

have the word "per capita" instead of "poll" in Section 2, line 6.

The CHAIR. If there is no objection the change will be made.

Mr. HAYS. I now move the adoption of this article.

The CHAIR. The article has been laid over until tomorrow morning.

Mr. BEATTY. I move we adjourn until tomorrow morning at nine o'clock.

Mr. HAYS. I will ask that this go over until tomorrow morning, until we have considered the other sections.

The CHAIR. It is moved and seconded that we adjourn until tomorrow morning at nine o'clock.

Mr. HEYBURN. I move to amend that by taking a recess until 8 o'clock this evening.

Mr. BEATTY. There is a committee to report; there is more work before it than can be done in twenty-four hours' time—the committee on Enrollment and Revision. Unless they get together and do this work we will be detained a week.

The motion to adjourn was voted upon and carried, and the convention adjourned until tomorrow morning at 9 o'clock.

TWENTY-FIFTH DAY.

FRIDAY, *August 2, 1889, 9:00 A. M.*

Convention called to order by the president.

Prayer by Chaplain Smith.

Roll call:

Present: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Blake, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Stull, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President.

Absent: Andrews, Ballentine, Brigham, Crook, Hagan, Hammell, Harkness, Hendryx, McConnell, McMahan, Pefley, Poe, Pritchard, Salisbury, Standrod, Steunenberg, Taylor, Woods.

The journal was read and approved.

Presentation of petitions and memorials. None.

Reports of standing committees.

COMMITTEE REPORTS—SCHEDULE.

Mr. GRAY. The committee on Schedule wishes to report both a majority and minority report.

SECRETARY reads: Boise City, Idaho Territory, August 2, 1889. To the President and Members of the Constitutional Convention: Your committee on Schedule hereby respectfully submits the following majority report; and it is the sense of the committee that the minority report by the committee may be hereafter submitted. Gray, Chairman.

Boise City, Idaho Territory, August 2, 1889. To the President and Members of the Constitutional Convention: Your committee on Schedule directs the submission of the following minority report. Gray, Chairman.

The secretary thereupon read the majority report.

Mr. MAYHEW. I want to say this just now (before the secretary reads the minority report), that while I am a member of that committee and in favor of the majority report, I was just requested by Mr. Sweet, who is preparing or has prepared a minority report, and desires to submit it to this convention, to state to this convention that he had just got a telegram to the effect that his house, where his family is now residing, is consumed by fire, and he would ask if the convention would give him until the coming in of the afternoon session to make his report, and I told him I would do so. He stated this further, that he might desire to make some changes; it is written in pencil and he thought perhaps it could not be read very well, and desired until that time. I merely submit this.

The CHAIR. The report of the majority of the committee will lie upon the table to be printed according to the rules. Is there any objection to withholding the minority report until coming in of the convention

this afternoon? There is no objection, and it is so ordered.

Mr. GRAY. Mr. Sweet made no such request to me.

Mr. MAYHEW. Just a moment after the convention convened I met him in the corridor and he gave me these facts I have stated.

Mr. GRAY. Very well, I have no objection.

The CHAIR. Are there any further reports of standing committees?

Mr. HAMPTON. Mr. President, I desire to state that the minority report was by one individual, and that the majority report was by the others, and I think that statement was not exactly in accord with the facts. It was agreed that the majority report should be submitted; there was no formal vote taken, because the matter was not fully considered. We did not know what the minority report would be.

Mr. REID. So far as that is concerned, the gentleman is mistaken about the formal vote. The chairman put the question and everybody said Yea, and nobody said No, of the eight members present, and thereafter they all agreed to it; and then I included in the motion that Mr. Sweet be allowed to put in his report. If the gentlemen say that is a minority report, it is a mistake, because I know the vote was taken and everybody answered Yea.

Mr. MAYHEW. Yes, and the gentleman was there himself when the vote was taken, and he never said yea or nay; made no dissent at all.

Mr. GRAY. I will say this, that it was included as Mr. Reid has stated; it was included in the motion that we adopt the majority report, and permit the minority report to be brought in; if it was not ready this morning, as soon as it could be ready. Probably the gentlemen from Cassia understood that all went together.

The CHAIR. In order that we may have no trouble about this matter in the future, the rules provide, if my recollection is correct, that these reports shall be signed by the members presenting them to the conven-

tion, and I think it would be better for the gentlemen, who represent the majority here, to take the report from the speaker's table by unanimous consent, and see that it is signed at least by the chairman.

Mr. MAYHEW. And let every member sign it.

