moment; but there is no more reason why we should provide for this thing in that way than there is that we should provide for the sale of the public lands of the United States, and say "as congress shall provide." Congress has provided; it is not something for the future; it has done so already, and I do not see any necessity of our dealing with the subject and simply filling up the constitution with a matter that has been disposed of by a superior power that we cannot control. Of course, if congress should hereafter relieve us of this limitation it has put upon our powers with reference to these university lands, it will be competent for the legislature to make any provision that is necessary, just the same as though in the future congress were to say that the state might sell public lands. Then of course the state could provide for the means of doing it. But it seems to me it would be a waste of time and rather absurd for the state to provide for the means of doing it in this constitution, hoping that at some time in the future congress might grant them this power to so dispose of them. For that reason I simply want to be consistent with the powers that are vested in us, and leave out a subject that is not within our jurisdiction, namely, university lands. Of course congress is not going to throw that fund recklessly into the hands of anybody, which it has already tied up, and so far said funds could be invested only in securities of the United States. If anybody wants a releasing act from congress, giving us further powers, congress in that very act will limit us to such other powers as it sees fit to vest us with. I have no objection to the amendment of the gentleman except for the fact that it is attempting to deal with a subject that it not within our power to deal with, and I do not want to see the constitution made up in that way. We might as well provide for the manner

in which the president of the United States shall be elected, and then say at the end "in such manner as congress may provide."

Mr. GRAY. Well, that is dependent upon some future action of congress, provided by the intended amendment to be offered by the gentleman from Latah.

Mr. McCONNELL. I will insert the words "as provided by law."

Mr. HEYBURN. But it is already provided by law.

Mr. GRAY. And if that amendment should prevail in this constitution you depend on some future act of congress, which we are opposed to.

Mr. HEYBURN. It is safe to say that when congress does act in the future it will act about as it has done in the past; that is, in a definite manner.

Mr. McCONNELL. I cannot see any reason why this fund should be excepted. If congress has provided for the protection of that fund, and we never have any university fund here which congress shall not have provided for, then it makes no difference if this is here; because the laws of congress would be superior to our laws. And, gentlemen of this convention, we have authorized a Board of Regents of the University of Idaho to assume the supreme control of these funds, and have provided no bonds. I suppose the legislature may provide for bonds. Those gentlemen may be as well qualified to guard these funds as anybody else, but I propose a safeguard against any mistakes which may be made by the Board of School Land Commissioners or the Board of Regents either. Upon looking the matter over I think it would be better to insert the words "under such regulations as provided by law." The same safeguards would apply to university funds as to the other funds of the state, and the sentence below "Provided," would leave it within the power of the territory in case the laws of congress did not provide for it, that the state could provide for it. The university fund vested in the state is a very small fund; we will have a



much larger fund hereafter doubtless, and it will be placed entirely in the control of the state, undoubtedly. I hope this university fund clause will not be stricken out; I hope it will not be placed in the hands of the Board of Regents or anybody else without having the same safeguards placed around it that we have around our school funds. I will ask Mr. Heyburn if he will not read the provisions of the act he referred to.

Mr. HEYBURN. I will read the provisions of the act granting the lands:

*"Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled:*

That there be, and are hereby, granted to the Territories of Dakota, Montana, Arizona, Idaho, and Wyoming respectively, seventy-two entire sections of the unappropriated public lands within each of said Territories, to be immediately selected and withdrawn from sale and located under the direction of the Secretary of the Interior, and with the approval of the President of the United States, for the use and support of a university in each of said Territories when they shall be admitted as states into the Union."

You will notice the terms of the grant. Thus it will be seen that the Board of Commissioners, our state commissioners, cannot sell these lands; it must be done by the United States, so that this Board of Regents that has control of the other lands has no control of these.

Mr. McCONNELL. It will have control of the money.

Mr. HEYBURN. It will not, for this reason:

"Providing the funds derived from the sale of said lands shall be invested in bonds of the United States and deposited with the treasurer of the United States."

Mr. McCONNELL. This board will not, but future boards will. We don't know what future boards we shall have.

Mr. HEYBURN. No Board of Regents under this act of congress would ever have any control of those lands, the appraisement or sale of them, or the fund derived therefrom, because it provides that they shall be sold under an appraisement by appraisers appointed

by the Secretary of the Interior of the United States,

“\* \* \* that the funds derived from the sale of said lands shall be invested in bonds of the United States, and deposited with the treasurer of the United States.” The money will not even be in our treasury. “That no more than one tenth of said lands shall be offered for sale in any one year; that the money derived from the sale of said lands, invested and deposited as hereinbefore set forth, shall constitute a university fund; that no part of said fund shall be expended for university buildings, or the salaries of professors or teachers, until the same shall amount to fifty thousand dollars, and then only shall the interest on said fund be used for either of the foregoing purposes until the said fund shall amount to one hundred thousand dollars, when any excess, and the interest thereof, may be used for the proper establishment and support respectively of said universities.”<sup>1</sup>

That is the end of the section. Approved February 18, 1881.

Mr. McCONNELL. Mr. Chairman, I think it is a very clear proposition to members of this convention that it does leave a latitude to us. That if these funds ever assume the proportions named in that act they shall be turned over to this state for the benefit of the university, and under the law the Board of Regents will have control of them. That fund will not amount to the specified amount within the time of the present Board of Regents, or perhaps during the time of three or four or five other Boards of Regents; but the time will arrive when this university fund, if this state ever gets control of any part of that fund, will be controlled as provided by our constitution by the Board of Regents, and I do not propose to take every safeguard away from it. I think it would be folly. The gentleman's own argument shows that when it arrives at a certain proportion it will go to the support of the university, and—

Mr. HEYBURN. I will ask the gentleman a question, with his permission.

Mr. McCONNELL. Yes, certainly.

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<sup>1</sup>—21 U. S. Stat. at L., 326.

Mr. HEYBURN. Does the gentleman see any way under that act by which the investment of that fund can ever be changed from bonds deposited in the United States' treasury at any period in the future?

Mr. McCONNELL. No sir, I do not; but I say when it arrives at such an amount as in this act is contemplated, then the interest will go to the support of the university.

Mr. HEYBURN. Then later, if there be any necessity for investing the interest, it says that it must be devoted to the support of the university. Why then is it necessary to make provision for investing that which has been spent yearly?

Mr. McCONNELL. We don't know that it is, no sir, but we are sure this is not the only university fund. The way I propose to have it amended it will read like this: "The permanent educational funds belonging to the state shall be loaned on first mortgage on improved farm lands within the state or on United States bonds, under such regulations as by law provided." Now, then, this would not interfere with them later, but if any time came when we had other funds to invest like that, the provisions attaching to our school fund would attach to those.

Mr. KING. I would like to make one suggestion to the gentleman that there are no United States bonds running longer than 1897; in seven years more all the United States bonds would be called in and paid off, and then the bonds that belonged to the university funds being retired, the funds therefrom must be invested in something else, because there will be no United States bonds to invest them in. Then who shall have the control of that money, and where does the gentleman wish the money to be invested?

Mr. HEYBURN. I will answer the gentleman in this way: that is a matter entirely for congress, and any action we might take looking towards that difficulty would be void, because congress has undertaken to provide for the investment of this fund, and as in all

matters; of course, when those bonds expire and mature congress is not so short-sighted but it will provide for the re-investing of this fund.

Mr. McCONNELL. Have you any objections to the clause "As provided by law"?

Mr. HEYBURN. I have objections to including university funds in this section.

Mr. SWEET. I would like to suggest to Mr. McConnell, that so far as your point is concerned, it would be a good one if it was not covered by the provision that the regents be subject to such provisions as the legislature may see fit to make, and part of it is covered in the substitute, which reads like this, that the regents have control of the funds of the university subject to or under such rules as may be prescribed by law.

Mr. McCONNELL. That is all that I want to include in this.

Mr. SWEET. That is in the substitute already; they are absolutely limited.

Mr. McCONNELL. Then I object to any further amendments.

The CHAIR. The question is on the amendment of the gentleman from Shoshone.

The question was put by the chair and a viva voce vote taken. The chair was in doubt. On the rising vote the result was, ayes 19, nays 5, and the amendment was adopted.

SECRETARY reads the amendment offered by Mr. Harris: Strike out the words "one-third" and insert in lieu thereof the words "one-half."

The CHAIR. Are you ready for the question?

Mr. MAYHEW. I heard no support to that amendment.

Mr. GRAY. I will second the motion.

Mr. HARRIS. I move this amendment in justice to the claims of the people, who are the only ones that can borrow the money, in order that they may have the chance to get hold of some of this cheap money. At present they are paying not less than two per cent in

many instances for the use of money; two per cent in the way of premiums. This money will probably not bring more than eight per cent. The farming class of this country, who are the bone and sinew and life of the land ought to have this advantage. They are down-trodden by reason of these high rates of interest they are compelled to pay, and if all their land is not security enough for the cash value of one-half of it, I don't know what would be security enough. They have good fences generally, tolerably fair barns and houses. These don't count for anything, yet in foreclosing a mortgage on lands it will count on the sale. There will not be any danger of any loss by loaning it to these farmers for one-half the value of their farms.

The CHAIR. Do I understand you to say that money is being loaned here at two per cent a month?

Mr. HARRIS. It is in my county. There is a middleman and we pay him six per cent to obtain the loan, and then borrow the money at one and a half per cent, and the interest is taken out in advance, so that out of \$100 you get \$80 and give a note for \$100. That is the way they loan money down my way. Now, it would be unjust to these farmers, who pay more taxes in proportion to their wealth than any other class of people; and I ask that that "one-third" be stricken out and "one-half" inserted. Then I maintain that the security is good, as good as any private person asks, and I think it is perfectly safe for the school funds.

Mr. HEYBURN. Before voting on that motion I desire to send up a correction of two words, because it will depend upon whether those amendments are allowed, whether I shall support the motion of the gentleman just on the floor.

SECRETARY reads: Strike out the words "real estate" in the seventh line and insert the word "lands."

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

SECRETARY reads further: strike out the word "farm" in the third line.

Mr. HEYBURN. I would have no objection now if those amendments are adopted to supporting the amendment of the gentleman from Washington. If it is left on a purely land basis, then I think probably loans might be made safely on one-half of the value. But if there is any question about it being on a land basis, without regard to the kind of lands, then I think the proportion of value, which should be loaned upon, should be cut down. I have asked to strike out the word "farm" so it will read "upon improved lands," and in the seventh line I ask that the words "real estate" be struck out and "lands" substituted, so that it will always leave the value upon the land and not subject to the vicissitudes of buildings burning down or getting out of repair and becoming worthless. If it can be confined to the land I think probably one-half of the value might be loaned with safety.

Mr. GRAY. Would not the insurance be an asset?

Mr. HEYBURN. I will answer that by saying that I took that position before a convention somewhat largely against me, and I do not feel like renewing the debate unless there is some change of heart on the part of the members.

Mr. WILSON. Mr. Chairman, if you strike out that word "farm" in line 3, you might loan this money on a mine if it was patented.

Mr. HEYBURN. No, nobody wants to borrow money on mines; but except mines if you want to.

Mr. WILSON. Leave farms in there; that is pretty good.

Mr. HEYBURN. I will accept an amendment excepting mines. We are not here to try to get money for miners at all, and if the gentleman is uneasy about that, take the value of land other than farm lands; that is to say, orchard land or those valuable pieces of land; if the value is confined to it you are certain to get security so far as the land is concerned, because these men here farm their little town lots.

Mr. MAYHEW. I don't see the necessity of striking it out, or to insist upon this term "farm land." I shall support Mr. Heyburn's motion readily to strike out the word "farm" and insert "lands." I don't know what the gentleman means by saying "to loan money simply upon farm lands." It strikes me readily in different sections of this country that farms fail the same as any other property. It must be admitted by every member of this body that there are many mines in this country that are of greater value than any farm here, and I don't presume that this money that may be borrowed is to continue for a great many years. It may be a fact that many persons who have found mines in this country, and which are very valuable, require some loan of money to develop them; and why not loan the money upon those lands when it is once ascertained through the commissioners that it is a valuable investment, or rather that they are valuable lands. This board which is to loan this money to these farmers is not going to loan it upon farms of no value, and it is not every piece of land that is taken up for farming purposes that is going to be of great value in the future. Farms that lie in close proximity to towns may be of greater value than farm lands lying a considerable distance from those towns, and I don't believe it is proper to make this distinction. For the reason I have heretofore stated I shall support the amendment of Mr. Heyburn. I don't believe in making this distinction to loan this money to farmers, notwithstanding my friend says they are the bone and sinew of the country and still downtrodden. I don't believe his position is correct that they are downtrodden, or that they are the bone and sinew either. They belong to a respectable class of our communities, bound to exist, just the same as the mines of this country. I think they are on an equality and should be dealt with on equal grounds. I believe in placing all upon an equal footing.

The CHAIR. I understand the question is on the amendment of the gentleman from Washington.

Mr. MAYHEW. I understand not, not the one I am speaking to. I am speaking in support of the amendment offered by Mr. Heyburn, and in opposition to the amendment offered by Mr. Harris.

Mr. PYEATT. I move to strike out the entire section 17 (11) with its amendments.

Mr. GRAY. I second the motion.

The question was put by the chair.

Mr. McCONNELL. If the gentlemen of this convention desire to strike out every safeguard for the educational funds of this state, and they have the votes of this convention, I suppose it is in their power to do so, and from their arguments it is very apparent that many of these gentlemen so desire. When a gentleman gets up on this floor and tries to draw a distinction between orchards and farm lands it either shows he is trying to cover up something or does not know anything about the question.

Mr. MAYHEW. That is your opinion about it.

Mr. McCONNELL. Any man here who is an agriculturalist and knows anything about agricultural land knows that farm lands and orchard lands are one and the same thing.

Mr. HEYBURN. Well, take these orchards in town here, are those farm lands?

Mr. McCONNELL. They are farm lands or could be farmed if the orchards were taken off.

Mr. HEYBURN. Take these orchards on lots of the farm lands, would they come within the provisions of this act as farm lands?

Mr. McCONNELL. They would come within the visions of this act if they were not within the corporate limits of a town, and might be construed to be so anyway. That would be a matter for the board. But it is clear, Mr. Chairman, that there are certain gentlemen in this convention who desire to have this money loaned in mining camps and in towns. This is a clear proposition. To strike out this word "farm" in that sentence, it then says it may be loaned on lands; what kind of



lands? Mining lands, lands within townsites, or any other lands? Now, I will make this as a proposition, which every gentleman knows who is familiar with mining and farming investments, that if a piece of mining property is a good and valid investment, they don't want to borrow money from this school fund, because they can borrow it from banks. And if a piece of property in a town is a good piece of property, they don't want to bother around the school board to get money; they can go to the bank and get money.

Mr. MAYHEW. Do you propose to legislate exclusively for the farmers of this state?

Mr. McCONNELL. I propose, as chairman of this committee, if possible, to place every safeguard around the educational funds of this state, without regard to whether it affects this or that interest.

Mr. MAYHEW. Let me —

Mr. McCONNELL. I am not a farmer, I don't want to borrow any money on any of my lands, I own town property.

Mr. MAYHEW. My God, you are like a goat; I can't get my word in at all.

The CHAIR. Does the gentleman yield for a question?

Mr. McCONNELL. Yes.

Mr. MAYHEW. The only question I wanted to ask the gentleman is this: Do you propose by this fundamental law to legislate exclusively for the Mormons of this state?

Mr. McCONNELL. I propose to legislate for your children and grandchildren, if you ever have any, for their protection. I may be in error; so far as you are concerned it may not do your grandchildren any good, but I propose to legislate for the future generations of this territory, and place every safeguard around the educational funds, without regard to the interests of any one class. The class I propose to legislate for is the children of this territory.

Mr. MAYHEW. That may be a fact, that nobody have children but farmers.

Mr. McCONNELL. The gentleman from Shoshone I understand hasn't any, so he is not so much interested in this fund.

Mr. MAYHEW. I am very much interested in everybody's children, whether miners', mechanics' or farmers' children. I don't understand that there should be any class distinction or legislation made at all under the principles of a free government.

Mr. HEYBURN. I beg the indulgence of the committee to say the last words I have to say in this matter. I probably am about as much interested in this matter as the gentleman from Latah is; I probably contribute just about as largely to the tax funds of the territory in my county as he does in his, and I have a right, although I haven't any children, to express my opinion as to how the funds which I help to produce and share in shall be disposed of in this territory.

Mr. MAYHEW. I am glad somebody on this floor is on an equal footing with myself.

Mr. HEYBURN. Now, Mr. Chairman, the gentleman seems to think somebody is trying to make it easier for the miners and mechanics to get hold of this fund. I will vote for a provision of this kind, providing that no part thereof shall be loaned on mining property, although I do not recognize that there is any justice in it; yet I know these people well enough to know that the school fund does not cut any figure with them. They maintain their own schools and probably maintain them better and more months in the year than the schools in the county the gentleman comes from, and pay the teachers as high salaries. I know the schools in our county are about as largely attended, and kept open as many months in the year as in any other part of this territory, and about as well conducted. Now, Mr. Chairman, the gentleman's argument, that because I spoke of orchard lands not being included within the class of farm lands, that therefore I did not know what I was talking

about, has no weight. I submit to the gentlemen of this committee that I do know what I am talking about in regard to the quality of such tracts as you have within this incorporated city, or as are within the incorporated city of Lewiston, or any other such city or town in this state. Those lands have as permanent or reliable value as the farm lands of Latah county have, or any other county in this territory, and they will have for the next hundred years to come, in all human probability. And I would like to know what reasonable ground there is for excluding this class of lands from the benefits of what the gentleman from Washington has been pleased to term "these cheap loans." I don't know whether these will be cheap loans or not. I presume we will have a Board in charge of this money that will see to it that the money is not loaned on worthless property or property that is going down in its improvements and value. I suppose the people will have to trust somewhat to the integrity, honesty and intelligence of those who will have charge of this fund in the future. I simply do not want to see class legislation foisted upon this convention under the guise of high sounding terms of protecting your children and mine or anybody else's children. Those are beautiful terms and sound patriotic and all that, but we don't want to lose sight of the business proposition that lies below this whole matter. We want to see this school fund invested so that when it is needed, or when the entire country is under the new ship of state, it will be where the powers that be can put their hands upon it and use it. That is all we want, and we don't care whether it is a farmer paying the interest, or whether the state is paying it on its bonds, or the United States government, or whether it is the owner of some of these beautifully improved lands so permanent in their improvements and value as lie around this city.

Mr. CHANEY. I would like to ask the gentleman a question. Do lands and town lots in a mining camp come within the scope of that amendment?

Mr. HEYBURN. It depends upon what the gentleman calls a mining camp. No town lot in our mining camps would. Because towns, everyone of them in our country, are located upon mining property, and they come within the exception that I have offered to incorporate in this section. We have no towns up there except they are located upon mining titles, so that they would not come within it; and if they are not located upon mining titles, then they would be like the gentleman's own town or this town.

Mr. POE. Mr. Chairman.

The CHAIR. If the gentleman desires to offer an amendment he should offer it to the chair.

Mr. POE. I rose and addressed the chair, and the chair did not recognize. I ask permission to offer an amendment.

The CHAIR. I simply made the suggestion, because the chair cannot tell how many amendments are here unless the gentlemen announce them.

SECRETARY reads: Amend section 17 (11) by inserting after the word "lands" in the third line the words "other than mineral lands or lands within a mining district."

Mr. HEYBURN. I have no objections to that.

Mr. GRAY. There seems to be an indisposition to trust this Board. I am willing to, and as we have this section now I would rather strike it out, and I second the motion to strike it out, and I believe it would be correct to do so, for I don't see, as we are fixing it now, that it is any better. I was willing to have the section at first, but as it is at present I am opposed to it and shall vote against it.

The CHAIR. The question is on the motion of the gentleman from Lemhi (MR. PYEATT), that Section 17 (11) and all amendments be stricken out. (Vote and lost.)

The CHAIR. The question now recurs upon the motion of the gentleman from Harris, Mr. Washington (laughter). I mean the gentleman from Washington,

Mr. Harris, that the word "third" in line six, be stricken out, and the word "half" be inserted in lieu thereof.

On the viva voce vote the chair was in doubt, and a rising vote was taken, resulting in 14 ayes, 19 nays; and the amendment was lost.

The CHAIR. The question now recurs upon the motion of the gentleman from Shoshone to strike out the words "real estate" in line 7, and insert the word "lands," and also strike out the word "farm" in the third line.

On the viva voce vote the chair announced the amendment lost. A division was called for, and on the rising vote the result was, ayes 8, nays 25; and the amendment was lost.

The CHAIR. The question is now upon the amendment of the gentleman from Nez Perce, Mr. Poe.

Mr. POE. I will withdraw the amendment, since the amendment to strike out the word "farm" has been defeated.

The CHAIR. If there are no objections the amendment is withdrawn. The question is now upon adopting the article as a whole. Are you ready for the question?

("Question, question.")

Mr. McCONNELL. Has the section been adopted as amended?

The CHAIR. The question is now upon the adoption of the section as amended. (Vote and carried.)

The CHAIR. The question is now upon the adoption of the article as a whole.

Mr. HEYBURN. Mr. Chairman, the article was passed upon by the convention, and when this section was referred back to the committee of the Whole, the committee of the Whole has no jurisdiction over the article other than this section.

The CHAIR. Then that motion is unnecessary.

Mr. REID. I now move that we proceed to consider

the report of the committee on Salaries of Public Officers.<sup>1</sup>

The CHAIR. I think that would be in order without any motion.

ARTICLE IV., SECTION 19 — EXECUTIVE DEPARTMENT.

SECRETARY reads Section 1 (19) of the article referred to.

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

SECRETARY reads: I move that the words "fifteen hundred" in line 8, Section 1 (18) be struck out and the words "one thousand" be inserted in lieu thereof; and the words "fifteen hundred" in line 9 of said section be stricken out, and the words "two thousand" be inserted in lieu thereof. (Seconded.)

Mr. WILSON. It simply takes five hundred dollars from the state treasurer and gives it to the attorney general. In other words, it makes the salary of the state treasurer what our territorial treasurer receives now, and the salary of the attorney general the same as it is now, and I can see no objection to it. It makes the salary of the attorney general \$2,000, and the state treasurer \$1,000. The article we adopted on Executive Department provides all those officers shall reside at the seat of government, and I know that any business man here who can give the necessary bond is willing to take the office of state treasurer for the salary of \$1,000. In fact, it would be sought after; not so much on account of the salary, but for the simple reason that they have control of large funds, which is useful in their business. The banks will always do it, so there will be no question about that salary being satisfactory. But \$1,500 is not enough for the attorney general, and practically excludes every lawyer in Idaho who does not live at the seat of government from accepting the position. And I think it is freely conceded that no lawyer who resides elsewhere can afford to come here and accept the attorney

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<sup>1</sup>—The first section of this report on Salaries was afterwards incorporated in Art. IV. as Sec. 19.

generalship of Idaho at \$1500 a year, and it does not increase the expenditure on account of those salaries one dollar, but it equalizes them. That is all. It decreases one \$500 and increases another \$500, which, as it is now, must be objectionable.

Mr. POE. Do you wish to vote on those propositions separately or jointly?

Mr. WILSON. Jointly.

Mr. POE. So far as the amendment to change from \$1500 to \$1000, on account of the treasurer, I will accept that; but I will not accept the other proposition. So if you want to put them separately—

Mr. WILSON. No, I think they ought to go together. I was on the committee and insisted on this change there, but there were three against me and my wishes did not seem to prevail.

Mr. POE. In the consideration of this matter it was the object of the committee to put the salaries at such figures as would justify obtaining men to perform the duties, and at the same time not make them exorbitant. Of course the law would require the attorney general to reside at the capital of the territory; but it was well considered in the matter of the attorney generalship, that in all probability in the performance of the duties of attorney general, but very little of his time would be required. In fact, it would not interfere with either his civil or his criminal practice in the courts to any great extent, and we considered that \$1500 would amply pay a competent man to do that in connection with his other business. If the attorney general was confined exclusively to the performance of that duty and was not permitted to do any other business of any nature or character whereby he could receive compensation, then probably it would not be enough. But, Mr. Chairman, and gentlemen of the convention, you will observe in this bill that we have provided that the attorney general, in addition to this \$1500, shall receive the necessary expenses that he may incur by reason of having to travel in the performance of his official duty.

Now, we don't know how the legislature may fix that: "Provided, however, that the legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction, while traveling within the state in the performance of official duty." Now, if perchance the attorney general should have to travel anywhere away from the capital to perform the duties here, we have provided that his expenses shall be paid. Now, I say there are plenty of men and competent men that will be glad to get the position to have the \$1500 paid into their pocket each year for the services they will have to perform as attorney general. It is not laborious, it will not be great, and I am under the impression that it is pretty good compensation. So far as the treasurer is concerned, we took this into consideration, that while there may not be any great labor necessary for the treasurer to perform, yet there is considerable responsibility. He has to keep a correct book, a correct account of the funds of the state, and you have got to get a man there with some ability as a book-keeper and of finances, and he has got to give an enormous bond, a bond entirely out of proportion to the salary he receives; probably it may be \$100,000, and it may be \$200,000. There is a great deal of responsibility attached to that office, and not only the labor should be paid for, but there should be some compensation for the risks taken and the responsibility placed upon him. I care nothing about that matter of the treasurer particularly only this. The gentleman belongs to Ada county, he lives in Boise City at the very place where the capital is, where the treasurer will have to live, and he says that if you reduce it to \$1,000 the result is that he or some of his friends in Boise City must inevitably be the treasurer, because they cannot leave their home anywhere else and come here for any such salary as that. It is very shrewd in the gentleman, I admit. I don't say it is selfish of him, or that he ever thought of it, but that is the natural result. It is inev-



itable if you put it to a nominal figure like a \$1,000, \$500, \$600, or \$700 salary; nobody but a man from Boise City can be treasurer. That is all right; I am perfectly satisfied that anyone there should be, if he is competent, and undoubtedly there are plenty of them here that are competent. But I see no reason why it should be changed.

Mr. WILSON. I am amazed to see the chairmen of these various committees get up and antagonize reasonable propositions for no other reason than that the proposition antagonizes their report. It seems to me it shows a very narrow mind on the part of the chairmen of these committees. This committee consisted of five. There were two on that committee that favored the position I have taken, and three did not, but the chairman himself cast the deciding vote on that question. He insinuates that some gentleman from Boise City will desire this position, and that is the motive for my amendment. It seems to me that is a very childish insinuation. He is aware that I am an attorney. If I had any selfish interest in the matter it would be to increase the attorney general's income instead of that of the treasurer.

Mr. GRAY. That was your motion, wasn't it?

Mr. WILSON. (Amid laughter) Yes, it was. But he says I desire to reduce the salary of the treasurer, so that a man in Boise City can always get it, and that nobody else can afford to, and makes the assertion that the attorney general —

Mr. POE. Excuse me, but I did not say you desired to do that. I said that is the inference that would be drawn. I did not accuse the gentleman of any such thing as that.

Mr. WILSON. An accusation is more honorable than an insinuation. The gentleman makes the assertion that the attorney general can practice in the courts and have criminal and civil practice besides his official duties. It seems to me he loses sight of the proposition entirely.

He cannot take any criminal case even in a justice court, if he is attorney general, because he is compelled to represent the state in all cases that may come before the criminal court, and the smallest criminal case may come before the supreme court, and therefore the gentleman knows the attorney general could not take a single case in the district court if he was attorney general of Idaho. The qualifications of men for attorney general are entirely different from those of men for state treasurer, and I think that a man as attorney general should have better pay than the state treasurer. I know the duties of the office of state treasurer amount to nothing; business men of our city here take that office, and have no separate office at all, but do it in conjunction with their private business. Men in the mercantile business here have had it a number of years, and practically it takes none of their time. So far as their bond is concerned, the compensation which they receive by virtue of controlling that large amount of money which the state has, amply pays for it. It is simply an adjustment to an equitable basis to change it, which two out of five in the committee thought was right, and which three thought otherwise.

Mr. GRAY. Mr. Chairman, I favor the amendment to give the attorney general \$2,000, and that is not enough.

Mr. HAYS. Are you in favor of taking it away from the treasurer?

Mr. GRAY. No, I would not give the bond the treasurer has to give for \$1,000. I would not have the responsibility connected with it for \$1,000. And no man that has any idea of the responsibility placed upon it would be willing to, I think. I stand with my friend from Nez Perce, that it does seem as if it was to keep every man in the territory from having that position if he does not live in Boise City. He has got to have other business than that or he cannot live on it.

The CHAIR. Does the gentleman from Ada ask for a division of the question?

Mr. GRAY. I do ask for a division of the question. And as I say, if I had the placing of it, the attorney general should have not less than \$3,000 a year. But then, as it has gone to the committee, I am content with the amendment; for I know the able gentleman that holds the position today has got as much as that in one case in defending criminals. If you want to put officers down to that which is a starving salary you never must expect you will get good ones. If you do, they won't attend to the business.

The CHAIR. The chair rules that this is a divisible question.

Mr. WILSON. I have no objection to the division of the question. If the convention thinks the treasurer ought to receive \$1,500 I have no objection; I was equalizing it.

The CHAIR. The question is shall the words "fifteen hundred" in line 8, Section 1 (19) be stricken out, and the words "one thousand" be inserted in lieu thereof. Are you ready for the question?

Mr. McCONNELL. Mr. Chairman, I am in favor of that amendment, for this reason: that there are perquisites connected with this office which will increase the income of the office very largely.

Mr. GRAY. In the treasurer's office?

Mr. McCONNELL. Yes.

Mr. GRAY. Tell me what it is?

Mr. McCONNELL. I will if you will wait. Of course, the perquisites will be provided by the legislature. They are in other states. The laws of many of the different states provide that insurance companies, for instance, be required to deposit bonds to a certain amount with the state treasurer, to insure the insurers of the state against loss by fire in case there should be a conflagration in any of the towns; in other words, that they would have some security that their policies were good. In the state of Oregon, the state treasurer gets, I think, \$800, but he receives a percentage on deposits, which increases his salary to such an extent

that the treasurer's office exceeds every office within the state. It is a well known fact that the politics of the state of Oregon were manipulated eight years in the interest of the state treasurer. I think there would be no difficulty in finding any gentleman, who is able to give the bond, who will take it for \$1,000 a year. There are not very many people in the territory who can give these bonds; it will be entirely confined to some gentleman of this town or some adjacent town.

Mr. GRAY. Let me ask the gentleman a question. Under the laws as now existing can the treasurer take one single dollar, or do you propose to make a law some time to give him something more?

Mr. McCONNELL. I suppose this state will follow the precedents of other states. They do it. It is not the case now in the territory.

Mr. GRAY. He is not entitled to one single dollar more than the salary.

Mr. McCONNELL. No sir, but would you propose to say we could not get a treasurer for \$1,000 now?

Mr. GRAY. I say there are very few you can get.

Mr. McCONNELL. Well, we only want one.

Mr. GRAY. Yes, and then he is trifling away his time.

Mr. McCONNELL. Well, he is to be pitied, but it seems we can always find a man. I favor the amendment.

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

The CHAIR. That the words "fifteen hundred" in line 8, Section 1 (19) be stricken out; and the words "one thousand" inserted in lieu thereof, which will reduce the salary of the treasurer from \$1,500 to \$1,000 a year.

Mr. CLARK. Mr. Chairman, we have adopted in the Executive Department Section 19, which contains this clause, applying to all the state offices: "The compensation enumerated shall be in full for all services rendered by said officers respectively, in any official capacity or

employment whatever during their respective terms of office. No officer named in this section shall receive for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty shall be collected in advance and deposited with the state treasurer quarterly to the credit of the state." That has been passed by the convention, and shows there can be no income to the treasurer except salary.

Mr. McCONNELL. Well, if that is the case I had overlooked it. I think \$1,500 is none too much then.

The chair puts the question and the amendment is lost.

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

The CHAIR. There is another amendment. The question is now to strike out the words "fifteen hundred" in line 9 of said section and insert in lieu thereof the words "two thousand."

Vote. Division demanded. On the rising vote the result was, ayes 15, nays 24. And the amendment was lost.

Mr. McCONNELL. I desire to offer an amendment.

SECRETARY reads: Strike out in line 4 the words "twenty-five hundred" and insert "three thousand."

Mr. GRAY. I am in favor of that, but the governor has not half the responsibility nor the hardships that the attorney general has. But I would be in favor of that. It is too little for a man to spend his time and his hospitalities which he has to expend to the people—even that is too little; but when you tell me that the attorney general can do this work for \$1,500—you will get one whose services would not be worth anything. Better not have it in at all.

The CHAIR. The question is now as to the governor's salary.

Mr. McCONNELL. Mr. Chairman, I offer this amendment for the reason that I want to be proud of Boise City; I want to be proud of our governor, and I want to place him in a position that he will not have to

go to the mountains and hide himself to prevent breaking himself up in the office. The salary of the governor of Oregon is so low that with few exceptions they avoid the capitol. They only go there when it is necessary to sign some executive order; and no man can live and maintain the dignity of the governor of Idaho or any other state for \$2,500 a year. He has to entertain people when they come here, has to keep open house, and he cannot keep house for even \$3,000 a year in this city, and throwing his time in for nothing. But knowing as I do that the people of the territory desire an economical administration of statehood, knowing they would hardly endorse or appreciate the fact that it costs so much to keep house, I only make it \$3,000 when I really would be in favor of \$6,000.

Mr. REID. Mr. Chairman, I would like to see our officials well paid, but we are just going to commence to keep house now, and ought to be as economical as possible. The great objection we are going to meet in becoming a state and to the adoption of our constitution is the question of expense. The governor today is getting \$2,650. I suppose that is about the same as his predecessor received. I think \$2,500 is ample to start with. The legislature may increase it hereafter. Surely we can get men to serve us as governor, patriotic men; we have had two, and have got one now, fully identified with the interests of our territory and using every possible effort to develop and bring Idaho to the front, as did his predecessor. I believe there are other gentlemen in this territory who will think that they could sacrifice something, if it is necessary; I believe a man can come to Boise and support his family on \$2,500 a year. I don't believe that nine-tenths of the lawyers in this territory, with all the talk that is consumed here, clear more than that during a year. Of course there are exceptions, but we must be economical in starting out. If you look over the field you will find it is only the rich states where they pay these high salaries, and the great question you are going to meet with the moment you

strike the people—and if you take up the papers laid on our desks from day to day, or go to the newspaper offices and read the exchanges—you will see there is a warning note raised that we must not proceed on the idea that we are as rich as California or any other state. Go to our assessment roll or to any of our resources, and you will find that we cannot stand it, and the people will not stand it. Gentlemen, I will appeal to the lawyers of this body especially, for we have got to pay the salaries, or the increased expense; let us save that and add it to the judiciary system. We want an independent supreme court. The people want it; I don't mean the lawyers, though I am appealing to them because they know the need of it, and if we have to increase the expense, let us increase it so we can improve our judiciary system. These gentlemen who have been serving us, have been serving us at about these rates. Idaho has never lacked for good officers, and the committee in reporting salaries did not want to starve anybody, and yet wanted it to be reasonable and comfortable, and after looking over the whole field of salaries, they thought the territory could stand these. Now, as the gentleman intimated, we don't want to stand by the report if it is not right; all wisdom is not lodged in us. This work was turned over to us and we looked at our resources and we hoped by adopting the county system to save a hundred thousand or two hundred thousand dollars in order to keep down the actual expense that would be large in becoming a state instead of a territory. But these state officers can live on that very comfortably. After a year or two, if we find we can do so, and that they cannot live on the same salaries our officials have lived on in the territorial days, then we can instruct our representatives when they are elected to increase their pay. But now, when we are starting out to keep house, as it were, we must be economical. We are bound to change our judiciary system. Everybody, every litigant is dissatisfied with the present system. We ought to have an independent supreme court and are bound to increase our

expenses for the judiciary. Let us not increase it in the executive department unless for good reasons. I would like to pay our governor five or six thousand dollars so he could keep open house, so that when one of our citizens comes from any part of the state he could treat him royally, so the people could get acquainted with the governor in his home and around his fireside; but we are not able to have the luxuries yet. Let us get along with the necessaries like every wise and prudent man does, and after awhile when we develop our resources and our assessment rolls increase, we can support our governor with that munificence and luxury that the people would like to have. But I think we ought to go slow in raising salaries.

Mr. MAYHEW. Mr. Chairman, I do not propose to discuss the salaries of any of the officers except that of the governor. It seems to me when the gentleman goes to the extent he has in discussing the propriety of the salaries of the different officers enumerated in this article, he is somewhat begging the question. I think the salary of the governor of the territory, or rather of the state when it becomes a state—and I am in hopes it will soon become so, even with the present congress, as we have assurances it will—should not be less than \$3,500 a year. My impression is that the governor of the state will be required to go to considerable more expense in his office than the territorial governor. The territorial governor is an appointive office, and I don't believe it is economy to be governed by what congress in its munificence has given to the governors of the territories. When we leave the condition of a territory we assume that of a state, and I believe in maintaining the dignity and character of the governor's position. He is naturally required to be at greater expense, not only in his campaign, but is required to spend more money in leaving his home and going to live at the seat of government, devoting his whole time to that position. No one except a rich man is able to do it. Now, what do you do? By putting him on a salary



of \$2,500, no man, it makes no difference what his abilities may be or how patriotic he may be, it makes no difference how much service he has rendered the state or with how much devotion he has adhered to his party or served the interests of his state, can afford to take that position. As I have stated, I don't believe in making a distinction. A man of ordinary circumstances who may aspire to that position cannot afford to take it because his pecuniary circumstances will not permit him to do so. The result is that no one but a wealthy man can have the position. It is not an honorary position, but the most responsible one in the gift of the state. I believe in placing this position upon a foundation where a man of merit, let him be republican or democrat, who aspires to that position, if he should be fortunately elected, would be able to maintain the dignity of the office both as an executive and as a gentleman. He cannot entertain his friends, his neighbors, nor perform the many functions of his office, which are required of him independent of attending strictly to the legal duties required of him by the constitution and laws, on \$2,500 a year. But he is also required to do many other things, to go to many places and investigate different things that may occur in different portions of the state.

Mr. REID. We provide in this bill that when he is traveling on official business in different parts of the state the legislature can pay his expenses.

Mr. MAYHEW. Certainly. That is still begging the question in my opinion. I don't believe in having cheap officers. I believe in putting this salary at a figure that will tempt the very best talent in this state to aspire to this position; I don't care whether he is a lawyer or what he is. It is no reason because a man is a lawyer that he is more entitled to these positions than any other person, and when the gentleman appeals to the profession of the law, that they do not clear \$2,500 a year, that is true, not many of them do, but it is not what a man may clear, and it is not what he may save up. The question is, what is the position worth, and

what should we pay the executive of this territory. I am in favor of giving \$4,000, nor would \$4,500 be too much.

Mr. GRAY. \$5,000?

Mr. MAYHEW. I think \$5,000 under the circumstances would be a little too much; but I think \$3,500 would not be any too much, and I do think \$2,500 for the governor is decidedly too small. I do not think this is economy. A gentleman says when we go out before the people, if we give these officers extravagant salaries, we will meet with opposition. The gentleman may have a more extended idea and acquaintance in this territory than I have upon that question; I never have discussed with the people any question as to salary, but I will venture to say that most men—day laborer, miner, farmer or whatever the occupation may be, would not object to the governor of the state receiving sufficient compensation to maintain himself with character and dignity. I don't believe the people will complain unless it is some man who envies the position. As a general proposition these people, noble, practical and generous-hearted people as they are in this territory—laborers, farmers, mechanics, miners—do not complain, and I have never heard anyone complain yet in the four or five years I have lived in the territory and in the west for the last twenty-five years, of the salaries of those officers, and I don't believe they will in the future. The gentleman makes an argument that we curtail the salary of the governor in order that we may maintain the judiciary. That is in favor of an independent supreme court, and he makes that in the way of an argument why we should lessen the salary of the governor. I don't think it is any argument at all. I think by the manner in which they have consolidated the several offices in the counties of the state, to that extent we are not increasing the salary of this office. I don't want to be considered extravagant in this matter, but I do desire that this convention shall be fair to the executive of this

state and other officers. Of course this question of attorney general has been voted by this convention.

The CHAIR. The gentleman's time has expired.

Mr. MAYHEW. Well, I expire with the time.

The CHAIR. The chair will recognize the gentleman from Latah (MR. BRIGHAM).

Mr. BRIGHAM. I just wished to express a few ideas in regard to this matter. I represent an agricultural constituency here, and I think in looking over the circumstances of the people of this territory, that we are obliged to economize; that we ought in justice to those whom we represent here to be careful. There is one idea occurred to me while the gentleman was speaking that is evident to us all; that where we have high salaries, as a rule we have no more efficient administration of that office than we have where they are cheap. You know that in our county governments, for example in the office of sheriff, where the position is recognized as being exceedingly remunerative, that is just where the corruption steps in, corruption of the suffrage and every way they can do in order to seek that position, and it is not, as a rule, with all respect to the gentleman, the best men that get into these positions by any means. There are competent men enough to fill those positions without paying exorbitant salaries. You will find them in the farms, in the fields, you will find them everywhere, gentlemen of culture and ability who will take the positions, and I say we ought to lessen the expenses of this territory as much as we can.

Mr. McCONNELL. I rise to congratulate my friend from Nez Perce (MR. REID), on his desire to economize as we are just about commencing to keep house, but at the same time I cannot help but smile at his inconsistency when I look over the list of names of the gentlemen who compose the committee which made this report, the majority of whom are lawyers at the bar. And then to look down and see the provision they have made for lawyer's salaries as judges and prosecuting attorneys, and take into consideration the salary they give the

governor. The salary of the district attorney, \$3,000 a year—

Mr. MAYHEW. Yes, that is right.

Mr. McCONNELL. Yes, I have not objected to that, and won't, unless there is objection made to placing the governor on a par with the district attorney, who in nine cases out of ten is a pettifogger in the country districts, and he is supposed to have a salary larger than the governor, because, I suppose, he is a member of the bar or has been admitted—a young man who has read law in some office for three months, perhaps. There is a motion made in court that he be admitted to the bar, and he is admitted, and then nominated for district attorney and he gets a salary larger than the governor. I think it is very inconsistent, as we are about to commence housekeeping. I hope the governor will be allowed a salary of \$3,000. I don't think it is unreasonable when we come to consider the other salaries.