The CHAIR. Yes, let every member sign it who concurs in it, and let every one who concurs in the minority report sign that.

Reports of select committees. None.

Final readings.

Mr. BEATTY. Mr. President, I would ask unanimous consent for a suspension of the rules in order to hasten the work of the committee on Revision. The committee, on examining the papers before them, find that there is no article in here such as is provided in nearly all constitutions for the distribution of the powers of the legislative, executive and judiciary; and I have prepared, or rather I have quoted from another constitution, what is the usual provision, and I will read it for information, and then will ask its adoption, if the convention so agree.

ARTICLE II.

“Article —. Distribution of Powers. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.”

I will state that there is not among the papers referred to your committee any provision of that kind; and I think it is proper that there should be, as it is in almost all constitutions, although some of them do not have it, but simply start off with Executive, Legislative and Judicial. I will move the adoption of this article.

Mr. MORGAN. I second the motion.

The CHAIR. The gentleman from Alturas asks unanimous consent to adopt the additional article as sent

to the secretary's desk. Is there any objection to the article? There is no objection; the secretary will read.

SECRETARY reads the article as above set forth.

Moved and seconded that the article be adopted.

Mr. BEATTY. I suppose it is proper that the rules be suspended, if there is no objection.

The CHAIR. If there is no objection, by unanimous consent the rules will be suspended. (Put to vote and carried.)

Mr. BEATTY. I now move that it be considered engrossed, the rules suspended, and that it be placed upon its final reading. (Seconded. Put to vote and carried.)

The secretary thereupon read the article as above set forth.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pierce, Pinkham, Reid, Robbins, Savidge, Sinnott, Shoup, Stull, Underwood, Vineyard, Whitton, Wilson, Mr. President—48.

Nays: None.

The CHAIR. The article is referred to the committee on Revision and Enrollment.

ARTICLE XX.—AMENDMENTS.—SECTIONS 1 AND 2.

Mr. BEATTY. I beg the indulgence of the convention for another matter pertaining to the duties of this same committee. The committee is endeavoring to arrange the constitution in the order in which it should be finally adopted, and among the first provisions in the constitution, comes that of the judicial, legislative and executive. In the report of the committee on judiciary are two sections with reference to the amendments of the constitution. There is no question that amendments of the constitution, in all constitutions, which I have examined, are made a separate article; but they are now included in this report on judiciary. The committee

does not feel it is authorized to transfer those two sections to another article, but desire the authority to transfer them and make them a separate article.

In addition to that, there is no provision anywhere yet adopted in the constitution, by which the legislature can call a convention. The only provision now adopted is merely for the adoption of separate articles to be submitted to the people. And I have here, cut from another constitution, two additional sections, which I desire to submit to the convention, which provide that in addition to submitting separate articles to the people, the legislature may call a general convention to revise the constitution. I do not say that it is absolutely necessary that such a provision should be in the constitution, but it is a common one in all constitutions, and for the information of the body I will read the two additional sections which the committee proposes. Section 3 this would be if you allow the committee to transfer the other two sections to a separate article, and they will constitute Sections 1 and 2, which you have already adopted.

Mr. MAYHEW. In what article?

Mr. BEATTY. In the article on judiciary. Provided you authorize us to transfer them to a new article they would be Sections 1 and 2, and now follow Sections 3 and 4 as follows:

SECTION 3.

“Section 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members not less than that of the most numerous branch of the legislature.

SECTION 4.

“Section 4. Any constitution adopted by such convention shall have no validity until it has been submitted to, and adopted by the people.”

Now, the motion I make first is that your committee be allowed to transfer these two sections, now a part of the report on judiciary, to a separate article; and then I will follow that motion, if adopted, by a motion to adopt these two sections.

Mr. REID. I would like to ask the gentleman first why not make the number of members of the convention equal to the number in both houses?

Mr. BEATTY. I will answer the gentleman, that I am not now asking the adoption of this section. I am simply now proposing the first motion, asking authority to transfer those two sections.

Mr. REID. But to bring the whole matter up, it is usual to put it in a separate article; the only reason the Judiciary committee put it there was that it came under our head, and then we left it to the committee on Revision. I see no objection to the articles, except you say that it shall not be less than the members in the lower house.

Mr. BEATTY. I have no objection to amending this.

The CHAIR. The question is now on the motion of the gentleman from Alturas to give the committee authority to transfer the proposed sections and incorporate the two sections in a separate article.