Mr. WILSON. Mr. Chairman, I am in favor of the governor receiving a salary of \$4,000, but we are sitting here as a board of equalization, as much as anything else, and have just fixed the salary of the attorney general at \$1,500, and I undertake to say that his labor is twice that of the governor. The report of the Judiciary committee requires that four terms of the supreme court be held annually, two at Lewiston and two at Boise City, four terms in all. And for one to undertake to say that a man of sufficient ability to fill the office of attorney general can afford to attend the two terms of court annually at each of these places for \$1,500, is to talk—well, I can't express it.

Mr. MAYHEW. The question of the attorney general is disposed of, Mr. Wilson. The question now is as to the governor.

Mr. WILSON. Yes sir, but I say we are sitting as a board of equalization, and I am in favor of the governor being paid \$2,500, because we have fixed the attorney general's salary at \$1,500. I would have the attorney general paid \$3,000 and the governor \$4,000, but the

committee did not have it so. When the time comes I intend to move to strike out the salary of the district attorney, move to strike out \$3,000, and make it in proportion to the rest of the salaries. Therefore I am in favor of \$2,500 as the salary of the governor.

Mr. REID. The gentleman from Latah sometimes gets very ironical, but before he shoots his irony he ought to arm himself with facts. He goes on the idea that we are paying county attorneys \$3,000.

Mr. WILSON. District attorneys.

Mr. REID. Yes, as I call them, but which the gentleman called pettifoggers. This district attorney who is paid \$3,000 is a man who has to go over the whole district with the judge, pay his own hotel bills and prosecute all the criminals in the county, and county attorneys are abolished entirely. When the governor moves we provide his expenses shall be paid. If the attorney general or prosecuting attorney was a stationary office it would be different, but he has got to follow the judge around and pay hotel and stage bills and everything like that.

Mr. MAYHEW. As long as we have taken a vote on attorney general, if this constitution should be adopted and two terms of court at Lewiston and two at this place provided, I ask if the attorney general is not required to attend those four terms?

Mr. REID. Yes, and there is a provision that when he is travelling on public business his expenses will be paid. He will get \$250 a term to prosecute what few cases there are and all his expenses paid; and I dare say any good lawyer in the territory would do the same thing. When we get a little richer I would be willing to give some good lawyer a sinecure, an old man. I know in the state I came from the attorney general gets \$1,500 and in addition to that the supreme court makes him the reporter for the court, and he gets about a thousand dollars out of that, \$2,500 in all, or maybe \$3,000; and that does not come out of the taxpayers, because the

lawyers buy the reports. He can make in addition to that—

Mr. MAYHEW. Can you live cheaper in North Carolina than in this country?

Mr. REID. No sir, not a great deal of difference. The difference is about one-fifth, as I found it. But the gentleman who occupies the position now, I don't know what his salary is.

Mr. WILSON. About a thousand dollars.

Mr. REID. Well, this is about \$1,500. We can get some gentleman in Boise—all the officials I have met with live in Boise—conduct their offices very well, make good officers; but the gentleman's answer is that we are providing for lawyers. We have given the governor the same as he has now, and given the judges \$600 less than they are getting now, so when you criticise, arm yourselves with the facts. The district attorney now that prosecutes in the name of the state gets \$2,500 to \$3,000; we have put the district attorney who has got to go around with the judge to the different counties and prosecute criminal cases and pay his own expenses, only \$3,000, and you gentlemen who attend courts know what it is to travel in this country. We have put it at the lowest figure, and we want patriotism and economy to have something to do with this. I don't object to good salaries; I think the state ought to hunt up the best person and get the best talent, but I believe there is patriotism enough in the territory to get the best talent at those salaries. Some gentlemen seem to have the impression that we are legislating in favor of lawyers, and that we have raised the salaries of lawyers and provided them good places; but that is not the fact. We have cut down the salaries of the judges, and we leave the salary of the governor the same. The district judges today get \$3,600, and we have reduced it to \$3,000. But they get \$100 from each county; it is about \$3,600. We have provided that the governor shall have expenses paid whenever he travels. We have not provided anything of that sort for the judges, and they have to travel and pay

their expenses and don't get as much as the territorial judges now get; so that when you make the charge that we are taking care of the lawyers and legislating against the other officers it is not sustained by the facts.

Mr. SWEET. I am in sympathy with the amendment offered by my friend Mr. McConnell to this extent, that I would like to see the governor paid \$3,000 a year, but I do not see any occasion for doing it under the circumstances. That is not enough money, I am ready to admit; but there is one fact to be taken into consideration in connection with these officers. We have enacted or are about to submit a constitution, and provide in this constitution for the protection of the people. In order to protect the people they must be heard and their claims presented in the courts. It is expected, and it will indeed follow, if this constitution is adopted as it is now drawn, that the state will be in controversy with some of these railway corporations inside of a year after it is adopted, as to what this constitution means; and they will walk into the supreme court of this state with legal talent for which they pay \$10,000 per annum, or \$15,000, and we will contend against them with \$1,500 officials. And there is quite a difference between a \$10,000 man and a \$1,500 man; it is so all over the country. Now, I only mention these things because I think it is right, notwithstanding my friend Mayhew has called attention to the fact several times that the salaries of judges and attorneys are not under discussion, I think it is only right and fair to compare those cases. District judges upon whom centers more interest than any governor of any state, receive \$3,000 per annum and pay their own expenses, and if a judge has \$1,200 left after paying his expenses, he is a fortunate and economical man. His salary is altogether too low; at the same time it will doubtless remain at that figure. I maintain he is as important a factor in any state or territory to the maintenance of good government as any governor, and necessarily should receive as much money; but under this bill he will not receive as much by \$1,000,

and I don't think it is consistent or reasonable to raise the salary of the governor under the circumstances.

Mr. GRAY. I should do right by the governor even if the convention has seen fit to do wrong by the attorney general. I am in favor of the amendment. I will say with my colleague that it is not any comparison. There are such things as governors that do not have to put in ten or fifteen years of their lives reading law books, and they make good governors too; but I say where a man prepares himself for a position he should be recognized in some particular. The gentleman from Nez Perce says a good many lawyers would be glad to make \$2,500 a year. If that is all we ever got, with that salary of \$1,500 we would go hungry to bed before the year was through. We make more than that and still we don't lay it up. He says that we could lay up money on that. A great many of us are not much on the lay-up, but still it takes a good deal to keep us during the year. Perhaps it is our way of living, but I say this, that I am yet, even if the convention has not seen fit to treat the attorney general as he should be treated, willing and anxious that we should treat the governor well. For I will say that the governor who holds that place today and fills his office perfectly, is losing money every day of his life. He is not living upon what he is getting. It has been spoken here by some of these gentlemen in a way that it would appear as if they thought that a man must be governor, and then keep store or a peanut stand to help him out during the year, as the only way to do; and that other officers would have to be placed in that same position, instead of having men that are capable of filling the offices. I do believe we should pay our officers well; we have some good talent in the territory, but if we put them upon these starving rates we will get none of them. We will get judges such as would make fair justices of the peace or something of that kind, and all officials will come in that line.

(“ Question, question.”)

The CHAIR. The question is on the amendment of



the gentleman from Latah (MR. McCONNELL), that the words "twenty-five hundred" in line 4 be stricken out and the words "three thousand" be inserted in lieu thereof.

A viva voce vote was taken and a division called for. A rising vote was taken with the following result: Ayes 10, nays 22.

Mr. McCONNELL. I have another amendment, Mr. Chairman.

SECRETARY reads: Strike out in line 12 the words "three thousand" and insert "two thousand."

Mr. WILSON. I have an amendment also.

Mr. HEYBURN. I have an amendment. I would suggest that we are not proceeding to consider these officers in the order in which they come, and in order to avoid confusion, I would simply make the suggestion that we take up the officers in the order in which they are named in the bill.

SECRETARY reads: Amend Section 1 (19) by inserting in line 5 after the word "governor" the words "when serving as governor in the absence of the governor of the state, shall receive the same salary as provided for the governor;" and strike out in the next line the words "to be allowed only."

The CHAIR. The chair thinks this section should be read in paragraphs.

Mr. POE. This section proposes to give to the lieutenant governor the only compensation provided for him under this bill, and says the only compensation is that he shall receive the same per diem as the speaker of the house of representatives, and mileage. Now, this amendment is to the effect that if at any time the governor should be absent from the state and unable to perform the duties of governor, then by virtue of his office he would act as governor. This amendment is to the effect that while he so acts as governor he shall receive the same compensation the governor would be entitled to in the performance of that duty. And as chairman of the committee I will accept that amendment.

Mr. CLARK. I beg leave to call the attention of the convention to the report upon Executive Department, which we have already adopted, which states that when the governor is unable to discharge the duties of his office, the powers devolving upon the governor, and all his duties and emoluments of office, shall devolve upon the lieutenant-governor. His salary is transferred to him by Section 12 of the Executive Department.

The CHAIR. The amendment offered by the gentleman from Shoshone seems to be already provided for.

Mr. HEYBURN. I think not. We are providing salaries here, and the fact that that provision is contained as an abstract principle in another bill, which does not provide for the salaries of officers, does not make it unnecessary here. This bill is supposed to be an enumeration of all salaries, and the other is simply a limitation upon it. If it were to stand as it is here, this being a salary bill, and there was a conflict, this would be held to govern with reference to his salary, and it would do him great injustice possibly.

Mr. CLAGGETT. I cannot see for the life of me but what the point made by the gentleman (MR. CLARK) is well taken. This constitution is a whole. We are not adopting half a dozen or fifteen or twenty instruments; we are adopting a constitution as a whole. One provision of it is for the salary of lieutenant-governor. The amendment offered is that when the governor is not acting as governor, when the lieutenant-governor is acting in his stead, he shall receive the compensation. And that is all provided for in the Executive Department and covered plainly.

The CHAIR. The chair does not understand that the gentleman from Ada raises a point of order; but simply the propriety of it.

Mr. CLAGGETT. No, I simply call the attention of the committee to the fact that this amendment as offered is unnecessary, because we already have the same provision in the constitution.

The CHAIR. The question is upon the amendment of the gentleman from Shoshone.

The secretary re-read the amendment.

("Question, question.")

The vote was taken and the amendment was lost.

Mr. HEYBURN. I move to strike out this clause with reference to the lieutenant-governor so there will be no inconsistency in the constitution, if it is already provided for in the other act. (Seconded.)

The CHAIR. It is moved and seconded that the entire clause relating to lieutenant-governor shall be stricken out of this article.

Mr. CLAGGETT. If you strike it out we will have no provision whatever in any part of the constitution for the services and compensation of lieutenant-governor.

Mr. HEYBURN. I just understood the gentleman's argument was that it had been already provided for.

Mr. CLAGGETT. I beg the gentleman's pardon. I say the amendment offered was already provided for, but not the substance of this matter that he moves now to strike out.

Mr. CLARK. Mr. Chairman, in the clause fixing the salary of the members of the legislature, in the report upon the Legislative Department, the salary of the lieutenant-governor appears. Section 23, line 9, reads as follows: "The presiding officers of the legislature shall each in virtue of his office receive an additional compensation equal to one-half his per diem allowance as a member."

Mr. CLAGGETT. That makes no provision for the lieutenant-governor at all. He is not a member of the legislature. That is where it comes in.

Mr. MAYHEW. He has no vote and still presides.

Mr. CLAGGETT. He has no vote. It simply fixes the per diem of the members and then provides that the presiding officer of each house shall receive additional compensation; but nowhere in this Legislative or Executive Department bill is there any provision as to what the compensation of the lieutenant-governor shall be.

Mr. BALLENTINE. I call attention of the committee to Section 19, Executive Department, line 7, which reads:

“The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the session of the legislature.”

Mr. HEYBURN. I would like to have any gentleman show me where there has been any provision made for the payment of the lieutenant-governor as presiding officer in any bill, in the absence of the governor. There has been none read yet.

The CHAIR. The question is shall this article from the word “and” in line 5 be stricken out down to the words “secretary” in line 7, as I understand it.

Mr. REID. Since it has been amended I wish to move to strike it out, because it is in the line referred to by Mr. Ballentine. When this is struck out there is no provision anywhere, having struck out the other part of it for paying the lieutenant-governor when he acts as governor.

Mr. MAYHEW. “The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the session of the legislature.”

Mr. REID. Suppose for any cause he should succeed to the governor. What pay does he receive then?

Mr. HEYBURN. The emoluments of his office.

Mr. BALLENTINE. I also call attention to it in Section 12 of the Executive Department.

The CHAIR. I will call the attention of the committee to this article. This is a report on Salaries, and as I understand it, the lieutenant-governor is not a salaried officer.

Mr. REID. He has a salaried office when he becomes governor. If this is struck out, when he becomes governor it says he shall receive such and such pay only when he is acting as president of the senate.

Mr. BALLENTINE. I will read this section: (Section 12, Article IV.)

“In the case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall cease shall devolve upon the lieutenant-governor.”

Mr. HEYBURN. Does the gentleman consider that the word “emoluments” there used covers salary?

Mr. BALLENTINE. Yes, I think it does.

Mr. HEYBURN. I do not think it covers salary. The emoluments are something in addition to the salary of the office, and always are, and it is for that reason, that we want to provide that the salary shall go to him. Emoluments are not salary; it is not covered by that term.

Mr. McCONNELL. Under the provisions of the article adopted, emoluments must mean salary, because they are not allowed anything else but salary.

Mr. REID. They are allowed when they travel in the state, actual expenses and so on, and I know it is held with reference to a member of the house of representatives that he gets salary and emoluments, to-wit, a per diem, and also an allowance for stationary and things of that sort.

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

Mr. HEYBURN. Mr. Chairman, I don't like to see a mistake that is so palpable on its face made by an intelligent convention. This word emolument does not mean salary, and if he has no emoluments then he receives nothing. It does not cover the term salary at all. The amendment originally offered was because there was no provision in this section saying that when the lieutenant-governor was acting in the place of the governor he should receive his salary, and it was offered with that idea in view, and it was voted down.

Mr. REID. Yes, I was going to say that the convention has destroyed, by defeating the amendment a

moment ago, the right of the lieutenant-governor to receive any salary.

Mr. HEYBURN. Exactly; voted that he should receive no salary during the time the governor is absent from the state, and if the governor is absent or unable to act and conduct his duties there is no provision by which he shall receive the salary, except under the obscure term "emoluments," which will require a construction to determine its meaning. We might as well be plain about it, and say he shall receive the salary. That is all I have to say.

Mr. CLAGGETT. Mr. Chairman, my understanding of the word or the legal meaning of the word "emoluments" is that it means anything that is received in the shape of a pecuniary advantage whatever. It is a word so much broader than salary that it includes salary and everything else. (Reading from dictionary) "The profit arising from office or employment; that which is received as a compensation for services, or what is annexed to the possession of office, as salary of office, and perquisites." It covers everything.

Mr. REID. I will ask the gentleman if that is the legal construction of it?

Mr. CLAGGETT. Yes, I don't think there is any doubt about it.

The CHAIR. All in favor of the motion, that all of this article applying to the lieutenant-governor shall be stricken out say Aye; contrary No. The chair is in doubt.

On the rising vote the result was ayes none, opposed five; and the motion to strike out was lost.

Mr. MAYHEW. I move the committee rise, report progress and ask leave to sit again.

Mr. CLAGGETT. Before that motion is put I want to bring up by unanimous consent another matter. I understand this bill relating to Irrigation has been engrossed and made a special order for final reading at two o'clock.

The CHAIR. If there is no objection the gentleman may proceed.

ARTICLE XV., SECTION 3.

Mr. CLAGGETT. The way we amended Section 3 of that bill left it, in my judgment, in very bad shape; and I therefore move as the sense of the committee, that the committee on Engrossment (if there is no objection made to it here) be directed to substitute for Section 3 as contained in the engrossed bill, Section 3 as amended, and which I will read now:

“The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those requiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference over those claiming for any other purpose.”

And I stop right there. In other words, recognizing the doctrine of priority all the way through, except that in the matter of domestic purposes we make a preference, and that preference to be exercised in the manner limited by law. I am afraid of those amendments which were put on the bill the other day.

The CHAIR. I think the motion is out of order at this time, but if there is no objection—

Mr. CLAGGETT. I know it is, and I ask unanimous consent to have the matter considered now. I have submitted it to both gentlemen who offered the amendments the other day, Mr. Heyburn and Mr. Ainslie, and they both concurred in the suggestion of the change.

Mr. HEYBURN. I am in favor of striking the whole thing out, but if it is to be in, I prefer the change.

Mr. CLAGGETT. The matter can be put in shape of a motion in convention, Mr. Chairman.

The question was put by the chair, shall the commit-

tee rise, report progress, and ask leave to sit again?  
Carried.

## CONVENTION IN SESSION

The president in the chair.

## ARTICLE IX, SECTION 11.

Mr. SHOUP. Mr. President, the committee of the Whole makes the following report: Mr. President, your committee of the Whole have had under consideration Section 17 (11) of the committee's report on Education, Schools, School and University Lands, and recommends as follows: that the section be amended by adding after the word "funds" in line 1, the following words, "other than university lands," and that the section be adopted as amended.

The CHAIR. If there are no objections the report of the committee of the Whole on that bill will be considered as received and adopted.

SECRETARY reads further: "Also have had under consideration the report of the committee on Salaries of Public Officers, and come to no conclusion, and ask leave to sit again. J. M. Shoup, Chairman.

The CHAIR. The report will be received and lie on the table.

## ARTICLE XV, SECTION 3.

Mr. HEYBURN. Mr. President, I move that in the report of the committee on Manufacturing, Agriculture and Irrigation, in Section 3 the words in the third line "for the same purpose" be stricken out; and that also all after the word "purpose" in the seventh line of the section be stricken out. (Seconded.)

The CHAIR. That makes the section correspond as just read by me in committee of the Whole. All those in favor of the motion—

Mr. COSTON. I would like to hear that section read again. It seems to me it radically changes it.

Mr. HEYBURN. The change is this: It strikes



out the words "for the same purpose" in the third line; and then strikes out all after the word "purpose" in the seventh line; and leaves just the one word in the seventh line.

The CHAIR. I will state to the gentleman from Ada that that will leave the section as reported by the committee with the exception of this word stricken out. It gets rid of the amendments that were granted on the bill the other day in that section.

Mr. COSTON. Then the theory of that section would be to give the preference for domestic purposes, and extend it no farther, but let it stand equal, recognizing no priority of right only for domestic purposes. Is that the theory?

The CHAIR. That is it. . .

Mr. McCONNELL. Do I understand, Mr. President, that if this amendment should be adopted, it would be in effect that a manufacturing interest might use the water if he had the priority of right, where it might in a season when the water was short, work to the detriment of agriculture or to the exclusion of agriculture?

The CHAIR. No sir. It stands just in this shape. The constitution recognizes and enforces the right of preference for domestic uses, subject to such limitations as may be prescribed by law; but that so far as any other preference is concerned, it leaves it to the legislature in its wisdom to provide.

Mr. McCONNELL. Well, I am opposed to this amendment then, because it strikes out what we have been working to secure. We have been working to secure a permanent investment to those people who have seen fit to go out on the plains and improve farms. If they have no priority of right after they have gone there and done that work over a manufacturing interest, then there is no security in their going there. That is the way I would understand it. For instance, here is a ditch; I don't know by whom it is owned. I understand they say the motive power for generating electricity or a portion of it is secured from it. That would be prior-

ity of right over those lands in case there was not water below there for agricultural purposes, and in case there was not water enough to furnish this motive power here they could shut the water off those farms they are now attempting to cultivate and divert the water entirely for this machinery down here. That is the result of this amendment as I understand it.

The CHAIR. I do not so understand it.

Mr. McCONNEL. Then I move we adjourn and take this matter up this afternoon and discuss it again.

The CHAIR. If there are no objections it will be laid aside informally.

Moved and seconded that a recess be taken until two o'clock P. M. (Carried.)

#### AFTERNOON SESSION, *July 29.*

The CHAIR. The special order at this hour is reading the report of the committee on Legislative Department in committee of the Whole.

Mr. REID. The chairman of the committee on Engrossment is absent. Has the committee reported?

The CHAIR. I am informed by the secretary that he has not yet reported it.

Mr. REID. By consent I suppose we could continue taking up that question we were discussing before recess.

Mr. McCONNELL. I object to its taking place now.

Mr. REID. Then I suggest by unanimous consent we proceed with this salary bill as in committee of the Whole, as the senate sometimes does — need not go through the formality, but proceed as if it was. It can be done by unanimous consent on the salary bill, and I ask unanimous consent that we proceed until Mr. Hasbrouck comes in, without a change of officers, as if we were in committee of the Whole.

The CHAIR. There being no objection, we will proceed.

#### ARTICLE IV, SECTION 19.

Mr. REID. I ask for the reading of the amendments.

SECRETARY reads: Strike out in line 12 the words "three thousand" and insert "two thousand." McConnell.