Mr. MAYHEW. So far as I am individually concerned I agree to the proposition made by Mr. Beatty, chairman of the committee. I think the suggestions he has made are correct. The question is with me, whether you adopt it or not, does the adoption of the suggestion he makes come up in the convention so that it can be made as suggested by my friend Reid? (Vote and carried.)

Mr. BEATTY. Now, Mr. President, I will ask consent to introduce these two sections, and at the suggestion of Mr. Reid, before introducing them I will

make that amendment as suggested, although, I will state this article allows the legislature to name any number they please.

Mr. REID. I would rather fix the minimum. Thirty-six is too small a convention to change a constitution.

Mr. BEATTY. "And such convention shall consist of a number of members not less than that of the most numerous branch of the legislature."

Mr. SHOUP. I will ask the gentleman what constitution it was taken from?

Mr. BEATTY. I got it from the constitution proposed by Washington territory.¹

Mr. SHOUP. In some of the states they have two hundred members in the lower house.

Mr. BEATTY. But that would have no application here, because this one is only thirty-six. Then this amendment as suggested by the gentleman would read this way: "And such convention shall consist of a number of members not less than double the number of the most numerous branch of the legislature."

Mr. MAYHEW. I move an amendment, by saying house of representatives. I merely suggest it to the chairman.

SECRETARY reads: "Section 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at the next session, provide by law for calling the same, and such convention shall consist of a number of members not less than double the number of the most numerous branch of the legislature."

"Section 4. Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people."

¹—Art. 23, Sec. 2, Washington Const. 1889.

The CHAIR. It is moved and seconded that the rules be suspended, and that the two sections just read by the secretary may be considered engrossed and put upon their final reading for incorporation in the article relating to amendments to the constitution. Are you ready for the question? ("Question, question.")

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pinkham, Pyeatt, Reid, Robbins, Savidge, Shoup, Stull, Underwood, Vineyard, Whitton—45.

Nays: None.

Mr. Reid in the chair.

PREAMBLE.

Mr. SHOUP. Mr. President, the committee on Revision would like to have the preamble acted on at this time in order that it may be enrolled. That is the first part of the constitution, and I think there is no reason why it may not be acted upon at one time as well as another.

The CHAIR. The chair will state to the gentleman that it can be done by unanimous consent.

Mr. SHOUP. I ask unanimous consent then that the preamble be taken up and considered.

Mr. BEATTY. Mr. President, I, as chairman of the committee on Revision, requested the chairman of the committee on Bill of Rights to make this motion this morning, and I hope it will be done. Your committee on Revision are making every effort to have the constitution prepared as rapidly as possible, and not delay you by neglect of their work; and this is the first thing that comes in our constitution. We have our clerk at work and would like to prepare it from the beginning so that it may be completed as we proceed.

The CHAIR. Is there any objection? The chair hears none. The clerk may read the preamble.

SECRETARY reads the preamble, and it is moved and seconded that it be adopted.

The roll was called and the yea and nay vote taken.

Mr. PARKER. I vote no on this article because of my objections to Sections 4 and 14.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, Jewell, King, Kinport, Lemp, Lewis, Maxey, Mayhew, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Shoup, Stull, Underwood, Vineyard, Whitton—45.

Nays: Parker—1.

And the article was adopted and referred to the committee on Revision to be incorporated in the constitution.

RESOLUTION.—ADDRESS TO THE PEOPLE.

Mr. AINSLIE. Mr. President, I ask leave to introduce a resolution, and desire to state that the resolution was intended to be introduced by the present member in the chair, but Mr. Claggett being out, I desire to introduce it for Mr. Reid.

SECRETARY reads: Resolved, That a committee of ten, including the president of the convention, be appointed to prepare an address to the people recommending the adoption of the constitution framed by this convention.

Mr. MAYHEW. I move the adoption of the resolution. (Seconded.)

Mr. AINSLIE. I think resolutions have to lay over one day, and I move that the rules be suspended, or ask unanimous consent therefor. (Seconded.)

The CHAIR. Is there any objection? The chair hears none. The question is upon the adoption of the resolution. (Carried.)

MEMORIAL.—IRRIGATION DEVELOPMENT.

Mr. MORGAN. I ask unanimous consent to introduce the following memorial, and ask the secretary to read it.