Mr. McCONNELL. Mr. Chairman, I move that the words "district attorneys each three thousand dollars per annum" in line 12, Section 1 (19), be stricken out.

Mr. REID. In the absence of the chairman of the committee I desire to speak. I suppose the amendment is offered to strike out \$3,000 to district attorneys in line 12. I will explain his duties and give the reasons why the committee put his salary at that price. This district attorney will go around with the judge in the district. Suppose we have three judges—I don't know how many we will have—those in the northern district will have one judge, and there are five counties. He will have to go to Shoshone, Kootenai, Latah, Nez Perce and Idaho counties; follow the judge to every court and prosecute in the name of the state. We have made no provision in the county bill for a county attorney. We abolish that office, and let the district attorney prosecute in the name of the state, follow the judge around the district. We allowed that his salary ought to be \$2,500, and we put the \$500 in to cover expenses. He gets no fees, nothing but this. We thought \$500, say where there are five counties in the district, would be to pay his expenses, and he would get \$2,500 for his services. We estimated that in estimating the salaries of the judges, that their expenses would be about \$500, and they would get about \$2,500 as a salary. If the committee wants to say \$2,000—I mean the convention as in committee of the Whole—if they think he can get along for that, the committee that reported this bill does not make any special objections. But the gentleman has been talking about getting good talent and all that sort of thing. This district attorney will have to go around to the different counties, it will be his duty as prescribed to examine into probate matters, to see that administrators and guardians have fulfilled their duties, to see that county officers perform theirs, and he

will have to prosecute all crimes, murders, arsons, and everything of that sort, besides a great many other duties in the way of looking after the interests of the state and the people generally. If you put it at \$2,000 his salary will be practically \$1,500, because it will take \$500 and more to pay his expenses. But the committee thought you could get a lawyer, a man who is capable, for that amount. And Mr. Sweet suggested this morning that in the supreme court room the attorney general would have to meet the best talent of the railroads and the corporations; so in the district courts the man who represents the state in prosecuting for the state, has to fight the whole bar, and will meet the very best talent the state can afford. We want a man to meet those conditions who is capable of taking care of the state's interests. However, if you gentlemen of the convention think we can get good men for \$2,000 of course you can vote it, and the committee will acquiesce; but I am explaining why we did it. We thought we could get one of the best lawyers the bar afforded, but not as my friend suggested, one who has just got his license, that he called a pettifogger; I don't think it necessary because he has just started out, that he should be a pettifogger, but I know it has been the habit to make young men district attorneys and I am glad it is so. If they don't know how to do the business they can ask the older attorneys. In some cases we have unfit attorneys, but that is not the rule. I think the district attorney for these districts, a man who prosecutes for the state, ought to be a man learned in the law, a man of experience who can try capital cases, a man who can measure lances with the very best talent among lawyers who will be called upon to defend criminals. I think you ought to allow him \$500 for expenses and \$2,500 for salary, and we have put it all in as salary. But if you think \$2,000 is enough, well and good. I think my friend from Ada moved this amendment, I think, to kill the office, because he has made a strong fight. I hope I am mistaken.

Mr. SHOUP. It seems to me this discussion is premature at this time, inasmuch as it has not been decided whether we shall have a district attorney at all or not. If we occupy two or three hours in discussing what the salary of the district attorney is, and afterwards decide we won't have any district attorney at all, but retain the present system of the counties, it will be all thrown away. I think this ought to be passed until after the report of the Judiciary committee is considered.

ARTICLE III, LEGISLATIVE DEPARTMENT—FINAL READING  
AND PASSAGE.

The CHAIR. Gentlemen, the order of the committee was that we proceed as in committee of the Whole until Mr. Hasbrouck, chairman of the committee on Engrossment, was ready to report.

Mr. HASBROUCK. I have the report.

SECRETARY reads: "Boise City, Idaho, July 29, 1889. Mr. President: Your committee on Engrossed Articles of the Constitution, to whom was referred Article — on Legislative Department, have carefully examined the same and find it correctly engrossed. We also found a section referred to your committee in relation to Section 1, supposed to belong to the Bill of Rights, carefully copied. Hasbrouck, Chairman."

SECRETARY reads the revised article on Legislative Department.

The CHAIR. The article as read by the secretary will be referred to the committee on Revision to be embodied in the constitution.

Mr. GRAY. It has passed any amendments, now, has it, Mr. President?

The CHAIR. Yes, according to the rule it seems to be.

Mr. REID. Don't we vote by ayes and nays on its final passage?

The CHAIR. This is not its final passage.

Mr. REID. Yes, it was ordered to final reading at this time.

The CHAIR. But it was voted on by ayes and nays the other day, and the report of the committee came up in convention, and was finally adopted by aye and nay vote and then referred to the committee on Engrossment to be sent back here for final reading to see if there were any corrections, and after it has been read the rule provides that it shall be referred to the committee on Enrollment and Revision, and when that committee reports, then each article is to be voted upon separately on the final reading of the entire constitution, and then the constitution adopted.

Mr. GRAY. What sense is there in reading it now, if we have no say about it?

The CHAIR. Not unless there is some motion made to suspend the rule.

Mr. MAYHEW. I understand the object of reading it now is for the purpose of seeing whether it is correctly engrossed.

The CHAIR. That is the intent of the rule.

Mr. McCONNELL. Is it the intention of the rule not to give a third reading of these bills, and not to have them voted on the third time as it will appear in the constitution finally? Is there to be another opportunity to offer any amendments than those offered when it is first brought into the convention? It is considered in committee of the Whole, then brought into the convention and passed to its third reading, as I understand it. It has only had two readings; one in committee of the Whole and one in the convention as reported from the committee of the Whole, and it certainly should have a third reading on its merits.

The CHAIR. There is a third reading provided for here in rule 54, which reads as follows: (Reads the rule.) The final vote was taken, as I understand it, on the report of the committee on Revision and Enrollment.

Mr. REID. The other day we proceeded under rule 52, which is as follows: (Reads the rule.) The order

then was that it should go on its final reading at this hour. In the meantime the committee on Engrossment was ordered to pass this over. Now, I take it the proposition is, shall we agree to this proposition as read? This is the final reading, and if so, it goes to the committee on Revision. That is the plan we took the other day, and took the ayes and nays on it.

The CHAIR. The chair understood the ayes and nays were taken on the adoption of an article when it was considered by the convention on the report of the committee of the Whole. It is a matter of no special consequence. The secretary will call the roll.

Mr. GRAY. I understand then no opposition can be made now except to the entire bill.

The CHAIR. This is the final reading according to the views of the convention, and it cannot be stopped at this time for amendments unless some motion is made to reconsider the vote by which it was ordered to be engrossed, or to make some other disposition. In the absence of any motion to suspend the rules and make some other disposition of the engrossed bill, the proposition now is upon its rejection or adoption. Roll call:

Ayes: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Pierce, Pyeatt, Reid, Sinnott, Shoup, Underwood, Whitton, Wilson, Mr. President—38.

Nays: Gray, Pinkham—2.

The CHAIR. The article is adopted, and the engrossed bill will be referred to the committee on Revision and Enrollment for embodying in the constitution.

#### ARTICLE III, SECTION 24.

The next matter, made a special order for this hour, is the matter which was brought up by the gentleman from Ada (MR. CLARK) this morning. It is reported

as Section 1, but Section 1 of what article is not mentioned.

Mr. CLARK. It was agreed at the time that was introduced that the committee on Revision would place it where it was most appropriate in the instrument. It was simply spoken of as "the temperance section." I presume it would be in the Bill of Rights, but we left it for that committee.

The CHAIR. The secretary will read the section.

SECRETARY reads: Section 1. The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The legislature should further all wise and well directed efforts for the promotion of temperance and morality.

Mr. GRAY. I call for the ayes and nays.

The CHAIR. That was by order of the convention this morning made a special order at this time on final reading for incorporation in the constitution.

Mr. MAYHEW. I think it ought to go to the last part of the constitution as a sort of moral prayer.

Mr. HEYBURN. Mr. President, I was not here and this is the first time I have heard of this measure, and I desire to have it read that I may know what it is. (The section was read, as above set forth.) Mr. President, I will vote no. I believe in the sentiments expressed, but I don't think it has any place in the constitution.

Roll call:

Ayes: Ainslie, Allen Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Hasbrouck, Hays, Hogan, Jewell, King, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Moss, Pierce, Pinkham, Pyeatt, Reid, Sinnott, Sweet, Underwood, Whitton, Wilson, Mr. President—37.

Nays: Harris, Heyburn, Mayhew, Shoup—4.

The CHAIR. The vote on the final reading of the article as read is yeas 37, nays 4. It will be referred to the committee on Enrollment and Revision, with



instructions to incorporate the same in its proper place in the constitution.

MOTION TO LIMIT SPEECHES.

Mr. ANDERSON. Mr. President, if it is in order I move that speeches by members before this convention be limited to five minutes. (Seconded.)

The CHAIR. The chair will have to rule the motion out of order for the reason that previous action of the convention was taken limiting them to ten minutes. If the gentleman will send his notice up it may be taken up tomorrow under the rule.

Mr. REID. Mr. President, does the question of irrigation come up by special order at this time?

Mr. Sweet in the chair.

ARTICLE XV, SECTION 3.

The CHAIR. It comes up at this time, yes. The secretary will read for the information of the convention Section 3 of the bill as it was agreed upon the other day in the committee of the Whole, and then Section 3 offered as an amendment or substitute for Section 3 by the gentleman from Shoshone (MR. HEYBURN).

SECRETARY reads: To amend Section 3 by adding after the last words, "and in an organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have the preference over those using the same for manufacturing or agricultural purposes." And to continue Section 3 as follows: "but the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public use and private use as referred to in Section 14, Article I, of this constitution.

The CHAIR. The secretary will now read the substitute proposed by the gentleman from Shoshone.

SECRETARY reads: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority

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

Moved and seconded that Section 3, as agreed to the other day, shall be amended as last read by the secretary.

Mr. McCONNELL. Mr. Chairman, I hope this amendment will not be adopted. We had this question fully discussed the other day, and it seems that the lapse of time has given an opportunity for some gentlemen to change their minds. But I still think there are enough members on this floor who are not attorneys for any ditch company, and haven't any special interest only in the welfare of this state, to vote against this amendment. If this amendment passes, parties who own ditches in this territory and have on those ditches manufacturing enterprises, may at any time take the water they have heretofore rented to farmers, and by that rental have induced them to go on to these sagebrush lands and open up thousands and thousands of acres and build homes, and turn it to the use of manufacturers. There is no provision to protect those men. Gentlemen of this convention, we are more interested today in the reclamation of these sagebrush lands than any other problem that has been brought before this body; and if you adopt this amendment you practically place these gentlemen who are tilling these sagebrush plains down here at the mercy of the ditch owner. For instance, there is one ditch right along here, and I don't know how many more there may be in the territory, but here is one ditch at least that has within a few miles of its head a large milling enterprise, and an enterprise for the generation of electricity. They furnish part of its waters down below on the plains to the farmers. Suppose now we strike this out, and give

them the privilege of saying at any hour of the day or any day of the week: "We have use for this water ourselves for manufacturing and we cannot let you have it any longer." What condition will those farms be in, gentlemen of this convention? That is the question that comes right home to you. I don't suppose that any of my children or any of the children of Judge Claggett, or perhaps any of your children will ever be situated down here, but they may; it is not likely we will cultivate those lands, but our children and their children may, and let us not place anything in this constitution, which will place those agriculturalists, who are necessarily poor people, in the power of any incorporation which brings out a ditch. I live in a remote part of the state where irrigation has not been adopted or will be adopted, but I rise in defense of this proposition of irrigation here. It is to your interests, gentlemen, who live in the southern part of the territory, to see that the eloquence of those men, who perhaps may be paid and perhaps not, for their eloquence, does not prevail in this convention.

Mr. GRAY. Mr. Chairman, I feel as much interest in this water question as anybody who doesn't drink any more water than I do. But I will say that if I make a ditch it is mine, and if I spend \$25,000 or \$50,000 to build a ditch, it is mine, and I want the privilege of using it if I need it. If I make a contract with a man I don't suppose this convention could change that contract; I don't suppose there is any lawyer upon this floor that would say that he could change it or anybody could change it, but when you say to me, as it has been said to me before, that I have got to rent this water because once I have given it to a man twenty miles below before I needed it myself; and further say to me when I want it myself that you are going to bar me from the right ever to use it again, I don't know whether the man who argues that knows anything about water or not. I don't believe he does; I don't believe he even drinks enough to know anything about it. What I want is

this, and I have tried to tell this convention before, that when a ditch is opened the first man at the head shall have the right as long as there is any water there. If I have dug that ditch and want to use it on my own land, I claim I have the right to do it; and I claim I have the right when I spent my money and my time to build it, it is mine as much as any man's land is his, without he entered into a contract with me, and if he has then I must fulfil my contract. The idea is to make me build a ditch costing \$25,000 or \$50,000, and then give it to some man that is forty miles below, where on account of the evaporation it would not be worth cleaning out by the time it got there; the ditch would not be worth cleaning. I want these gentlemen to understand me. It costs money to build ditches; it costs money to do most anything; but I want them to understand this, that if I have water to sell, I want to sell it to the first man on the ditch. I have that right, because I don't want to lose it by evaporation. It is money to me, and as long as there is water in the ditch, and I have got it for sale, I don't want it to ever pass any man's land if he will take the water. I don't want it ever to be allowed to pass; and I believe the principle is correct. I can go down here and make a contract with a man to supply him with water, and then this water will waste largely in going, by percolation, evaporation and all that, and then I will say to him, "See here, sooner or later you have got to shut up." That will be the doctrine the gentleman is going to adopt. That is just exactly what I think. If I make that ditch it is mine as much as the hat I wear on my head, if I pay for it. If I enter into a contract I will comply with it, I have got to comply with it, but don't make me dig ditches to supply a man with water who is forty miles down the country; don't force me to do that and waste all the water before it gets down there.

## ARTICLE XV, SECTION 1.

Mr. REID. I would like to ask the chairman of this

committee before I vote on it—I had not noticed it particularly, and I thought you gentlemen knew more about water rights than I did—about two or three things that I don't understand. "The use of all waters now appropriated;" and further down the words "also of all water originally appropriated for private use, but which after such appropriation has heretofore been or may hereafter be sold, rented or distributed." Now, I wish to ask, if that does not interfere with vested rights I don't understand the English language, and if it does, it is just as void as if it had not been written. I understand it that way. It says "all water now appropriated," no matter what the law has been heretofore. I always understood the principle here in this water right business, "first in time, first in right," no matter what right he has acquired.

Mr. McCONNELL. That is not all of it; read on.

Mr. COSTON. Mr. Chairman, I rise to a point of order. There is no amendment proposed to the first section. The question is pertaining to the change of Section 3.

The CHAIR. That is all.

Mr. REID. Well, I suppose that Section 3 takes all up for consideration, section by section. I am talking about Section 1 now. The reason I am asking is that my vote on Section 3 might be influenced by the explanation I have on Section 1, and the whole when it comes up.

Mr. McCONNELL. Do you desire an explanation on that?

Mr. REID. Yes, I want to know if it does not interfere with vested rights. If it does, I don't want to be put in the attitude of going to the congress of the United States with a constitution which on its face interferes with vested rights or contracts acquired under prior laws.

Mr. McCONNELL. In the absence of the chairman of this committee I suppose it will devolve on me to defend the action of the committee. This was taken

from the California constitution.<sup>1</sup> They found it necessary to declare water appropriated for public use a public trust, and that the legislature should have the right to prescribe suitable laws concerning it. It does not say that the use of all waters now appropriated or that may hereafter be appropriated, shall be taken away from anybody, but the waters "that are appropriated for sale, rental or distribution" shall be under the control of the legislature.

Mr. REID. Let me put another question. There is a ditch running around the town of Lewiston where I live that a gentleman has already acquired rights under and sells it and rents it. Now, this first section, as I understand it, declares that man's vested rights, for which he paid a valuable consideration, may be condemned to the public use. Suppose Mr. Eastman, who furnishes the water for this capital, should have his rights declared to be a public use, according to this language; all rights now "for sale, rental or distribution," now appropriated or which have been appropriated originally "for sale, rental or distribution." If that is so, I don't want to be put in such an attitude as that for any such section.

Mr. McCONNELL. I suppose it is out of order, but if I may explain that —

The CHAIR. You had better argue what is before the house.

Mr. McCONNELL. I would like to make an explanation to the gentleman before he gets the wrong idea. I would hate to have—

Mr. REID. I ask for information.

Mr. McCONNELL. Let us say you have a ditch out here out of which you get water and pay a certain amount to the people owning the ditch. They have used that water quite a number of years; it is a franchise; there can be no other ditch brought where that ditch is because it occupies a position that prevents the bring-

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<sup>1</sup>—Constitution of California, 1879, Art. XIV., Sec. 1.

ing in of another ditch. Now, suppose these men who own the ditch have a mill at the end of it. And this comes right to the point, right home to the gentleman's own constituency, for those gentlemen on their prior right can say, "We will use this water all for the mill; we will not allow you to have anything for your gardens, orchards or houses." What kind of a position would his constituents be in? They would have to move up to Moscow where we don't have to irrigate.

Mr. REID. But, in line 4 it says, "hereby declared to be a public use," and that man has taken his rights and vested them, and has his deed and is protected, and took out his charter for a special purpose, and here you declare that man's franchise and vested right, which he has acquired under the laws governing this territory before the adoption of this constitution, to be a public use, interfering with his rights.

Mr. McCONNELL. I declare that it is a public use.

Mr. REID. If it applied to anything acquired after the adoption of this constitution, it would be a different thing. That is what I want to see as to the effect of it. If it is the opinion of the legal talent of this house that that does not interfere with any vested rights or franchises, I am in favor of it; but if it does disturb them or make them subject to litigation, I will vote against it, because it is not the object of this constitution to precipitate litigation upon the people.

Mr. McCONNELL. This is a part of the constitution of California.

Mr. GRAY. That was a law passed for the—

Mr. McCONNELL. (Interrupting) I hold to this theory whether it is the law or not. I am not a lawyer, but I will exchange common sense with other men, who are perhaps better versed in legal lore. I claim if Mr. Eastman here chose to shut the water off from this town, the people would have a right to say that he should not do it, because he has put the water into their houses, and without it they cannot exist, and he has no right to shut it off if they pay for it.

Mr. REID. But you declare in this section that the public can deprive him of it if it wants to.

Mr. McCONNELL. No sir, not at all.

Mr. COSTON. Having participated with the committee on Agriculture and Irrigation in the consideration of this proposition, I desire to submit a few words as to my understanding of the force of these pending amendments. The section as it already stands adopted has just been read. It does not interfere nor do these amendments, with the question as settled by this bill as to prior rights; it does not affect them in any way; it only affects the proposition that in time of scarcity, at times when there is not water enough to supply all that have located water from a common source, as to the distribution on those emergencies. These amendments set forth and make the concession that a preference shall be given for water in time of emergency, when there is not water enough to supply all; that there must be a distribution of it when all the rights cannot be complied with because the source has failed. And it provides that the right to the use of it for domestic purposes shall have the preference, under such restrictions as future legislatures may see fit to enact. The bill as readopted the other day, after stating the first right for domestic purposes, went still further and specified as to which should have the preference when manufacturing and irrigation are competing. The amendments here proposed, propose to make no distinction; but put water acquired and used for the purpose of manufacturing and for irrigation in the same boat, as it were; to make no distinction as was made in favor of domestic purposes, in reference to irrigation and manufacturing. That is the purport of it as I take it, and that is all these amendments affect the bill or the theory of it from top to botom. That is my understanding.

Now, I oppose those amendments, and I do it for this reason: that there is just as good argument in favor of making the distinction in preference of agri-



culture when agricultural and manufacturing interests are competing, as there is (as the gentleman who moved these amendments will concede) for domestic use being given the prior right. To make a familiar illustration—and if I am wrong I ask the movers of these amendments to correct me—in this way: There has been a ditch heretofore taken out of a stream, of 10,000 inches. It was the right and the purpose of the ditch owner to exhaust the entire strength of the stream. Now the first right he sells out of that, by the theory of this bill, this prior right attaches not only to the original locator and ditch owner, but also attaches to him who has had the prior use of it, and that becomes a vested right, as I take it, and just as secure as the right originally to the water. Now, there are 5,000 inches, we will say, devoted to manufacturing purposes, and the other 5,000 inches has been distributed in the farming community. It has all been taken and paid for by rental, and that prior right attaches to each one who has taken any per cent of that water and paid for it and used it. Now, here comes a scarcity; the usual flow is reduced to 5,000 from 10,000 inches.

Moved and seconded that a recess of twenty minutes be taken. Carried.

Session resumed.

Mr. HEYBURN. I move a call of the house.

(Motion seconded, and it was carried.)

Roll call proceeded.

Present: Allen, Anderson, Ballentine, Campbell, Clark, Coston, Crutcher, Glidden, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Maxey, Mayhew, McConnell, Melder, Moss, Pierce, Pinkham, Pyeatt, Reid, Sinnott, Shoup, Sweet, Whitton, Mr. President—29.