SECRETARY reads:

Whereas: The government of the United States has taken steps toward redeeming the arid lands of the west; and

Whereas, For the purpose of establishing a thorough system of storage reservoirs, canals, and irrigating ditches, engineering parties are making surveys for this purpose, and

Whereas, It is learned that the plans of the government are threatened to be thwarted by speculators having men to follow up these surveys to make filings on lands, reservoirs and canal locations; and

Whereas, It is learned that one corporation is seeking to seize and control Bear Lake, together with large bodies of land adjoining its shore lines with the intentions of making that lake a great storage basin; and

Whereas, The same corporation is seeking to control the waters of Bear Lake together with all the waters of Bear River with the tributaries thereof, and gulches, for a distance of about 150 miles in Idaho, with a view of monopolizing all these waters to their own uses, one purpose of which is that they may dispose of a very large portion thereof within the territory of Utah, greatly to the injury of Idaho and against the interests of her people.

Therefore, Be It Resolved, That it was not contemplated by the government or territory of Idaho, that any such monopolizing of the lands and waters of Idaho should be permitted.

Resolved, That steps should be taken at once to prevent such seizures of reservoirs and canal locations, and the same be preserved for the people.

Resolved, That Bear Lake should be retained for a public storage reservoir; and the lands immediately adjoining the lake should be withdrawn from market to aid in carrying out such purposes.

Resolved, That the Idaho Constitutional Convention now assembled at the capital of said territory, having the good of the general public and the good of the people of Idaho with the prosperity of the territory at heart, do hereby memorialize the Department of the Interior to take such action at once as will remedy the evils which threaten this fair territory in the manner outlined in this memorial.

Resolved, That this memorial be spread upon the journal of this convention, and a certified, engrossed copy thereof forwarded by the governor to the Secretary of the Interior."

Mr. MAYHEW. I think you had better say "enrolled copy" instead of "engrossed copy."

Mr. MORGAN. I have no objection.

The CHAIR. Is there any objection to referring it to the committee on Memorials?

Mr. AINSLIE. I think it goes to the committee on Federal Relations.

The CHAIR. The gentleman asks unanimous consent to consider it now? The chair hears none. What is your pleasure?

Mr. MORGAN. I move its adoption. (Carried.)

ARTICLE VII.—REVENUE AND FINANCE.—SECTION 5.

The CHAIR. The next regular unfinished business is consideration of the substitute for Section 5 of the report of the committee on Revenue and Finance.

Mr. KING. This is the substitute for Section 5.

The secretary reads the substitute.

Mr. KING. I desire to make an amendment to that section.

Mr. HARRIS. I desire to make an amendment.

SECRETARY reads: I move to amend the substitute for Section 5 by inserting after the word "goods" in the eighth line the words "tools and implements of industry," and strike out the word "two" in the ninth line and insert the word "four." King.

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

SECRETARY reads: I move to strike out the words following the word "solely" in line 13 down to the word "for" in line 14. Harris. (Seconded.)

Mr. KING. The object I have in making this amendment is, it will make it read this way: "household goods, tools and implements of industry, shall be exempt from taxation" to the amount of \$400 instead of \$200. Whatever arguments may be brought up in favor of exempting the goods—and it seems to me there could be worlds of argument brought up in favor of it—will apply also to the tools of a man's trade. The tools of a man's trade, the implements he uses, whether as a laboring man, mechanic, miner, farmer, are an essential to his work; he must have the tools to work with or he cannot live. A man cannot live well without his household goods, and these absolute necessities for a man to live and make

a living with, ought, I think, to be not only exempt from taxation, but ought to be exempt from execution for debt; and I apprehend that when the legislature meets they will make a provision to exempt them from debt. We want to make them now exempt from taxation. When the tax gatherer assesses property, and cannot find anything but a man's tools of his trade, if they are not exempt he seizes upon them. He may not take his household furniture, but he will take his tools with which he works to make a living for himself and his family; he may take from the farmer his plow, his drag, his scythes and mowers and everything of that kind. He must have those things, and if he be so unfortunate as to be unable to pay his taxes, and there is nothing for the collector to take, but to take those things, he will take them unless they are exempt; and I am in favor of exempting them, as well as the necessary household furniture and goods. I think it will strike the sense and justice of all, that those things shall be exempt. It exempts the poorest class of the community, not the wealthy; it is something in favor of the great mass of people who are the foundation of our government. It is to them that we are indebted for all the wealth and improvement of our country, and the necessary means to produce that wealth certainly ought to be exempted from all manner of taxation and from execution for debt.

Mr. HARRIS. I desire to hear it read again. (The amendment was read.) Mr. President, in its present sense it would exempt all the hardware implements of large hardware companies; they are implements and tools of industry. If it said the tools and implements of the artisan, then it would have some meaning as applying to the persons whom the gentleman wishes to relieve, but as it now stands it will just as well apply to those large hardware stores in trade as to those who use the tools, and I will vote against it.