Mr. ALLEN. I was not here as the roll call was ordered, but I move that further proceedings under the call of the house be dispensed with. (Seconded.)

Vote and carried.

Mr. COSTON. I think I had arrived at the point where there was only water enough left in the ditch to supply the manufacturing interests, that having been

used prior, and by the theory of this bill having the preference. Now, then, if these amendments prevail it prohibits, as it were, or at least gives no power to the legislature to pass such laws as shall make a distribution of that water to save the orchards, farms, meadows and the homes of that agricultural community, which have acquired a vested right in the waters of that ditch to the use of those waters. With the reinstatement of those words "and for the same purpose" it would then only put, in cases of this kind, which provides for the distribution of water in an emergency, manufacturers in competition with manufacturers.

Mr. CLAGGETT. Those words in the amendment which is offered are stricken out.

Mr. COSTON. Yes, but as we come to some subsequent provisions of this bill we will find out that for agricultural purposes the words are again repeated, which puts all the rights of agriculture within that prescription. As I was going to say, under the theory of this bill as it will stand, as I understand it—and I ask cooperation, all I want is a fair understanding of it—in the illustration which I have attempted to make, even in that emergency when the waters of that stream were reduced to one-half of their natural and usual flow, it would give the manufacturer the undisturbed control of all the then waters from that source that exhaust the ditch. To those who are familiar with the great damage which would be done perhaps in two or three months, or less, in a drouth like this, when the work of years would be sacrificed, no apology is needed for giving domestic uses the preference. As competing with the three uses contemplated here, we are very free to concede that domestic use stands first. That now is disposed of, and the only question is as between manufacturing and agriculture. I claim there is as good argument in favor of the preference being given under the circumstances to agriculture, as there is in giving the preference to domestic purposes when all three are competing. Why? Simply because the loss

that will come from the agriculturalist being deprived of the use of that water is irreparable; there is no substitute for the use of water. With the manufacturer there is a substitute, and it is fast taking the place of water for the usual manufacturing purposes; that is, not to the variety of purposes for which it may be required, but for furnishing power.

Mr. ALLEN. Mr. Chairman, in order to confine this discussion more closely to the two propositions before the convention, I wish to read from Section 3 of the report of the committee on Public and Private Corporations, and to make a comparison; and this in answer principally to the question presented by Mr. Reid of Nez Perce county, and that is the theory upon which we are acting. "The legislature may provide by law for altering, revoking or annulling any charter of incorporation existing and revocable at the time of the adoption of this constitution, in such manner, however, that no injustice shall be done to the incorporators." That answers the question of Mr. Reid in regard to the ditch in his town. The same theory has been adopted in this committee, and now the only other question before the convention is the application of that rule to the use of water for irrigation purposes, and that is left with these restrictions, as stated in Section 3, under the limitations of the legislature. The legislature has power in an emergency, and when the water of any natural stream is not sufficient for the service of all those desiring to use the same—the legislature is granted the power to step in and regulate the questions which may arise under that emergency. I think the section as amended has no objections, and I shall vote to have it sustained as amended.

#### ARTICLE XV, SECTION 3.

Mr. WILSON. I call for the reading of the substitute. I still do not have a clear distinction between it and the original section.

The secretary read the substitute as heretofore set out.

Mr. CLAGGETT. It seems to me if the members of this convention, instead of indulging in criticisms, would sit down and study each one of these sections, they would find the whole thing as plain as a man's nose on his face. There ought not to be any misunderstanding as to the terms, conditions or meaning of any section in this bill. The committee, as it reported Section 3, which is the only one up for consideration, recognized the right of priority as between different locators or appropriators of water for any useful or beneficial purpose, whatever the purpose might have been. But to that they have made two exceptions. The first one was where there was not enough water to go around for all the appropriators, that those who used the water for domestic purposes, should have preference over all others; and those who used it for agricultural purposes should have preference over those using it for manufacturing purposes. In other words, when Section 3 was originally reported by the committee there were two preferred uses, and in times of scarcity one had to yield to the other, or in times when there was no thought of scarcity, because it is not limited, as stated by my friend from Ada, to cases of scarcity. Then upon that proposition coming in, an amendment was made by me, and adopted by the convention, making a third preferred use with regard to organized mining districts; and in those cases a man who had taken up water for mining purposes has the preference over those who have taken it up for agriculture. Now, bear in mind, those preferences are violations of the law of priority. There is no provision in this bill as it was originally, until amended the other day on the motion of the gentleman from Boise, for any compensation whatever. And the more of those preferences you put in there, the more you take away the right of prior appropriation. Now, I think, and I think everybody else thinks, that so far as domestic uses are concerned, they

should have the preference over all usés; but so far as the constitution is concerned I think we should stop there. If any preferences are to be made hereafter, they must be made pursuant to law, by the condemnation of the prior right which is devoted to another use. That is the substance of the whole thing. I am afraid of the practical operation of putting in this constitution, where we cannot change or amend it in any way by the action of the legislature, so many of these preferred uses, where when you come to work them out practically they will do injustice to a great many men. So far as Section 3 is concerned, the amendment reported by the committee is word for word taken from the constitution of the state of Colorado.<sup>1</sup> And the effect of the amendment now offered by Mr. Heyburn is simply to recognize the right of priority, no matter what the use was for, provided that it is a beneficial and useful purpose; except, that in the matter of domestic use it has the preference over all others. And I think that is as far as we ought to go in the constitution. The legislature will not be left powerless on these subjects.

Sections 5 and 6 refer to special cases; that is to say, where water has been taken up and appropriated for use, sale, rental and distribution for agricultural purposes only. It refers to nothing else and brings no other cases in here. Section 1 of the article declares that all water that is made the basis of profit, by sale, rental or distribution shall be deemed a public use and subject to the control of the state, and the right to collect rates is declared a franchise and can only be exercised in the manner provided by law. But this whole article does not affect private ditches or private water rights in any way, shape or form from the existing law as it is today, except it does subject all private uses and everything of that kind, no matter what the purpose may have been, to the preference of domestic use, which I think ought to be done.

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<sup>1</sup>—Const. Colorado, 1876, Art. 16, Sec. 6.

Mr. GRAY. Suppose I dig a ditch, am I compelled to give it for domestic use, when it is done for my own personal purposes only?

Mr. CLAGGETT. Will the gentleman be kind enough to read the law, and stop asking so many questions. This use of water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference.

Mr. GRAY. I will leave it all to the law if you will let me.

Mr. McCONNELL. This discussion has assumed a different shape, as the opposite side has had an addition to its counsels. I am astonished by the argument of my friend Claggett. He used that on the committee, drafted it or copied it from the Colorado constitution, favored it in the committee and has favored it up to this time.

Mr. CLAGGETT. No, I have not.

Mr. McCONNELL. You have not urged any objection before.

Mr. CLAGGETT. I favored the original section, but they have gone on and amended the section, and I want to get rid of that particular section, which gave rise to the amendments.

Mr. McCONNELL. Well, if this amendment is adopted I will then move to amend the title, and make it "an act entitled an act to donate the public domain to ditch companies." That is what it amounts to. If a gentleman who has priority of right in a ditch, which he has if he digs it, no law we propose to pass here will take that right away from him. But if he spreads that water out over these lands, as has been done in many instances in Nez Perce and Ada counties—

Mr. REID. (Interrupting) If the gentleman will pardon me, the first section attacks the ditch companies and makes all their rights subject to public control.

Mr. McCONNELL. I am discussing what the effect will be if this section is adopted.

Mr. REID. The section will go in as a part of the law. The gentleman from Shoshone does away with the

trouble in my mind, and I shall vote for his amendment.

Mr. McCONNELL. Yes, I thought probably he would, too. After water has been diverted as it has in this county to agriculture, having already enough water for their purposes in manufacturing (as there is enough water to run a mill and two or three manufacturing enterprises which are being run by this ditch company) they have given a certain share of the water out to the country below. And you say here under the law you can take this water away from those parties whenever you want to manufacture.

Mr. CLAGGETT. We are discussing that Section 3, which has nothing to do with that proposition you are arguing. That is covered in Section 5.

Mr. McCONNELL. And that is the proposition which says, Priority of right shall have priority in everything except for domestic purposes.

Mr. CLAGGETT. But only as between persons to whom the water is distributed.

Mr. McCONNELL. This section says: (Section 3) "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied." Now, this: "Priority of appropriation shall give the better right as between those using the water." Now, then, does not a man have priority of right who took that water out and used it for manufacturing purposes? Haven't they priority of right over those who come in afterwards and propose to reclaim these lands if the ditch company is going to give them the water?

Mr. GRAY. Yes.

Mr. McCONNELL. Then if we adopt this amendment, haven't those people that we say have the priority a right to say "we want all this water to turn our mills," and the next year they can buy in those lands under cultivation at five cents on the dollar of their cost. I ask this convention to be very careful.

Mr. REID. Take Section 1. On this ditch you have around Boise, and the one we have around Lewiston, we

have all been buying and using the water several years. If the legislature enacts legislation under Section 1, can these ditch companies take away from us the right to use that water after it has been declared a public use and subject to legislation?

Mr. McCONNELL. That seems to be the object of this amendment. I am not an attorney, but I am talking as a citizen.

Mr. REID. I say if you leave Section 1 in there, those people that have been using this ditch can use it for agricultural and domestic purposes forever, if the legislature does its duty. That is my trouble, but that objection is removed. Lewiston and that country will be a desert unless we can control that ditch.

Mr. McCONNELL. And you should control it over manufacturing or any other purpose.

Mr. REID. Certainly; we use it for agricultural products, fruits and everything. And now, if the legislature comes in under Section 1 and enacts proper regulations and rules, we will get our water and also keep our rights.

Mr. McCONNELL. I tell you, gentlemen, under this section which these gentlemen ask to amend—he says it would give priority right and preference; and that ditch in Nez Perce county was dug for milling purposes, not agriculture, and used for milling purposes; and those men (or ladies, I think they are) who own that ditch can take that water and turn it on to the wheels of that mill and shut it off from the land if this becomes a law.

Mr. REID. They cannot do it.

Mr. McCONNELL. Then they will have to go into court and make a fight for it.

Mr. CLAGGETT. Let me call the gentleman's attention to the section that covers the whole thing. He says this ditch at Lewiston was built originally for some other purpose, and now the waters have been devoted to agricultural purposes, and if this amendment is made, so far as the different proprietors are concerned on that



stream, it will authorize the ditch company to take it away from the farmers. Now, let me call your attention to this: (Section 4.) "Whenever any waters have been, or shall be appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental or distribution shall be deemed an exclusive dedication to such use." But here is the question about Section 3. Suppose two men have taken a ditch out of the same stream, who is going to have priority as between those two ditches? I am not talking about renters or persons purchasing the water; that is protected in the other one. Are you going to leave it in that shape, and if I take a ditch out where there had nobody taken out an agricultural ditch, and I expend \$50,000 or \$100,000 to put up a manufacturing plant, and another man for agricultural purposes wants it, can he take my property without any compensation?

Mr. McCONNELL. Yes, this practically says so. I have heard two expressions which come to the same thing, since I have been in this convention (it was from a democrat); one says when a leading republican advocates something, you look out for it; there is a nigger in the fence. And I heard a republican say that about the democratic action. And so I say, as a rule when I find an attorney for a corporation advocating a certain measure, I look out for that.

Mr. CLAGGETT. Does the gentleman mean to say that I am an attorney for—

Mr. McCONNELL. Oh no, oh no.

Mr. REID. Does the gentleman mean to say that I am an attorney?

Mr. McCONNELL. Oh no, no sir.

Mr. MAYHEW. Does the gentleman mean to say that I am an attorney?

Mr. McCONNELL. Oh no, oh no.

(Amid laughter and confusion the discussion was interrupted for several minutes.)

Mr. McCONNELL. I am in favor of having this stand as it is.

Mr. REID. Well, the gentleman has seen fit to reflect on us. If any gentleman happens to be an attorney, the probability is that his opinions are not those for the good of the country. But as an attorney, I say such a reflection is out of order.

Mr. ALLEN. I call for the previous question.

Mr. McCONNELL. I think the gentleman is out of order.

Mr. WILSON. The next time the gentleman from Logan gets up —

The CHAIR. Mr. McConnell has the floor for three minutes yet.

Mr. McCONNELL. If this convention sees fit through these honorable gentlemen, who have a great respect for the voters, to give up these waste lands to ditch companies, let them be responsible to their own constituents when they go home. That is all I have to offer. If this amendment is adopted that is what it practically means.

Mr. HAMPTON. Mr. President—

Mr. McCONNELL. I second the motion for the previous question.

The CHAIR. The gentleman is out of order.

Mr. HAMPTON. I understood the substitute, which was first offered this afternoon, as read this morning, contained the words, "for the same purpose." I understand now from reading the section those words were stricken out. It seems to me those words, if they mean anything, or might be of any use in this section, should be there in order to be consistent with it. I understand the gentleman from Shoshone (MR. CLAGGETT) to say that the legislature would have under this section the power to pass legislation restricting the right to the use of water, as was indicated in the latter part of the section giving agricultural rights the preference. The legislature would have this power. And I want to ask if Mr. Claggett means to say that in case those words were stricken out it would have that meaning; if the legislature would have the power to prefer rights in

times of scarcity, in case the words "for the same purpose" were stricken out?

Mr. CLAGGETT. The bill as it is reported by the committee and stands today only has one section in it that refers in any way whatever to private rights or private uses. If I have a ditch taken out for agricultural purposes and use it on my own farm, and I am the first man to use it, this will protect that private right completely by recognizing the priority, so far as the priority is concerned; but under the provision, which was adopted in Section 14 of the Bill of Rights giving the right of eminent domain to the state to condemn private property for public uses in all matters which are necessary to the complete development of the material resources of the state, the legislature will have power to do it, but only by condemning and paying for the prior rights. And I see in the amendment offered by the gentleman from Boise yesterday, that with the exception of giving the priority to domestic use (and that even must be under limitations provided by law), no prior rights should be condemned and taken away for a preferred right unless the value of the property which is destroyed by it shall be compensated.

Mr. WILSON. I am in favor of the section as it originally read; but I am not in favor of the substitute for one reason only. I realize it is to the interests of this country that manufacturing establishments be built here and that manufacturing go on here; there is no question about that; but I think it is of paramount interest to this country that these arid lands be cultivated. This necessity does not arise except in southern Idaho. There will never be any controversy between those desiring water for mining purposes and those desiring water for agricultural purposes, unless perhaps in some of the placer mines on the Snake river, because where they use water for mining purposes in those mountain streams, it is not necessary to irrigate; the altitude is so great that little agriculture is carried on. But on these sagebrush plains I think the paramount

interest is that they be cultivated. If you want to have manufacturing establishments, other power can be used than water power, although that is cheaper and we ought to have it when we can afford to have it. But if we have to have it at the sacrifice of the right to irrigate the arid lands, then I say we better not have water power. These mountains are covered with timber, which can be floated down the streams and used for the purpose of generating steam power, and at not much greater expense than water power. But God does not sprinkle these plains, and so they are an absolutely barren waste, and without water never can be used. You can get wood down there to generate steam power, but you cannot do anything with the land at all unless you have the water to irrigate it. Therefore I think the preference should be given to agriculture.

Mr. CLAGGETT. Suppose at a point where a stream issues, or just below where the stream issues from the mountains, a man comes in today and digs a ditch and erects a manufacturing plant of any kind, and goes on and uses the water as a power. Now, suppose afterwards that the same water can be used for agriculture by depriving him of the power. Do you propose to take that man's right away from him without paying him for it, under the preferred right of agriculture?

Mr. WILSON. Yes, of necessity.

Mr. CLAGGETT. Yes, that is it.

Mr. WILSON. We exist under peculiar circumstances, and it is necessary that that be done; it requires a heroic remedy.

Mr. SHOUP. Allow me to ask you a question. Does the section allow a man to take this water away from a factory under circumstances like these; suppose I have taken out the water of a stream, and that it requires all of that water for my mill; and suppose there is a little piece of land, may not be more than three or four hundred acres, which the water that runs my mill is sufficient to irrigate, or might be a little more than sufficient, but it takes practically all the water to run

my mill. Now, Mr. Wilson comes in below me after I have had that factory ten years and employ a thousand people, perhaps, and he takes up this piece of land and makes me shut down my factory in order to give him that water, under this bill.

Mr. McCONNELL. No sir.

Mr. HEYBURN. Yes, that is what it would be.

Mr. WILSON. I think I have the floor, Mr. Chairman, I will answer that question. In the first place he does not stick to the facts. If there are only three or four hundred acres there it will only take three or four hundred inches, and that won't furnish power to employ ten men.

Mr. SHOUP. It may take 2,000 inches to run my mill, and if you take away 400 inches I would not have enough left.

Mr. WILSON. I would sacrifice that right. Understand me, gentlemen, we are not taking away any accrued rights now; could not if we would, would not if we could, because it would not be law. We are legislating fundamentally for the future; and I would put that in our fundamental law that he who builds a manufacturing establishment in the future builds it with that law before him, knowing that there may come a time when it is necessary to irrigate these arid lands, and the water may be taken from his establishment. I say the first interests of this arid country are agriculture, not manufacturing. There must be some wrong done somewhere; there must be some industry sacrificed out of the very nature of things. I say that it is essential to the interest and the paramount interests of this country that manufacturing be sacrificed rather than agriculture, because this is not a manufacturing country; we don't have raw materials to manufacture out of, and I doubt if we ever will have. We might manufacture some few things, but this is not a country like Pennsylvania.

Mr. REID. Don't we produce a great deal of wool? Couldn't we manufacture flour?

Mr. WILSON. Yes, but wool manufacturing establishments have no standing here yet.

Mr. REID. Doesn't the north part of the state produce large quantities of flax?

Mr. WILSON. Yes, but north of the Salmon River mountains this question of irrigation does not come up, except perhaps at Lewiston. This is where we have the right to speak; our voices ought to be heard. "Priority of appropriation shall give the better right as between those using the water." Yes, but give the priority of right to those using the water for agricultural purposes as against manufacturing purposes, for the reasons I have said, out of the very necessity of things, for the vital interests of the arid country. And I will tell you another reason why. In Colorado it is generally conceded they have the best laws relating to the question of irrigation of anywhere in the United States. They have made a thorough study of it; I have been over that state a little, and I have been particularly in the portions where they irrigate in and around Greely, and I know to what perfection the country which was naturally an arid country has been redeemed by this system of irrigation, the whole country is redeemed until land is worth \$100 an acre for agricultural purposes alone, and I don't think we can do very much better than follow them.

Mr. ANDERSON. In threshing and rethreshing out this old subject there had been only one point that I have seen brought forward, and that is, that if we stop a sawmill or a woolen mill or any other kind of a mill for the purpose of distributing water for a few days to agriculturalists, we cause them to lose the profits they would make during those days; and according to Mr. Ainslie's amendment they are to be compensated for that by the farmers who get the water. On the contrary, if the farmers are deprived of their water for a week or two weeks, they work for years thereafter at a sacrifice. They have orchards growing that perhaps have trees seven or eight years old; the wheat fields may

be almost ready for the harvest. If they cannot get water on those trees at the critical time, their work is all gone. There is another point that might be mentioned, and that is that the mill owner in a small community might have his eye on the lands occupied by those farmers. By withholding water from them for a short time he would drive them out and make them sacrifice their land at any price he chose to pay for it.

Mr. GRAY. Mightn't the farmers have an eye on the mill?

Mr. SHOUP. The gentleman in discussing this question apparently is trying to make every member of this convention believe that these manufacturers are going to destroy this country entirely. Now, that is not the case at all. The factory can use this water for power, and the water is still left and still goes below to irrigate land just the same; there is no necessity for closing the factory down.

Mr. ANDERSON. But suppose the mill is below the farms?

Mr. SHOUP. If they can get the fall in the river, they can take it out somewhere else. When it is used for agriculture it is lost.

("Question, question.")

Mr. GRAY. I cannot see for my life why one class of people have got to have an advantage over another. If there is no wheat raised here, there will be no flour mills; but there are two flour mills right here run by water, one down the river eight miles. Now, these gentlemen propose, if some rancher down there wants that water he can shut it off. If there is no wheat raised, there will be no mills. When I go and dig a ditch, and I am first in right, that belongs to me, and I don't want any other man to say to me that I shall use it for some other purpose than the purpose which I say is a legitimate purpose and the purpose I want it for. This domestic use I am not opposed to; they can drink as much as they are a mind to, because the people in this country don't drink enough to do any harm. But out-

side of that, I say they have no better right to it than I, if I dig a ditch to run a sawmill or a grist mill or any other manufacturing plant; and I believe they are just as useful to the country as is this agricultural business that may be going on. You may take it in some portions of the country where there is really no agricultural land, and they may want to take that water—for what? As the gentleman from Custer has said, you take 200 inches of my water and then I haven't enough power to run the machinery to which I have appropriated it. If I have dug this ditch and spent my money, or a good deal of it, have I any right, or does it belong to some fellow down the creek there? Now, answer me that, and answer me it directly; does it belong to him or to me? I say that the agricultural interest is not the only interest in this country.

(“ Question, question.”)

Mr. McCONNELL. I demand the ayes and nays on that question.

Mr. HEYBURN. I ask to have the substitute read.

The section was read: “Section 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of appropriation shall give the better right as between those using the water. But when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes, shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose.”

The CHAIR. Is that the substitute offered by you?

Mr. HEYBURN. No sir, Mr. Ainslie's and my amendment was adopted. Mine was in reference to organized mining districts. I did not intend to offer this as a substitute, except in the sense that in an organized mining district, mining purposes should have the first right to the water.

Mr. McCONNELL. This strikes it all out.



Mr. HEYBURN. Very well, take it as a substitute for the section.

“Question, question.”

The CHAIR. All those in favor——

Mr. McCONNELL. I call for the ayes and nays, Mr. President. I called for them some time before. I want to place these gentlemen on record.

The roll was called and the yea and nay vote taken with the following result:

Ayes: Ainslie, Bevan, Crutcher, Glidden, Gray, Heyburn, Lewis, Mayhew, Pierce, Pinkham, Reid, Shoup, Underwood, Vineyard, Whitton, Mr. President—16

Nays: Allen, Anderson, Armstrong, Ballentine, Blake, Campbell, Chaney, Clark, Coston, Hampton, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Maxey, McConnell, Melder, Myer, Moss, Pyeatt, Sinnott, Sweet, Wilson—26.

And the motion to adopt the substitute was lost.

Mr. McCONNELL. I move that we adopt the section.

Mr. GRAY. I move that we strike it out. (Sec-  
onded).

The CHAIR. All those in favor of adopting the section——

Mr. HEYBURN. Mr. Chairman, there is a motion to strike it out.

Mr. McCONNELL. I hope this motion will not prevail. I call for the ayes and nays on it. (Sec-  
onded).

The roll was called and the yea and nay vote was taken with the following result:

Ayes: Glidden, Gray, Heyburn, Mayhew, Pierce, Shoup, Vineyard, Whitton—8.

Nays: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Chaney, Clark, Coston, Crutcher, Hampton, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Pinkham, Pyeatt, Reid, Sinnott, Sweet, Underwood, Wilson, Mr. President—34.

And the motion to strike out the section was lost.

Mr. McCONNELL. I move the adoption of the section as amended. (Sec-  
onded).

SECRETARY reads the complete Section 3 as amended and the same was finally adopted. Vote and carried.

Mr. REID. If that completes that section I move the convention resolve itself into committee of the Whole for the purpose of taking up the Salary bill.

Mr. McCONNELL. Why not finish this now?

Mr. REID. I thought it was. By taking this action we have disposed of that now, and it goes to the committee on Engrossment. I am waiting for the chairman to make the motion.

Mr. McCONNELL. I move that this now go to the committee on Engrossment, and be ordered to report it at two o'clock tomorrow afternoon, and made a special order for that hour. (Seconded).

The chair put the question and it was so ordered.

Mr. REID. I now renew my motion that the convention resolve itself into committee of the Whole for the purpose of taking up the Salary bill. (Carried).

Mr. ANDERSON. I now give notice of motion to change the rule limiting speakers to five minutes.

The CHAIR. Send it to the secretary.

#### COMMITTEE OF THE WHOLE IN SESSION.

#### ARTICLE IV., SECTION 19.

The CHAIR. I believe the amendment offered by Mr. McConnell to strike out "three thousand" and make the salaries of district attorneys two thousand was under consideration at the time the committee rose. The question is now before the house.

Mr. McCONNELL. In offering this amendment I did it in the interest of economy. As we are about to commence housekeeping I thought it would be policy for us to commence and run our little domestic machine as cheaply as possible the first few years of our state government. It is in the province of the legislature, as I understand it, to increase the salaries, if they see fit; but in the interest of economy at first I thought

we had better run our state government as cheaply as possible. And to relieve the minds of some members who may not be as familiar with the legal brain as I am, I believe I am authorized in saying that their traveling expenses are usually provided by corporations and transportation companies, and that very nearly all our prosecuting attorneys and judges have passes. It seems to be a general rule; so I don't think their expenses going from place to place are very much. They are very nearly all men of very economical habits anyway, it does not cost them very much to live, so I do not see why they should have their salaries larger than the governor or anyone else.

Mr. WILSON. I rise to a point of order. I have a motion there, which has been seconded, to strike out "district attorneys" and salary, and my motion will take precedence over this one, and we want to consider that one first.

Mr. REID. The gentleman also has an amendment in the same as the gentleman from Latah, to strike out "three thousand," and insert "two thousand"; and the only motion made was to amend this, and there is no motion to strike out. It was suggested that that matter go over, and pending that suggestion the house adjourned.

Mr. MAYHEW. I would like to ask the gentleman from Latah a question. He seems to think he is qualified to give a dissertation on lawyers. I would like to ask the gentleman what business he is engaged in.

Mr. WILSON. I call for a decision on my motion. My motion is to strike out "district attorney, \$3,000" and someone made a motion to reduce it to \$2,000.

Mr. REID. I insist there was no motion of that kind made, and if the clerk will refer to his notes he will find it was just as I suggested.

Mr. WILSON. My motion was in writing.

Mr. REID. Then I call for the reading of it.

SECRETARY reads: "Mr. Chairman, I move that the words "district attorneys each three thousand dol-

lars per annum," in line 12, Section 1 (19) be stricken out. (Seconded).

Mr. WILSON. The reason why I made that motion is because the gentleman is anticipating the judgment or action of the convention. The Judiciary committee has reported that there will be created the office of district attorney for each judicial district. There is now a bill creating a district attorney for each county. The gentleman seems to anticipate that this convention will do whatever that Judiciary committee said. I have the honor to be a member of that Judiciary committee, and I think we have made a report which the convention will not acquiesce in entirely on this question, perhaps not at all. We divided equally on one question, and I move to strike this out for the reason that we don't know that we shall have such an officer, and when that question comes I will be prepared to present my reasons why we should not have such an office and why no man can discharge the duties of such an office, and why the interests of the state will be sacrificed by creating such an office, and why the state treasury will be depleted by having such an office.

Mr. REID. Before the question is put, it is a new motion subject to discussion. The gentleman has uncovered his purpose, and I think his amendment for \$2,000 was a strike at this office.

Mr. WILSON. I did not make the amendment for \$2,000.

Mr. REID. Well, I understood you to, as well as the other gentleman. Now, his purpose is to anticipate the action of the convention. He says "We presume that the Judiciary committee report will be adopted." I presume no such thing. I am now, as a member of this committee on Salaries, looking after this bill, I with fifteen other gentlemen belonging to the Judiciary committee. I do not know whether you will adopt it or not. Whatever you do, I shall bow to it with a great deal of pleasure; but I want you gentlemen to vote with your eyes open. By striking out "district attor-

ney" he thinks then it will be easier to restore county attorneys. I have here an exact calculation; it will just make a difference to you in this territory of \$27,000 if you restore them. Enough to pay for your entire judiciary system. Now, when you strike it out, strike it out with your eyes open. In other words, the gentleman does not want to leave it; when we come to that on the Judiciary bill we propose to meet him on it. I propose to show you by actual figures that it will just save this territory \$27,000 by having district attorneys and not going to the other system. That is not before you, but he proposes to strike it out here, and then when you come to the Judiciary system he will have an easier chance to restore the county attorney business. You have been voting in the interest of economy, but my friend has sneered repeatedly at what I said in the interest of economy. I want it to be understood that he was for raising the salary of the governor—it may be he is a candidate for governor—he cannot be a candidate for district attorney, and therefore he is not interested in that at all, and so he proposes to make a lot of cheap political capital by assaults on attorneys.

The CHAIR. The gentleman is out of order.

Mr. REID. Did you say my time is out?

The CHAIR. No sir. I thought you took your seat.

Mr. REID. I did not. I have not yielded the floor. I just wanted to know why the chair called me to order.

Mr. WILSON. I rise to a question of privilege——

The CHAIR. Mr. Wilson, the gentleman from Nez Perce has the floor. I called the gentleman from Nez Perce to order because he was not discussing any question before the house, and was fast approaching a personal encounter with the gentleman from Latah.

Mr. REID. The question ——

Mr. WILSON. I rise to a question of privilege.

Mr. REID. I claim to have the floor, and I have not yielded it, and the only thing that can take me off the floor, if I do not yield it, is a motion to adjourn.

The CHAIR. I have stated, Mr. Wilson, that the gentleman from Nez Perce has the floor, but I will recognize you next.

Mr. WILSON. I rise to a point of order. Can I do that?

The CHAIR. The gentleman from Nez Perce——

Mr. WILSON. The gentleman is lacking in the elements of a gentleman, and he has no right to say what constitutes a breach of parliamentary etiquette, and he has got to answer personally to the gentleman from Latah, and there is——

Mr. MAYHEW. I call the gentleman to order.

The CHAIR. The gentleman is out of order.

Mr. WILSON. I have said what I wanted to.

Mr. REID. Yes, other gentlemen can bellow, but I shall always proceed with the proposition; and I am able to take care of myself with the gentleman from Latah or from Ada either. But the gentleman proposes under color of discussing an amendment to make flings at a particular class of men, as he has done today; and I propose to hold him right up to the scratch on that very point. He has gone out of the proprieties on this very occasion to charge men here with voting because they were attorneys. He has come in here and said we made a preference for lawyers—that members of this committee did—because we left their salaries at \$3,000, and when he was refuted on the facts he comes back and sneeringly says that it is in the interest of economy. I don't propose to let gentlemen through irony use arguments based upon misstatement and keep still; but I shall always keep within the proprieties of the occasion. I say it is done for buncombe, and I say it because the manner in which it is done warrants saying it. This bill was prepared carefully, Mr. Chairman, after this committee had sat day after day in the interest of economy, and I say it will cost this territory \$27,000 if this system is abolished. If the convention thinks we can get a good attorney to fill the bill for \$1,500, to go around and do this work, I would accept the amendment

right at once; but the committee did not think so, and I am not authorized to accept it. Others not here, and the other gentlemen on the committee, have as much right to speak on it as I have. His amendment proposes to cut it down to \$2,000, another proposition is to cut it out altogether. Speaking to both propositions, I say it is not wise to abolish the office, because when you go to the old system of county attorneys it will cost the territory \$27,000, while by taking this system you will save that \$27,000 to pay for your judges. And in our judicial system I don't think \$2,000 is enough for an attorney. I think when he pays his expenses, hotel bill and others, incident to traveling the circuit of four or five counties, it will come down to \$2,000 net salary. And as some gentleman remarked to me this morning, I don't think an attorney can do all this and keep his expenses within \$500. We are not particularly stuck on these salaries, to use a slang phrase, and if you think you can get good lawyers for less, get them, and I will join the gentleman in economy, but I will not do it for buncombe. I don't care what the public or the convention thinks about it; the only purpose we have in view is economy, and that is what we ought to have. I did not criticise the gentleman's motives, but when he gets up and makes assertions of that kind, I propose to show that when we abolish this office of district attorney and return to the old system of county attorneys it will cost the state \$27,000 which would be saved by adopting this system.

Mr. HEYBURN. I expect we have got to make a record on this. I wonder that no notice has been given that the ayes and nays would be called. I suppose they will call the ayes and nays, that gentlemen may make records; those records are very useful to ambitious men, but to nobody else; they care nothing about that. We are here to use our best judgments. We are now paying our district attorneys a little over \$9,000 a year in our district out of the public treasury, in the district. I have just run through the state, and if Idaho

county is paying the maximum, we are paying them \$9,500, but I cannot speak for that; the minimum however is \$1,000, and of course they are paid that much. If we can reduce that \$9,000 to \$3,000 we are doing pretty well; and if \$3,000 is an exorbitant salary to pay, it does not reflect any credit on the legislature that fixed the list of salaries, that is all.

The CHAIR. The question now is on the motion to strike out.

Mr. HEYBURN. I understand it, but there is also coupled with that a consideration of the propriety of striking it out because it is excessive. I propose to submit this proposition in answer to the argument that has been made that that is an excessive salary for anybody. It is proposed now to abolish the several district attorneys, one in each of our counties, five of them in our district, and consolidate the office in one man, and you propose to ask one man to do it for less than \$3,000, that which you are paying \$9,000 for now. If \$3,000 is too much to pay, then we are being outrageously robbed at present.

Mr. AINSLIE. I desire to make a motion that the committee rise, report progress on this bill, and ask leave to sit again; for this reason, that the question of salaries on this bill would more properly come up after the action of the committee in convention upon the report of the Judiciary committee.

Mr. REID. We do not object to that, because I notice the judges come next, and the number of judges may depend on the salaries.

Mr. AINSLIE. I think it would be proper to dispose of the Judiciary article first; and I therefore move that the committee rise, report progress, and ask leave to sit again, and afterwards come back into committee of the Whole and take up the report of the committees on Livestock and Labor, and close those two articles this evening. (Seconded).

Vote and carried.



## CONVENTION IN SESSION.

Mr. Claggett in the chair.

Mr. SWEET. Mr. Chairman, your committee of the Whole beg leave to report that they have had under consideration the article providing for salaries of public officers. They ask leave to report progress and sit again.

The CHAIR. If there is no objection, the report will be received and lie on the table. What is your pleasure?

Mr. AINSLIE. I move the convention now resolve itself into committee of the Whole on the report of the committee on Labor and the committee on Livestock. (Carried).

## COMMITTEE OF THE WHOLE IN SESSION.

Mr. Mayhew in the chair.

## ARTICLE XIII.

The CHAIR. If there is no objection the committee of the Whole will take up the article on Labor.

Moved and seconded that the same be adopted.

## SECTION 1.

Mr. ARMSTRONG. Mr. Chairman, I move to strike out the word "four" in line 4 and insert the word "two." (Seconded).

Vote and carried.

Mr. REID. I would suggest to the chairman of the committee, that the committee on salaries overlooked the making of any provision for the pay of this commissioner of labor, and it might be well to consider that.

Mr. CHANEY. Mr. Chairman, I move that we strike out Section 1. (Seconded).

Mr. ARMSTRONG. I would like to have the gentleman state his reason for striking out that section.

Mr. CHANEY. My reasons are that I cannot see that the people will be benefited by this board or bureau.

And for another reason that in all probability it will cost the people of the territory probably five or six thousand dollars, without any provision that I can see that we will be benefited in the least. Those in short are my reasons.

Mr. GRAY. And I cannot see for myself what benefit there is in it. If there is going to be any expense attached to this, I am certainly opposed to it, because I cannot see anything in it. I have looked it over, and looked it over, and I like the word labor, although I do not like to labor, but if it was doing any good I would support it. I cannot see any provision in this section to benefit the territory in any way.

Mr. AINSLIE. Mr. Chairman, I do not see any necessity of striking it out. There is no appropriation of money in here. If we make an appropriation of money in the Salary bill, then there will be time enough to put in an appropriation. Some person may take the office at a very small or nominal salary, and I think these statistics to be gathered by this bureau of labor will be very valuable, and I am opposed to striking it out.

Mr. ARMSTRONG. Mr. Chairman, there have been several states of the Union that have already appointed a commissioner of labor in connection with the United States Bureau of Labor established several years ago. He has made several reports and there can be a great deal of information gathered from the matter. It has been the desire of those whom I have the honor to represent here that there be a commissioner of labor established in this state in the interest of the state and I shall oppose any striking out of the section.

Mr. CLAGGETT. I hope sincerely this section will not be stricken out. Right at this particular time I do not know that there will be any great necessity for this section; but we are assuming that we are going to get into the Union as a state, and upon the strength of our admission, that there is going to follow a very great development of the material resources of this territory. If that is so, we will very soon be confronted with problems of a very difficult nature relating to labor in

its various forms of employment and various exactions that may be imposed upon it, and the various exactions imposed by it upon capital. As a basis to enable the legislature to act wisely with regard to many different forms of legislation, which we will be called to act upon, it is necessary that all the information upon the subject that we can gain as to wages, as to hours of work, as to the manner in which labor is treated, and the manner in which labor treats capital also, shall be gathered together and reported as in this section provided, to the governor. It then becomes a reservoir of useful information upon which draft may be made from time to time as needed. And there is another thing about it, in considering the complicated conditions of modern society,—and how frequently these questions do arise in civilized communities, I think that those who are laborers, what are called laboring men (of course, we are all laboring men in our different ways, but those who are wage earners, as meant by this section) shall have the opportunity of being heard once a year through a commissioner, who will gather from the factories, mines and mills and all the various avocations of labor throughout the state, such information as bears upon their special interest, which is one of very great importance, and we should not cut them off from the opportunity of being heard in that formal and proper manner. It will save the state a great deal of trouble hereafter.

Mr. GRAY. Suppose it is left out, are they cut out then?

Mr. CLAGGETT. The office is cut out.

Mr. GRAY. But they can present their petition at all times, can they not?

Mr. CLAGGETT. The trouble with petitions is this: When they come up nobody knows whether they are the result of careful inquiry or investigation or not. The facts which will be recited in their petitions will be denied and the consequence is we will have no definite or reliable information to act upon; but if you have a commission whose special object it is from time to time

to keep run of all these matters, and when it is authorized to report to the governor, we have a collection of statistics which may prima facie be considered as reliable.

Mr. GRAY. You are deviating a little from your question of economy, cutting the judges and district attorneys down, cutting everything down, for something that some time in the future may be of benefit. I would say let the legislature provide it when the time comes.

Mr. CLAGGETT. I have not voted to cut anything down, and do not propose to cut one single salary down a single dollar that is reported by the committee on Salaries.

Mr. SHOUP. I wish to offer an amendment to this article before the vote is taken on striking the section out. I move to insert after the word "statistics" in line 1, the words "and immigration," and also insert after the word "statistics" in line 2 the word "immigration," and also to insert after the word "labor" in line 3 the words "and immigration." If this motion does not prevail I will offer that amendment. If it does, there is no necessity for it.

Mr. HEYBURN. Mr. Chairman, as member of the committee that reported this article I want to state briefly our reasons for reporting it. I recognize the fact that this may either be a very important bureau or it may be one utterly useless. It will depend in a large measure upon the efficiency of the officer appointed to fill this position. If it is to be a general statistical bureau, relating to labor and capital, and the relations that one bears to the other, it may be made very useful. As has been suggested by the gentleman from Shoshone, it will be a very useful source or a valuable source of information from which to draw statistics and facts and details for our legislature and by which they will be guided in dealing with those subjects. We have not recently had any very serious question between labor and capital in this territory. We may not have in years to

come, and yet we may have at any time. Those difficulties are constantly arising. It provides that this bureau shall be established, and that the commissioner of labor shall be appointed. I would have no objection to the amendment of Mr. Shoup, that it be a bureau of labor and immigration, if I was sure that those two subjects would harmonize. That is to say, that a person competent to fill one of those positions would be competent to fill the other. A gentleman of that peculiar turn of mind that fits him for the immigration bureau, as a rule is not sufficiently familiar or closely enough identified with the labor interests, and the interests of capital (because they are one and the same) to fill both of these positions. We have men especially fitted for an immigration bureau that I think would not be very valuable in this particular line.

Mr. SINNOTT. As a member of a labor organization, I hope the motion to strike Section 1 will not prevail. Labor in itself is noble and holy. By labor is brought forth the fruits of the earth; by labor is brought forth everything which we enjoy, and which contributes to our happiness and prosperity, even to the ditch of the member from Ada, which he so warmly advocates sometimes.

Mr. GRAY. Suppose it is struck out. Does it prevent labor?

Mr. SINNOTT. I know it does not prevent labor. And it does not prevent labor from being heard. But as heart is to the body so is labor to capital. If the heart stops beating, the body dies. If labor stops, the world itself will eventually stop, and suffer death all around. We have here provisions for the benefit of capitalists; there has been no demur, no objection to that. I see even a committee on Livestock, and it will eventually bring in some sections and articles legislating for the benefit of livestock. I don't think there will be much objection there. I am very certain it will receive the approbation of a great many here, and a great many who will vote against anything for the benefit of

the laboring classes will certainly support anything for the benefit of horses and cattle. They think horses and cattle are better in their eyes than a man or a woman who works and labors. A man's horses and cattle represent so many dollars and cents to him, but the white serf slave or the black serf slave is only a person, and when he or she dies he can get another, and the cheaper he gets them the better.

“Question, question.”

The CHAIR. The question now before the convention is striking out Section 1.

Vote and lost.

The CHAIR. The question is now upon the amendment of the gentleman from Custer.

SECRETARY reads: Insert immediately before the word “labor” the word “immigration” where the word “labor” occurs in lines 1, 2 and 3. Shoup. (Seconded).

A viva voce vote was taken and the chair being in doubt, a rising vote was taken, which resulted, ayes 19, nays 12, and the amendment was carried.

The CHAIR. The question is now upon the adoption of the section as amended.

Moved and seconded that the same be adopted.

Vote and carried, and the section was adopted.

## SECTION 2.

Section 2 of the article was read.

Mr. CLAGGETT. I would like to ask the chairman of the committee one question, whether the idea of this section is this: That where men labor for a private individual ten hours a day and receive five dollars a day wages, whether when they are working for the state they are expected to receive five dollars a day for eight hours work.

Mr. ARMSTRONG. The idea was that there should not be more than eight hours work on state or municipal work. It is a section adopted in nearly every constitution in the United States—the later constitutions. This clause has been adopted in many constitutions.