Mr. BEATTY. I ask for a division of that question. The first is exemption of tools and implements, and the second is as to the amount.

Mr. VINEYARD. I offer an amendment.

Mr. PARKER. I have an amendment.

SECRETARY reads: Strike out all after the word "taxation" in line 6, including the word "law" in the seventh line. Vineyard.

Substitute for Section 5.¹ All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such general regulations as shall secure a just valuation for taxation of all property, real and personal, provided, that (farm produce, while in the hands of the producer) and mines and mining claims bearing gold and silver or other precious metals (except the net proceeds and surface improvements thereof) shall be exempt from taxation. Also cemeteries not used or held for profit shall be exempt from taxation. All laws exempting from taxation property other than that herein mentioned shall be void. Parker.

Mr. ARMSTRONG. I have an amendment.

Mr. SHOUP. I think the amendment last read was voted on yesterday.

The CHAIR. It is now offered as a substitute.

SECRETARY reads: Amend Section 5 by inserting after the word "mines" in line 4 the words "not patented." Armstrong.

The CHAIR. The question first is on adopting the amendment offered by the gentleman from Shoshone upon which a division is asked. The clerk will read that part which amends line 8.

SECRETARY reads: I move to amend Section 5, or substitute for Section 5, by inserting after the word "goods" in line 8 the words "tools and implements of industry."

The question was put by the chair. Vote and a division called for. A rising vote resulted: Yeas 21, Naye 18; and that part of the amendment was adopted.

The secretary thereupon read the other part of the amendment offered: strike out the word "two" in the ninth line and insert the word "four."

¹—See Colo. Const. 1876, Art. 10, Sec. 3.

The question was put by the chair, and vote taken. A division was called for and a rising vote resulted: Yeas 10, Nays 25; and that part of the amendment was lost.

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

SECRETARY reads: Strike out the words following the word "solely" in line 13 down to the word "for" in line 14.

Mr. HARRIS. The purpose of that amendment, as will be seen by glancing over the substitute, is to not exempt church property and church buildings of any kind. I do it, not out of any prejudice at all, but that every class of property may be made to pay its equal proportion of state expenses; while it claims protection under the laws of the state, I maintain it should pay for the protection it gets from the laws of the state. In this connection I will read some short extracts from men whose character and standing in this land will not be disputed, for instance, General Grant:

"In connection with this important question I will also call your attention to the importance of correcting an evil that if permitted to continue will lead to great trouble in our land before the close of the nineteenth century. It is the accumulation of vast amounts of untaxed church property. In 1850, I believe, the church property of the United States which paid no tax, municipal or state, amounted to \$83,000,000; in 1860 the amount had doubled; in 1875 it was about \$1,000,000,000. By 1900, without a check, it is safe to say this property will reach a sum exceeding three billion dollars. So vast a sum receiving all the protection and benefits of government without bearing its proportion of the burdens of the same, will not be looked upon acquiescently by those who have to pay the taxes. In a growing country where real estate enhances so rapidly with time as in the United States, there is scarcely a limit to the wealth that may be acquired by corporations, religious or otherwise, if allowed to retain real estate without taxation. The contemplation of so vast a property as here alluded to without taxation, may lead to sequestration without constitutional authority, and through blood. I would suggest the taxation of all property equally."

Grant's message of 1875.¹ And in this same con-

¹—Richardson, "Messages and Papers of the Presidents," Vol. 7, p. 334.

nection President Garfield put himself on record in congress by saying:

“The divorce between church and state ought to be absolute. It ought to be so absolute that no church property anywhere, in any state, or in the nation should be exempt from equal taxation, for if you exempt the property of any church organization, to that extent you impose a tax upon the whole community.”

Mr. GLIDDEN. I have an amendment.

Mr. SHOUP. I have an amendment.

SECRETARY reads: Amend Section 5 by striking out the words “net proceeds and” after the word “the” in line 5.

Insert after the word “that” in line 8 the following: “all farm produce, while in the hands of the producer.”

The CHAIR. The question is now upon the adoption of the amendment offered by Mr. Harris, to strike out all after the word “solely” in line 13 down to the word “for” in line 14. (Put to vote and lost.)

The CHAIR. The question is now upon the adoption of the substitute offered by Mr. Vineyard.

Mr. VINEYARD. I would like to have Mr. Glidden’s amendment considered first.