Mr. ANDERSON. I move to strike out the section.  
(Seconded.)

Mr. SINNOTT. I call for the ayes and nays.

The CHAIR. The gentleman is out of order; you cannot call for the ayes and nays in the committee of the Whole.

Mr. CLAGGETT. I asked the chairman of the committee in good faith. I want to know what the meaning of this thing is. I think the question is not answered. If the ordinary employment of men in private employment is ten hours a day, and they receive so much, I want to know whether the intention is that when they work for the state they are to receive the same pay for eight hours' work. If it is so, I am opposed to the section, and shall vote in favor of striking it out, for the reason that I do not believe the state should have any pets of any kind whatever, and that if a man is going to work down here, has to go down here and employ labor for any kind of employment, and can get a man for ten hours a day for three dollars or four dollars or five dollars a day, I believe that when that man works for the state he should give the state just as good and honest a day's work as when he gives it to the individual.

Mr. SHOUP. My understanding in regard to this is that so far as the United States work is concerned, the rule there is the same as it is in this bill, that eight hours shall constitute a day's work. Yet, if the employes desire to work ten hours a day they are allowed to do so, and get extra compensation; but where they only work eight hours, they get compensation at the same rate as if they work ten hours. That I believe is the rule of the government.

Mr. HEYBURN. I would state to the gentleman the intention of this section. It is, that whatever the going wages are for common work, that persons who work for the state or municipal corporations shall receive that wages and work eight actual hours of labor; perform eight actual hours of labor. That is to say, if

they work, it will require them to work nearly nine hours, because if they work eight hours they are not allowed the time when they quit work for their noon lunch or dinner, and that is the intention of this section, that they shall receive the going wage for a day's work, for that many hours work.

Mr. CLAGGETT. Well, will you please answer the question I asked. Suppose that the ordinary number of hours work in the community is ten hours for which the party receives \$3.00. Is this proposition that he shall receive \$3.00 and work eight hours only for the state?

Mr. HEYBURN. That is the proposition as I understand it.

Mr. ARMSTRONG. That is the proposition exactly; that is the idea exactly.

Mr. CLAGGETT. In other words, that the state to the extent of this particular matter is to give a bonus to all work done for it, which the private citizen does not have.

Mr. REID. I would ask the gentleman if that would not depend on the contract; if the state makes the contract wouldn't it depend on the contract between the parties as to what they would pay?

Mr. WILSON. I think this section properly construed means this: that if a man is employed by a city or municipality or municipal corporation to work one day at \$3.00 a day or \$5.00 a day or \$10.00 a day, and nothing more is said about it than that, he shall work eight hours and no more and no less. It does not mean that he shall work eight hours for the usual and ordinary wages at all, there is nothing said about wages; but it simply means that if he contracts for a day's work it is fixed by the fundamental law that a day's work shall be eight hours.

Mr. REID. I would state, Mr. Chairman, that this question was had up in the District of Columbia and afterwards made a national law, as said by the gentleman from Shoshone. Of course, it would not affect



any law that had been passed previous to the adoption of the constitution; this would not be retroactive in its effect. Therefore when the state made a contract it would be governed by the same rules as individuals. That is, it would have to pay whatever it agreed to pay. And as stated by the gentleman of the committee, if no time was set and no number of hours agreed on as to what would constitute a day's work, it would mean eight hours, no matter what the price. But the state would simply bargain with parties with its eyes open, that eight hours was a day's work.

Mr. HEYBURN. Mr. Chairman, I understand that for all classes of labor there is a fixed and general price. For instance, a brick-layer receives so many dollars a day in the community; so with the carpenter or any other mechanic. And if a municipality employs a man by the day at these wages, they are required to work only eight hours. That is as plain as I can make the answer to the gentleman.

("Question, question.")

Mr. HAMPTON. I take it that one object of this section is or should be a sort of entering wedge, as it were, to enforce or bring about the custom of eight hours of labor among laboring people. I believe this is enough for any man to work hard, and if the state will adopt the idea that eight hours is sufficient for a day's labor, it will have the effect of introducing such a custom among other people, and for that reason I am in favor of it.

("Question, question.")

The CHAIR. The question is on the motion to strike out section 2. (Vote and lost.)

The CHAIR. The question is now upon the adoption of the section.

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

### SECTION 3.

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

Mr. REID. I would like to ask a question. Would that word "convict" before labor prohibit town commissioners or county commissioners under judgment of the court from working criminals on public streets, or simply apply to persons confined in the penitentiary?

Mr. HEYBURN. It would apply to any person who had been convicted and was serving a sentence. If they were convicted they would be convicts. It would not apply to persons who were working out fines for misdemeanors against a city government, I think; that is to say, it would not apply against the chain gang.

Mr. REID. Sometimes persons are incarcerated for the costs, and may be released on working them out, paying them in that way. Frequently that is the judgment of the court, and in our city we frequently work them on the streets to work out costs and fines. I would like to have the gentleman put in some word or phrase that would exclude any misunderstanding about that, so that it would apply simply to convicts in the penitentiary.

Mr. CLAGGETT. It is plain that ought to be done, because there is not a country jail now in the country where you can work the chain gang at all. It won't do to say the committee did not intend it; we must judge the effect of it by the language. All convict labor outside the prison grounds is prohibited. Now suppose the state should get in this penitentiary 200 men or even 150 men; and the state should go into the business of building large canals, as it undoubtedly will own some land that may be fit for agricultural purposes. Why should not the state take those convicts, put them in summer camps and let them do its work in the construction of those canals? Why shouldn't they be allowed to do any kind of work for the state outside of the prison walls? The intention of this section was, I presume, to prohibit the idea of having prison labor in the penitentiary brought into immediate competition with ordinary labor in the different employments outside of the prison walls; but the language is so extremely

broad it practically amounts to this, that neither in the county, municipality or state prison itself can we utilize the labor of those convicts in any way, shape or form, and I therefore think the section should not be passed until we can amend it in some way.

Mr. HEYBURN. I hope it will not be opposed. The suggestion made by the gentleman from Shoshone, that the state might employ convicts in the work of building irrigation ditches is exactly what this is intended to strike out. It is intended to prevent the state convicts from coming in competition, in the fields of labor, with ordinary labor. And if that is a wise measure, then this should not be stricken out and should not be opposed. The field of labor is none too broad; it is limited enough, and if you take three or four hundred convicts out of the state prison to employ them on irrigation ditches, you deprive the legitimate field of labor of just that much of its opportunity to earn a livelihood, and it is intended to strike out just such things as that. It is necessary to employ those convicts in some way within the prison walls or within the prison grounds; but it is not intended by the provisions of this article that they shall come in direct competition with other persons who are seeking labor.

Mr. WILSON. I have an amendment, which I think meets the objection raised.

SECRETARY reads: Mr. Chairman, I move to add to Section 3 the following: "except in cases of conviction for misdemeanors." (Seconded.)

Mr. REID. I move this substitute for the section.

SECRETARY reads: "All labor of convicts sentenced to the state prison outside of the prison grounds is prohibited."

Mr. WILSON. I will accept the substitute.

Mr. REID. It simply confines this to convicts in the penitentiary. Men sentenced in police courts or district courts for misdemeanors can be made to work it out and save the county's cost. This confines it simply to convicts, and I am willing not to go as far as

the committee and say I am opposed to the work of convict labor on the streets in competition with honest labor. If the state is going to carry on any industries for convicts, let it be within the prison walls, and cheap labor ought not to be brought out from the penitentiary walls and put in competition with honest labor. This simply confines their labor within the walls.

Mr. GRAY. I have only this to say, Mr. Chairman, I cannot see the real point. It is not that I wish labor should be in conflict with honest labor; but it is a benefit to the prisoner, it is a benefit to the state. You might as well say he should not do any labor inside the prison walls, which would conflict with it; he could not make shoes, could not make harness, or anything of that kind. I cannot see any point in it. I believe in allowing them to labor. It is better for the convict, better for the state, and I believe it is the correct reasoning. You are talking about economy at one end, and at the other end you say you want no economy at all. You don't want to have them earn anything to pay for the expenses of their keeping. I say yes; and it is a great deal better for them, they will come out better men, it keeps their heads in better shape. I had something to do with it, and I know a great deal about it; if you keep them employed you make a great deal better men of them. I can't see why you say they shall not labor outside the prison walls, like this rock-laying —

Mr. REID. Will the gentleman allow me to interrupt him. The language expressly says prison grounds. It comes from a section—

Mr. GRAY. The rock does not come from the prison grounds. The prison has nothing to do with it.

Mr. WILSON. Isn't there a reservation up there?

Mr. GRAY. Yes, but those rock are not taken from there. I know where the limits of the prison grounds are. Those rock were not taken from there.

Mr. WILSON. I thought they were.

Mr. GRAY. No sir, they were not. I know where

the limits of the prison grounds are. But where they are getting them now is outside of that; and that is the labor that brings them.

Mr. COSTON. Mr. Chairman, I shall oppose this section and all the amendments, which propose to prevent the convicts in our state prisons at the present time from being worked outside the prison grounds. I shall not do it because I lack sympathy with outside labor, or because I propose to put those who are on the outside in competition with convict labor. It is for this reason: the present condition of our prison is very crowded. We shall need in the early history of the state, if we are so fortunate as to become a state, greatly enlarged accommodations. We may need greater accommodations than we are able to have or otherwise would have unless we could utilize prison labor, and procure those accommodations cheaply by the use of this convict labor. In order to accomplish this it will be necessary that these prisoners should be worked outside of the prison grounds. I think this is premature, to incorporate any such section as this, with our difficulties as they now are. Consequently with or without the amendments I shall vote against the section.

Mr. REID. Mr. Chairman, with the permission of the gentleman who accepted my substitute (MR. WILSON), I will withdraw the substitute and accept the amendment proposed by the gentleman from Shoshone.

Mr. HEYBURN. I offer an amendment.

SECRETARY reads: Amend Section 3 by adding after the last word "except in cases of persons working out costs and fines imposed in case of misdemeanors." (Seconded.)

Mr. HEYBURN. Now, Mr. Chairman, it seems to me that ought to meet the objection fully, urged by the gentleman that there should be some provisions for persons who are sentenced to work on the chain gang, to work out fines and costs. The amendment that was sent up by Mr. Reid did not include convicts in the

county jail, although under the present condition of affairs in this territory those convicts as a rule are not sentenced to labor; yet the time undoubtedly will come when under state government they will be sentenced to labor, and they should be confined to labor in jails.

Mr. WILSON. I understand by that amendment, if a man is sentenced to jail twenty days, not fined at all, you could not make him work. I like my amendment better than that.

Mr. REID. Suppose the judgment of the court is that he shall be imprisoned twenty days; what right have the county authorities to work him? That is not a part of the punishment. It never is, I conceive, under any judgment, a part of the system that the man shall work. The judgment is he shall be imprisoned until he pays the fine and costs, and then he may work that out, and this covers that. But if the judgment is that he simply be imprisoned, there is no power in the world to make him work.

Mr. WILSON. We have in this city an ordinance which provides for the chain gang, and if a man is sentenced twenty days he may be worked during that time, and still in jail. And it is right; it ought to be so; that is they only way you can get even with these old drunks. I insist on my amendment.

Mr. CLAGGETT. Mr. Chairman, it seems to be conceded on all sides that the prison gang or the chain gang should be preserved. That is to say, that county and municipal convicts should be allowed to work on the public streets. Now, I will ask this question: If that is true with regard to the county or the town, what difference does it make with regard to the state? I can see very well how anybody living in Boise, how any workman here in this particular town, should object and properly object to having these prisoners rented out to different contractors, or hired out to private individuals to do work on their ranches and farms, because that would completely destroy the means of

making a living on the part of people who have that kind of labor for sale, so to speak, in this market; and that ought to be stopped. I lived in a town in Montana where they did that, and inside of eighteen months there wasn't a workman to be found; all the little labor, working of gardens, hoeing of beets, potatoes, etc., was furnished by convict labor from the penitentiary. And that I apprehend is what the chairman of this committee wants to get rid of. But I do say the state should not be confined in this manner, and that whenever the state should go into any public works where great numbers are employed, it ought to have the opportunity of employing this labor supported for the direct benefit of the state and of the people. On Vancouver Island in British Columbia they have 400 or 500 men confined; and I know at least 500 miles (the exact number I do not remember) of magnificent highways that have been built without any expense whatever to that government all over the island; built by the convict labor of the state. I therefore offer as a substitute for the section the following: "All convict labor of convicts confined in the state's prison shall be done within the prison grounds, except where the work is done on public works under the direct control of the state." I want to apply to the state and in the state the same right that every county and municipality insists upon applying to itself. (Seconded.)

The CHAIR. Is this offered as a substitute for the section?

Mr. CLAGGETT. Yes.

The question was put by the chair.

Mr. GRAY. I just want to ask the gentleman a question. Would that prevent our police operations?

Mr. CLAGGETT. Why, certainly not. It says in express terms, "all convict labor of convicts confined in the state's prison," and goes no farther—shall be done inside the prison walls, except on public works under the direct control of the state; they cannot loan

them out to private individuals at all, and they ought not to be contracted out.

The CHAIR. The secretary will read the substitute.

SECRETARY reads: "All convict labor of convicts confined in the state's prison shall be done within the prison grounds, except where the work is done on public works under the direct control of the state."

Mr. HEYBURN. I understand that substitute will be for the amended section. That amendment was by the committee, which I sent up.

The CHAIR. I am under the impression the substitute takes precedence of all.

("Question.")

Vote and carried.

#### SECTION 4.

Section 4 read, and it is moved and seconded that it be adopted. Vote and carried.

#### SECTION 5.

Section 5 read, and it is moved and seconded that it be adopted.

Mr. AINSLIE. I desire to offer an amendment to Section 5 by continuing it as follows: "unless he has declared his intention to become a citizen of the United States."

Mr. SINNOTT. I second that amendment.

Mr. CLAGGETT. And then he ceases to be an alien. He is entitled to the protection of the government wherever he goes, which is what is called a denizen.

Mr. GRAY. But you don't claim, Mr. Claggett, that when he declares his intentions he becomes a citizen?

Mr. CLAGGETT. No sir. But I say he ceases to be an alien. He is in that halfway condition between alienage on the one hand and citizenship on the other.

Mr. GRAY. Whereabouts is he then?



Mr. CLAGGETT. He doesn't belong to either.

Mr. GRAY. Half-way between?

Mr. CLAGGETT. Yes, at a halfway station between. And the history of the United States is that in many cases the government of the United States has ordered out its military or naval forces for the protection of men who have declared their intention, and have gone back to their homes where they came from, and where it was claimed they were subjects of the old country; but our government said, No, they have declared their intention to become citizens of the United States and are entitled to the protection of the laws of the United States. They have ceased to be aliens.

Mr. Gray. They are entitled to certain protections, but not entitled to all. I think the amendment of the gentleman from Boise is correct.

Mr. WILSON. I rise to inquire whether that would not prohibit Chinamen from working out their road tax. I want to know, because we work 400 Chinamen here. I want to know if that prohibits Chinamen working out their road tax on the street.

Mr. HEYBURN. I would state to the gentleman that it means just what it says, that no alien—we will accept the amendment, of persons who have declared their intention to become citizens—shall be employed on any public work; but if it is public work you cannot employ any alien.

Mr. REID. The chairman has accepted the amendment and I move its adoption as amended.

Mr. ANDERSON. I move to strike out the words "or municipal."

Mr. AINSLIE. I have a substitute for Section 5.

SECRETARY reads: Substitute for Section 5: "No person not a citizen, or who has not declared his intention to become such, shall be employed upon, or in connection with, any state or municipal works."

Mr. ANDERSON. If I meet with a second I will move to strike out "or municipal." (Seconded.)

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

Mr. ANDERSON. I will withdraw the amendment.

The question was put by the chair upon the adoption of the substitute. Carried.

Mr. REID. I offer the following sections as additional:

#### SECTION 6.

SECRETARY reads: Section 6. The legislature shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject matter of their labor.

#### SECTION 7.

Section 7. The legislature may provide for courts of arbitration, which shall have jurisdiction to settle and adjudicate the differences between laborers and their employers. (Seconded.)

#### SECTION 6.

Mr. REID. I do not know but what under the general statute the legislature would have power to provide adequate liens, but I have noticed it in some constitutions; it is well enough to put it in and put it in the form of "shall do it;" it makes it compulsory then upon them to do it and provide a proper mechanic's lien. It is a short section, it won't encumber the constitution much, and it is well enough to emphasize it in that way. I will ask to have the secretary read Section 6 again. (The section was read.) I will add "Laborers and material men," which will give men who furnish material as well as mechanics this protection.

Mr. SHOUP. Wouldn't the legislature have power to do that without the constitutional authorization?

Mr. REID. I think so; but there we make it obligatory upon them by saying they shall do it.

Mr. SHOUP. It is already in the territorial law.

Mr. REID. If I was sure that the state would adopt

the territorial statute; but I want to emphasize it in this article. I think possibly they could do it.

The next section is not exactly in the form I would have it. The reason I intended to draw it differently was, after or during the consideration of the report of the judiciary committee, it would embody then the idea that was incorporated in the statute passed by the lower house of congress under what is called the John J. O'Neill act, that provided for courts of arbitration for settlement of differences between laborers when strikes occur. Whether this is adopted or not, I shall present, when the bill comes up for adoption in the house, if it does not come up this evening, when I have time to prepare it in suitable form, a little different section from the one now submitted. That embodies the idea, but the phraseology is not what I wish it. It is this. We have now two large railroads in this territory. Sometimes there are strikes. Now, instead of these long lockouts and troubles, it is provided for a commissioner of labor. The legislature may provide that this commissioner of labor, together with somebody else, shall decide these differences, and let industries move along without let or hindrance. This was introduced by Mr. O'Neill who was their spokesman there and their great friend, and this passed the house; but I believe the senate has never taken it up and acted upon it. It provides for courts of arbitration to which both parties may submit their matters of controversy, and have speedy and amicable adjustment thereof without these long delays and so much trouble and breaches of the peace; it is looking to that end. It does not provide any certain court or any certain powers, but gives the legislature general power, if in its wisdom it sees that that may become necessary hereafter to establish a court of that sort. I submit it to the convention, and if the idea is a good one, and it will vote upon it, we can, if it is not exactly in the proper phraseology draw it properly hereafter. That part of it which could be adopted could be referred to the Judiciary committee,

to draw up the proper section, if the gentlemen of the bar think it covers it. If they don't think so, but favor the idea, we can clothe it in proper language. It does not make it obligatory, but clothes them with that power to provide courts of arbitration to adjudicate and settle these differences.

Mr. GRAY. I will oppose both sections. I believe the proper method is the courts. While I have great respect for the opinion of the gentleman, who has made this suggestion, yet to a lawyer it looks a little peculiar. As far as mechanics' liens go, I am in favor of them to a certain extent; but I am in favor of them just so far as they are in our state today, and no farther. I don't want it so that a man who is having his house or anything else constructed will ever have to pay more than his contract price, and the laborer must look after himself. I am afraid this gives them too much authority. As our statute now is it seems to me it covers everything. It is an innovation, giving a laborer any right to go beyond looking after the man that employs him; but we have gone this far in our state, and say to him, "Just so long as there is anything coming to the principal contractor, just so long you shall have every dollar that is coming to you, but you shall not make those men go beyond that." I dislike this kind of matters being put into a constitution. As I have tried to say before, let our legislature do something. I will say positively as to that seventh section, I will oppose it under all and every circumstance. I don't want but the one side of course; and then it seems there might be power given even to the injury of the working-man, and I want them the same as everybody else.

("Question, question.")

SECRETARY reads Section 6 as proposed.

Moved and seconded the same be adopted. Vote. Division was called for; rising vote, 24 ayes and 6 nays; and the section was adopted.

#### SECTION 7.

SECRETARY reads Section 7 as proposed.

Mr. SWEET. I hope the gentleman will provide us with something that is more comprehensive. While I am in favor of the principle, it seems to me it does not settle anything after all.

Mr. REID. I will not insist upon it now if it is understood it can come up in convention. It is not in the form I would like to have it.

Mr. CLAGGETT. I would like to have the gentleman explain what he means by the word settle. Does he mean that the constitution shall authorize the legislature to create a court of arbitration, which shall have jurisdiction to hear, determine and adjudicate, and then execute all its decrees and judgments between employees and employers?

Mr. REID. No sir.

Mr. CLAGGETT. If you mean to recommend boards of arbitration, who shall hear and recommend and carry the thing out in that form as the boards of arbitration are always understood, that is one proposition; but the way you have it now you have a special court provided for to take charge of the whole question of all controversies and settle them. To settle them means making a final end of them.