The CHAIR. The rule requires them to be considered in order except by unanimous consent.

Mr. VINEYARD. I ask unanimous consent.

There being no objection it was so ordered, and the secretary read Mr. Glidden’s amendment, as follows: “Amend Section 5 by striking out the words “net proceeds and” after the word “the” in line 5.

Mr. MORGAN. I think this amendment ought not to be adopted. I am willing, so far as I am concerned, to do every thing in favor of the developing and working of mines in this territory; but to strike out this provision in that section in my opinion would do a great injustice to the people of the state. Let me refer to one instance I know of in this territory. In the county of Custer is a mine that has been worked by people who live in San Francisco and New York who are very wealthy people. It has been worked for six or seven years, and out of that mine, over five and a half million

dollars have been taken. At least three million dollars of that money has been taken out of this territory; the rest of it has been paid to hands who are working the mine. The county of Custer has not a court house today, and is not able to build one, simply because it has not revenue sufficient. The county is poor. This vast amount of money, three and a half million dollars or more, from one single mine has been taken from Custer county.

Mr. MAYHEW. I would like to know who represents that mine in this territory; who represents that mine in Custer county?

Mr. MORGAN. Represents the mine?

Mr. MAYHEW. Yes, you say it is owned by people outside of the territory, in Boston and New York and other places, and has taken out over five million dollars of money.

Mr. MORGAN. I don't think it is necessary for me to answer the gentleman's question; I don't think it is pertinent to what I am saying.

Mr. MAYHEW. Very well; I may have something to say on that proposition after you get through.

Mr. MORGAN. I have no objection to your saying whatever you choose. I was saying that this vast amount of money has been taken out of this territory and almost no taxes have been paid upon it at all. It is true, that now and then a small amount of bullion has been taxed; and yet the people of that county, and the people of other counties where such mines exist—and there are some other counties—are overburdened with taxation; farmers, agriculturalists, and other property owners in the county are paying their money for the support of the government, and that mine and those mines get the same protection as the rest of the people. Now, I believe in fostering the mining industry, in helping it along as much as we can, but to tax the net proceeds of mines injures nobody. If you have a poor mine, which does not pay you anything, you pay no tax. If you have a rich mine, out of which you are taking large amounts of money, I say that the tax should be paid upon the

net proceeds of the mine as a matter of justice to the people of this territory. Nearly all the money produced in those mines, or a large amount of it, is carried out of the territory to build up mansions and rich homes in other places. I am glad to see this money taken out of these mines, and I am glad people are able to build mansions, and that people can become wealthy from these mines; but while they are becoming wealthy I desire that they shall pay some little tribute to the government of the state, and we do not get it in any other way than by taxation.

Mr. MAYHEW. Mr. President, the gentleman misunderstood me in asking the question I did. He seemed to think it was striking him by asking who was the manager and principal agent of that mine. I did not desire to ask him the question, and have it understood that I was asking who the individual person was further than to ascertain whether it was a citizen and resident of this territory, who was managing and controlling that mine. Now, I have this to say in relation to the taxation of mines. In the first instance, you understand, and every member of the convention understands, that no mine and no mineral land can be taxed under the laws of the United States, which is the supreme law of our land, unless those mines have been entered in the land office and a patent secured. That being the law, that any person or persons, associations or corporations, which have the power under the system of entering in the United States, can enter a mine if they desire, and they may omit it if they desire. But so long as they have not procured a patent from the government of the United States that mine is exempt from taxation. That is an admitted proposition. But as soon as the mine may be entered in the land office, and patent procured, then it is susceptible under the present system of taxation to be taxed. Now, I am opposed, Mr. President, to striking out in this article the words "net proceeds of mines."

Mr. SHOUP. I would like to have the gentleman read some of the law he quotes.

Mr. MAYHEW. Why, Mr. President, I did not presume for a single moment that there was a man in this convention who did not know that all mines and mineral lands to which a patent has not been issued were exempt from taxation. Quoting the law to this convention—if you will give me time to send for the laws of the United States, certainly it would be all right—but I presume to say, Mr. President, there is not a member of this convention but what knows that where a mine is not patented or title thereto secured, it is exempt from taxation.

Mr. GLIDDEN. Farm land the same way?

Mr. MAYHEW. Certainly. The gentleman is living on from 160 to 1,000 acres of land, in the county which he represents. Does he pay any taxes on this land? No. Does he pay any taxes on the land where he herds his cattle? No. And the same way it is with the mines. Unless you have a patent for the mine, you pay no taxes. It is right; it is the law of the United States, and we do not assume, as a constitutional convention, to tax this property. The question now before the convention is, that the net proceeds of mines be exempted from taxation. While I am in favor of fostering and protecting the mining interests of this territory as strongly as any member of this convention, yet I am not in favor of exempting the net proceeds and profits made by corporations and miners in this territory.

Mr. AINSLIE. This does not exempt the net proceeds.

Mr. MAYHEW. I understand that, but the amendment does. The amendment of my friend representing the county of Shoshone with myself. Now, I say this: that there is a good deal of plausibility in that proposition, namely, that those men who spend a large amount of money in the development of mines ought to be encouraged. That if a mine does not turn out to be a good mine, that money is lost. But, Mr. President, when that mine is placed upon a paying basis—when there is a dividend paid by those mines—I believe that mine should pay taxes. Let us see for a moment. The per-

sons or the corporations who work the mines in this territory, if the mine or mines yield dividends, should they not pay taxes upon the profit? Every person connected with that mine, even to the laborer and the miner himself, has to pay his taxes; and why not the persons who own the mine when it is upon a paying basis, and there is a dividend, that is, net proceeds—why should not he pay his taxes as well as anyone else? If there is any other view to be taken of this subject, I hope some member who is more conversant with the interests of these mines than I am will enlighten me upon this subject; but I maintain, where the net proceeds are over and above the net working and developing expenses, the owners of the mine should pay their taxes the same as a farmer or mechanic or merchant or anyone else. I am in favor of this law or this article as it now appears.

Mr. SHOUP. Mr. President, I do not like to discuss questions of law against a gentleman of legal ability like the gentleman from Shoshone. I have great respect for his opinions, and I believe he is honest in every word he says; but unpatented land has been taxed in this territory.

Mr. MAYHEW. Unpatented land?

Mr. SHOUP. Yes sir. It has been done and used to be done on farm lands as well. And here was the position taken. It was claimed that the land itself was not taxed, but that the possessory right to the land was rightfully taxed; which is substantially the same thing.

Mr. MAYHEW. Well, I do not pretend to say that the improvement placed upon the land could not be taxed.

Mr. SHOUP. Regardless of the improvement, it was placed at so much an acre, as has been done in this territory. But it was on the theory that the possessory right was assessed, and not the land. Now, as regards this question of exemption of mines, I do not believe in the exemption of any property from taxation. I believe all property that has a valuation should be taxed; I believe that is the true theory of taxation. It is true

that the men who operate mines have done a great deal to develop this territory, there is no question about that; but they have been assisted all right by those who are not directly interested in the mine. It has been claimed that the farmers depend on the miners for a market. This may be true; but the miners are just as much dependent on the farmers for cheap produce as the farmers are dependent on the miners. You must bear in mind that all the time these great mines are being worked, so much wealth of this territory or state, which it will be, is going away from the state. These mining men are not philanthropists; they do not come into this country and work the mines for the good of humanity; they work them for the sake of the profit; they buy everything as cheap as they can. Mr. President, I believe I have worn out at least two hundred feet of lead pencils in figuring on supplies to be furnished to mining companies. How do they do it? They will give the local merchant their list of supplies; they will say, "You bid on this." Then they will send to Chicago or San Francisco or Omaha, and get the wholesalers to bid there; and you have got to come down to those prices if you supply those miners, if you are a merchant. I allude now to the large companies. If you are a farmer, they will make out a list of vegetables they want, and every farmer figures on it, and the one that figures the lowest is the one that gets it for ten years. They figure very closely, and the result is that the supplies that are sold directly to the mines — merchandise, vegetables and everything else, have to be sold at a very close margin. It is not so with the men who work in the mines, the miners themselves; they are willing to allow the merchants a profit on everything they use, clothing, tobacco, etc.

Mr. MAYHEW. Will the gentleman allow me to interrupt him? My attention has been called to a statute of this territory. I do not wish to argue this proposition, but simply inform the gentleman of the fact that property liable to taxation, he will find under Section

1401 of these statutes,¹ and that possessory rights to the public lands are exempt from taxation.

Mr. SHOUP. Very well, that is an argument against the gentleman himself. If they are exempt what would be the necessity of that statute? I say in former years they were assessed, and hence the necessity of introducing that statute. And that is the reason. If they were exempt without it, there would be no necessity for it.

Mr. MAYHEW. Allow me to answer that proposition. The reason that statute is placed in there is to inform the people generally upon that subject, like the gentleman, who are not aware that all this land was exempt by the general law of congress; it seems to be following the law of congress itself, so as to give information to the people of the territory.