Mr. REID. As I stated when I submitted it to the convention; it was not exactly in the form I desired, and subject to legal criticism, which I would like to hear, and then it can be shaped correctly. The word settle is rather a broad term, but the word limiting it might be left out and the word adjudicated. Courts of arbitration; they always carry with them the idea that anybody can go into those courts when they go there willingly. When you speak of arbitration, it is something a man consents to. If you establish a court of arbitration, and a man goes in there and accepts the terms and rules as prescribed by the legislature, then when his rights are adjudicated he is bound by that; that is what I mean, and that is what was meant when it was introduced in the house of representatives and discussed there for several weeks. It was claimed there

that the decrees would not be binding, and finally they altered the bill, shaping it so. The other day when some members of the committee on Labor applied to me for it, I thought it had passed the senate, and referred to the first session of the 49th congress. But I find upon examination that it only passed the house and went to the senate and never has passed there. I intended to go to the library and get it this evening, and tomorrow before we reached the consideration of the judiciary bill I thought we could consider it; but we jumped over that, and took up this, so that I did not have time to look it up. I propose to get the language of that bill, because it was discussed and finally referred to the judiciary committee of the house, and they reported a bill which covers it, and it simply provides that the legislature has authority to provide courts of arbitration and hold them open, and say to either party: "If you will come in when these differences arise, and submit your rights to this court under the rules prescribed by the legislature and all that, then its adjudication shall be binding."

Mr. CLAGGETT. That is, provided the parties voluntarily appear.

Mr. REID. Well, they could not come in any other way. However, if we pass over this matter informally with the right to substitute in convention, I will draw one at leisure. You can adopt this article with the understanding that there is to be a substitute offered, and then you can vote down the substitute.

Mr. GRAY. Couldn't I do that if I make an amendment and submit it to you and Mr. Heyburn?

Mr. REID. Certainly you can, but you could not do it under a court of arbitration, because the Judiciary article prevents it. But that is what they want to do, is to meet that difficulty.

Mr. GRAY. We have a statute now for arbitration.

Mr. REID. That is where persons get in a controversy; but when the state comes in, as it did in one instance, and made the commissioner of labor of the

United States one party, and made the circuit court judges another party, it gave it that dignity and importance and fairness, that the moment those questions arose, before the strike commenced, before the harm was done, parties would submit it and have it adjudicated before any damage arose to anybody. And we want to provide this machinery, call attention to it, so that when these troubles commence, both may go into court, and not select arbitrators outside and leave it to them, as in the case of private individuals.

Mr. HEYBURN. I move the article be adopted as a whole. (Seconded.)

#### SECTION 5.

Mr. SHOUP. I desire to ask the gentleman to withdraw his motion a moment, and ask unanimous consent to have the substitute for Section 5 read again. I think it ought to be amended.

Mr. HEYBURN. I will withdraw my motion for that purpose.

The CHAIR. Section 5 or the substitute therefor has been adopted.

Mr. SHOUP. I have unanimous consent to have it read again.

SECRETARY reads: No person, not a citizen, or who has not declared his intention to become such, shall be employed upon or in connection with any municipal works.

Mr. SHOUP. Now, a person can be a citizen of the state of Idaho, and not be a citizen of the United States. I think it should be as broad as the statute of the United States, and I therefore move to amend by inserting the words "of the United States" after the word "citizen."

Mr. AINSLIE. I don't see how he can be a citizen of the state without being a citizen of the United States. Under the Suffrage and Election article we have defined what a citizen is.

Mr. CLAGGETT. That is for the mere purpose of

voting. The criticism which was made by the gentleman from Custer is well taken. A child just born is as much a citizen of the United States as one who has lived in the country, born in it and lived in it a hundred years, provided it was born in the Union. The fourteenth amendment to the Constitution of the United States provides that; goes on and declares that all persons born within the jurisdiction of the United States, shall be citizens of the United States and of the states in which they live. But there can be such a thing as a citizen of a state who is not a citizen of the United States. A state, if it saw fit, could make Chinamen citizens of the state, but they would not be citizens of the United States.

Mr. SHOUP. I move to amend by consent, by the insertion of the words "of the United States."

Mr. GRAY. I rise to a point of order.

Mr. SHOUP. We are in committee of the Whole.

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

Mr. AINSLIE. I will accept the amendment.

The CHAIR. The amendment is accepted and the clerk can insert the words "of the United States."

Mr. HEYBURN. I now renew my motion to adopt the whole article. (Seconded.)

The CHAIR. Do you understand now that you have adopted Section 7?

Mr. REID. No, that it has just gone over to be acted on in convention.

## ARTICLE XIII. ADOPTED.

The CHAIR. All in favor of adopting the article as a whole say aye; contrary no. (Vote.) It is carried.

Mr. HEYBURN. I move that when the committee rise, it report this article to the convention, and recommend that it be adopted. (Seconded and carried.)



## ARTICLE XVI.—LIVESTOCK.

The CHAIR. The question now before the committee is the report of the committee on Livestock.

## SECTION 1.

SECRETARY reads Section 1, and it is moved and seconded that it be adopted.

Mr. ALLEN. I would like to offer an amendment. Strike out the word "shall" in the fourth line after the word "legislature" and insert the word "may." It might not be necessary, but it is to give the power to the legislature to prescribe that system. It might require an expensive system when it is not necessary. (Seconded. Vote and carried.)

The CHAIR. The question is now upon the adoption of the section as amended.

Moved and seconded the section be adopted.

Vote and carried.

Mr. McCONNELL. I have another section I wish to offer.

SECRETARY reads: "The legislative assembly shall by law prescribe the manner, terms and conditions, upon which domestic animals may be permitted to graze upon the unoccupied public lands of the state, or of the United States within this state, and shall by law so regulate the subject of pasturage upon such lands as to preserve as far as practicable the value of the range, and prevent injury to such lands. But nothing herein shall be so construed as to authorize the passage of any law inconsistent with the laws of the United States relating to the settlement, occupancy, use, or disposition of the public domain."

Mr. McCONNELL. I move the adoption of the article. (Seconded.)

Mr. HEYBURN. Mr. Chairman, I move as a substitute for that motion, that it be referred to the Judiciary committee. (Seconded.)

Mr. CLAGGETT. I rise to a point of order, that in

the committee of the Whole you cannot refer anything to another committee.

Mr. REID. Before the vote is put I would like to know by what authority the state could control the use of the public lands of the United States. It provides in there that we shall regulate the grazing of public lands. It says public lands of the United States within the state.

Mr. McCONNELL. Mr. Chairman, this is a matter that the constituents of my friend from Nez Perce are as much interested in as my constituents, or any who live in what is known as the Pan Handle in this territory. The chairman reminds me that he lives up there too. We are, as might be said, during the latter months of summer, robbed by stock being driven in from Washington territory, especially sheep. There are a great many poor people, who have settled along the base of the Coeur d'Alene mountains, and those who are settling in there today have to settle upon lands that are pretty largely timbered; there may be small pieces of prairie land; they go in there for the purpose of carving out of those woods homes for themselves, and they have perhaps one or two cows, or a pair of cayuse horses, that they expect to pasture outside of their fields during the summer months. But along comes a gentleman from Washington territory, who claims he has paid his taxes down there, and is not entitled to pay any taxes in this territory; he comes in the month of June or July and drives his sheep by the thousands alongside those little farmers, eats out their pasture, every spear of it, so there isn't anything left for a cow or a horse or anything; then drives on to another settlement and eats that up. And the object of this article is to provide some means by which the legislature can protect our own citizens. The legislature so far has been powerless to do it. They passed a law that no band of sheep should be allowed to camp or come within two miles of any man's house,<sup>1</sup> which has been decided by

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<sup>1</sup>—Sec. 1210 Rev. Stat.

all attorneys not to be good law; in fact, they have not attempted to enforce it in our county, and I don't think they have in the county of Nez Perce. I have had this matter prepared by a legal gentleman at Moscow, and it was thought this would reach the matter so that the legislature might enact a law to protect our people. If there can be another article devised to reach the matter better than this, I am willing; but I don't think we should pass it by. I think we should do something to protect the poor settlers, because the man who comes in now to take up a farm along the base of the hills has to take a bare farm, because the best are all occupied.

Mr. REID. The reason I ask the gentleman is this. This constitution has got to go up for the inspection of congress, and we have in this a clause by which we propose to regulate the lands of the United States. We have trouble in our country at this moment; at one time we thought it was going to result in serious trouble. Agents from Washington came and ordered all the cattle off from public lands. We have allowed the Indians' cattle to come over on to the lands, and furnish them a market for those they raise, and the white men naturally think their cattle ought to range on the reservation. But the government agent thought differently and ordered them all off. That is creating trouble there now. If the territory cannot control the public lands, what right would the state have? After those public lands are turned over to the university and the schools and all that sort of thing, it is all right; but the question is, can we, as a state, control the public lands? I would like to have the regulating of it, and if we can do it, I will vote for it; if we cannot, let us not put it in.

Mr. ALLEN. I am somewhat familiar with the question, have heard it discussed at national conventions of stock men and several such conventions. The courts have ruled that the state has no power over the grazing facilities upon public lands. But I think it

would be proper for the committee on Federal Relations perhaps to express in some form that the police power of the state shall be exercised over the government lands, especially in those respects where contagious diseases are found and difficulties arise from stockmen violating the rights of settlers.

Mr. REID. Do I understand you to say that the stockmen in their conventions decided they had no control over the United States lands?

Mr. ALLEN. No, the gentleman misunderstands me. I was present while this matter was discussed, and I say that the courts have ruled that the states have no power over government lands. But I say that I think an expression perhaps might be had which would define the police power of the state upon these public lands. That I think should be done.

Mr. CLAGGETT. I would like to ask the gentleman from Logan what courts have made any such decision?

Mr. ALLEN. I think it is the second judicial district in Wyoming territory.

Mr. CLAGGETT. That might be; we have had a great many territorial judgments for which there is no law. The United States sends out in these territories a lot of gentlemen who don't seem to consider that the territories have any power at all. They come here as a sort of representatives of the United States. Now, so far as this provision is concerned, which has been offered by the gentleman from Latah, I undertake to say there is not the slightest straw in the way of its regulation. "The legislative assembly shall by law prescribe the manner, terms and conditions, upon which domestic animals may be permitted to graze upon the unoccupied public lands of the state, or of the United States, within this state." Now, when we come to get at this, it is a simple proposition, and ought not be passed over hastily. When we get to be a state we will occupy an altogether different position from what we occupy now. Then, as to these public lands within

the limits of the state, so far as they are concerned, the United States becomes a private proprietor. Armed, it is true, by the provisions of the Constitution of the United States with the power to make all needful rules and regulations respecting the territory and other property of the United States. But I will assume that the United States has made no needful rules or regulations; will anyone undertake to say that the state has no power to protect the rights of the United States in its own courts as a private proprietor?

Mr. ALLEN. Police power?

Mr. CLAGGETT. No sir, no police power about it. It cannot in any way take away, it cannot pass any law inconsistent with the laws of the United States; neither can it pass any law that will undertake to control the lands, because that would be inconsistent with the laws of the United States. But here is an immense amount of land lying within the boundaries of the state, which belongs to the United States as a private proprietor, and the United States fails to pass any law with regard to preserving the pasturage. I say the state has not only the duty to do it, but the duty to do it as a citizen of the United States; that is, in the sense of being a private proprietor, to preserve this pasturage being destroyed unnaturally and wastefully in different portions of the territory. As I said before, I cannot see a single bit of trouble with regard to the legality of the action. If there is anything there in conflict with the laws of the United States, as a matter of course this provision excepts it, and you can pass no law upon the subject. Take the case put by my friend from Latah where there are these little holdings of twenty or thirty or forty acres in a gulch. He may not have enough land to make a farm by itself in the gulch, but on the hillsides adjacent there is pasturage. Here comes in a man with a large band of sheep, horses or cattle, and drives them right to the man's door, and eats up the pasturage on the man's own land. I say it is competent for the state to regulate

those matters, and say upon what conditions this grazing upon the public lands shall be had.

Mr. REID. We had a case just in point. Mr. Maxwell, the district attorney, indicted a man for sheep grazing on the public land. It was brought up in court and the indictment dismissed on the ground that it was unconstitutional, in violation of the statutes, and that the territory could have no control whatever over the lands of the United States; and that any law the state made regulating the usage or occupation of the lands of the United States was entirely void and of no validity whatever.

Mr. CLAGGETT. That is the authority in the territory.

Mr. REID. I don't see how the state will be clothed with any more power than the territory. We have police regulations. Any crime committed on the public lands or Indian reservations, so far as the police power of the territory is concerned, it is all right. I am heartily in favor of the proposition, but I am afraid of it from the legal point of view—that we will be criticised for legislating about matters for which we have no right to legislate. If it is a fact that just because the United States has a tract of land here and makes no regulations regarding it, the state has a right to do it, then that is all right. I want them protected. I want them protected in this pasturage; but for the reasons mentioned I doubt if the state has the power. If we can do it we ought to do so, but I have not seen anything in the constitution that will give the state any more power than the territory has.

Mr. CLAGGETT. Let me ask the gentleman a question. If the United States has personal property which is stolen within the boundaries of the state, can the state make that a penal offense, and send it to the jurisdiction of the state court?

Mr. REID. That is the police power.

Mr. CLAGGETT. Not any more than any other power it exercises. Might it not go ahead and provide

that the United States may, if it sees fit, bring an action of replevin to return the property?

Mr. REID. Certainly.

Mr. CLAGGETT. Is that an exercise of police power?

Mr. REID. No.

Mr. CLAGGETT. Then I say when we get to be a state the state becomes the private proprietor of these lands; it ceases to be a local sovereign.

Mr. REID. Does the gentleman claim the same class of laws govern the commission of crimes as the policing and maintaining of the public lands?

Mr. CLAGGETT. Certainly I do. I mean to say there are certain powers, which may be exercised by the United States and by the states concurrently, and they do not conflict necessarily at all; and I mean to say when the United States has ceased to be the local sovereign in said state, when it is here as a landed proprietor those lands are subject to the use of the state, provided it is not in conflict with any of the laws of the United States. Why, haven't we done it? What is your possessory land act? Have we not, and has not every territory in this Union, provided for the taking up of possessory claims upon public lands before ever they have been surveyed, and that possessory right given all the protection of the law before the United States stepped in with the homestead and preemption land filings? And is not all our land throughout this territory upon the public domain unoccupied dependent on your territorial law, and yet according to the argument suggested the territory would have no power in the premises, because these are United States lands until the patents issue for them. Nevertheless, we provide for their protection, and give causes and rights of action in our courts, and parties are constantly coming in with questions about your possessory rights, of every sort, and sue and get judgment for the protection of them—the whole thing is a total nullity as against the United States.

Mr. REID. Yes, that is the point I make; whenever it comes in conflict with the United States on any right or title whatever, it has to be governed by the supreme authority of the United States.

Mr. CLAGGETT. So it does.

Mr. REID. And that is the point I make now. If the United States owns the land, if the title is in it, any law we might make as to who shall graze upon it—we might as well say who shall rent it—the United States may permit us to do it; and if they do, all right. But the point I make is this: Where they own the land or are entitled to its use or occupation, if we go on and say we can prescribe the use of it, say who shall graze on it, and that is in violation of the rights of the United States, if they choose to pass statutes upon it, the state law would fail. That is the point I make.

Mr. CLAGGETT. The gentleman does not understand the position I take about this matter yet.

Mr. REID. I certainly do not.

Mr. CLAGGETT. It is very clear you do not. What I say is this: That in the absence of laws passed by congress with regard to the question of pasturage, it is competent for the state to regulate the question of pasturage. It may not regulate it as against the party who wants to go upon the land for the purpose of getting title, either under homestead or preemption law. But as to those unoccupied lands not covered by any settlement whatever, or where nobody desires to settle, in the absence of United States regulations, all the latter will claim is that position of a landed proprietor, and the state is not only given the right, but it is a duty that belongs to it, to preserve that pasturage from destruction, and it can be done under state regulation.

A MEMBER. Will the laws regulating the land of the United States be changed under the state, or will the same laws hold good as now?

Mr. CLAGGETT. The laws will remain the same. But if the gentleman turns to the rules in the depart-



ment he will see that grazing is permitted upon the unoccupied part of the domain.

A MEMBER. Secretary Teller when he was secretary of the Interior ruled that the public lands were open and free to all alike. That ruling has been sustained by every secretary down to the present; and if that is the case, I cannot see why we cannot legislate here in regard to anything pertaining to grazing on government land.

Mr. REID. We can't do it.

Mr. AINSLIE. I don't think the position taken by the honorable gentleman from Shoshone is tenable, and I refer him to Section 2, Article IV. of the Constitution of the United States. The passage of a law by the legislature in pursuance of the amendment offered by the gentleman from Latah would be granting special privileges to citizens of the State of Idaho different from the privileges and rights enjoyed by citizens of other states. It is preferring the citizens of Idaho as to their rights upon the public domain that belongs to the United States, as against citizens of another state. Section 2, Article IV. provides: First, that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Now, if the citizens of Idaho Territory have no right to graze their stock on the public lands, if they are nothing more than trespassers, they cannot pass a law by their state legislature preventing the citizens of another state from grazing their stock upon them.

Mr. CLAGGETT. But we can subject them to the same conditions and terms as our own people.

Mr. AINSLIE. Then there is no need of adopting this amendment, because they would have the same rights as our own citizens would have. You cannot pass any constitutional article by this body that would discriminate between the rights of citizens of Idaho and Washington, or Oregon. And as I understand the object of this amendment, it is to authorize the legislature to pass some restrictive legislation favoring the citizens of

Idaho, or the actual residents of Idaho, as against those who live across the line in some other territory.

Mr. McCONNELL. No sir.

Mr. AINSLIE. Well, that is the line of argument the gentleman took, and I say it would be in violation of the Constitution of the United States.

Mr. McCONNELL. The same law would protect them from the citizens of their own territory; but at the present time there are no large sheep owners in northern Idaho, and they are only driven in. But this would protect them from large sheep owners in this territory just as well. I don't think a man with a large band of sheep has the right to go through among the weaker and poorer people and eat out their ranges and farms.

Mr. REID. I call attention to one fact——

The CHAIR. (Interrupting) There are a good many gentlemen who have discussed this question over and over, and——

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

#### CONVENTION IN SESSION.

Mr. President in the chair.

Mr. MAYHEW. Mr. President, your committee of the Whole instructs me to make the following report: "Mr. President, your committee of the Whole have had under consideration the reports of the committees on Labor and Livestock, have come to no conclusion thereon, and ask leave to sit again. Mayhew, Chairman."

Mr. ALLEN. I thought the report of the committee on Labor was adopted.

The CHAIR. It was. Mr. Sweet, the chairman of that committee, is not here. There was a section pending in the article on Labor, and for that reason it was reported back to the convention with the recommendation that it be adopted. The section offered by the gen-

tleman from Nez Perce is left open for further consideration and adoption.

Mr. MAYHEW. I made the report as I did because they desire to take up this question again, either in committee of the Whole or in the house.

The CHAIR. The committee of the Whole reports on the report of the committee on Labor, that it has not completed its labors and asks leave to sit again. If there is no objection that report will be received and lie upon the table. What will be done with the other report?

Mr. MAYHEW. I don't understand, Mr. President. The last article, you will remember, we had not completed, and the other was not completed because the gentleman desired to offer additional amendments to it.

Mr. REID. It was understood though we might take it up in convention.

The CHAIR. The motion was made by the gentleman from Shoshone that as far as it had gone the committee recommended its adoption, leaving it still to be considered with reference to the additional section.

Mr. MAYHEW. Then I will amend my report by saying that the committee has had under consideration the article on Labor, and report the bill back, and recommend its adoption in the convention.

SECRETARY reads: Your committee of the Whole have had under consideration the report of the committee on Labor and reports as follows: Sec. 1. Strike out "four" and insert the word "two" therefor; also insert the word "immigration" before the word "labor" where it first occurs and insert the same word before the word "labor" in lines two and three. Adopt Section 2; adopt the substitute for Section 3; adopt Section 4 and substitute for Section 5, and adopt Section 6.

Mr. MAYHEW. The gentleman from Nez Perce desires to offer a substitute in convention.

Mr. REID. I move the report now lie on the table to be taken up at regular order. (Carried).

Mr. McCONNELL. I move the convention take a recess until eight o'clock this evening.

Mr. MAYHEW. I amend that by moving we adjourn until nine o'clock tomorrow morning. (Seconded).

## ARTICLE XV.—IRRIGATION—JOURNAL RECORD

The CHAIR. The chair is informed by the secretary that the report of the committee on Agriculture, Irrigation and Manufacturing was made on Saturday and passed upon by the convention, voted upon, and the yeas and nays recorded, and ordered referred to the committee on Revision and Enrollment, and that all the proceedings had this afternoon were entirely unnecessary. And he desires to be relieved from the necessity of keeping any record of what transpired as to that matter today, inasmuch as no changes were made in the bill. If there is no objection the secretary will omit the proceedings with regard to that article today.

It is moved and seconded that the convention now take a recess until 8 o'clock p. m. To that an amendment is offered by the gentleman from Shoshone that we adjourn until tomorrow morning at 9 o'clock. (Carried). Adjourned until 9 o'clock tomorrow morning.

*July 30, 9:00 o'clock A. M.*

## TWENTY-SECOND DAY.

Convention called to order by the President.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Ballentine, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Standrod, Sweet, Taylor, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Batten, Bean, Beatty, Brigham, Crook, Gray, Hagan, Hammell, Harkness, Hendryx, Howe, Lamoreaux, Lemp, McMahan, Morgan, Poe, Pritchard, Robbins, Salisbury, Steunenberg, Stull, Woods.