Mr. SHOUP. But it does not inform the people and make them believe that those possessory rights were assessed before that statute was there.

Mr. MAYHEW. Well, they did not know it, it seems.

Mr. SHOUP. It is the truth, and it is the history of the territory that those rights were assessed. I only wish to say this, as regards the taxation of mining property. I don't believe mining property should be assessed in excess of other property, but I believe all property should be assessed at its actual value as near as can be ascertained. I believe this to be the true theory of taxation.

Mr. PARKER. Mr. President, this convention has already incorporated a good many anti-democratic papers in this constitution (laughter), and if this report of the committee is adopted, you will have another crime to answer for; I mean this question of exempting a lot of little things from taxation. It says in Section 4 of your Bill of Rights, "the exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity, on account of his religious opin-

¹—Rev. Stat. 1887.

ions." With one hand you give rights to the people and with the other you take them away again. And so with this section, you say, "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," * * * "of all property, real and personal;" and then you take it away and virtually authorize the assessor to assess a man's printing office, and let his next door neighbor go free. Where is the justice in that, Mr. President? Certain irrigating ditches escape taxation, while another ditch is taxed for every cent it is worth. There isn't a man on the floor who can give any logical justification for such a proceeding as that. I recollect in the last presidential campaign the democrats went into the campaign with one of their documents announcing "unnecessary taxation is unjust taxation." We were beaten on it, but it remains a fact nevertheless; and I will say on this floor, that unequal taxation is unjust taxation, and when you tax me and let my neighbor go free you do me an injustice. What we want in this country is equal and exact justice to all, and we want it incorporated into this article on revenue and finance, so there will be no kick coming from anywhere, so we can go home and work for this constitution so that there will be no exemptions whatever. I have no particular objections to churches or societies; I contribute toward two churches, I belong to three secret societies, and I will say right here that these societies and churches are better able to pay taxes on their property than I as an individual man. Now, I submitted a substitute this morning, which leaves out all the objectionable anti-democratic, anti-republican sentiment of this substitute reported by the committee, and if it is in order I would like to have it read again.

The secretary reread Mr. Parker's substitute heretofore set forth.

Mr. VINEYARD. Mr. President, I stated the reason of my being in favor of this amendment. I shall support it. Of all the industries we have in the territory and in these mining states, mining is the most precarious of

all others. It takes more money for its development than all the remaining industries; and it requires that they should be fostered. If you ever expect to develop the mining industries of the state or territory, and put them upon a proper plane whereby they will yield and become wealthy, and be a source of wealth to the state, they must be fostered and encouraged. How much money do you, or does any member of this convention, suppose it takes to develop a mine; all on a blind chance, so to speak? Not so with the agriculturalists; not so with the manufacturing interests. The mining man expends thousands and thousands of dollars before he ever reaches a point where his mine begins to yield him anything. And in order to encourage this industry I say that the proceeds of the mine should be exempt. The improvements to the mine are not exempt. These large mining corporations, the mining men who work large mines, put up large amounts of improvements in the way of machinery, hoisting works, tramways, all the appliances necessary for the proper working of the mines, to the extent of thousands and thousands of dollars; and all this, Mr. President, together with the indirect output of the wealth of these various improvements is taxed by the state, and yet, it is contended that this money, the proceeds of the mine, must be taxed as well. You might as well close them out, these enterprising mining men who are seeking to develop this industry. Why should there be discrimination, as my friend Parker says, in favor of an institution, in favor of church property in this state by exempting it for all time? If it is such a menace in the way of accumulations of property in the aggregate in these church corporations, it has become now, as has been stated by one of the members of this convention, an evil that must in some way or other be made to contribute its just proportion of the taxes of the state. Now, it yields nothing so far as the material wealth of the people and the state are concerned—the church property does not. I suppose that it is exempted upon the theory and the basis of contributing to our spiritual welfare, or something of that kind;

but I insist that the mining industry in this territory, if our ideas shall run to such an extent in favor of churches and church property and other eleemosynary corporations of every kind, should be included and their property exempted from taxation; for upon what theory are these other institutions I have named exempted? Upon the high-sounding, highfalutin theory of morality, and of our spiritual well-being, when our mining industries are languishing all over this territory. And we cannot throw too many safeguards around it if you expect to build up this great industry of agriculture whereby this shall be made a great and glorious state in the future. The indirect sources of taxation that grow out of and issue from these mining enterprises are numerous beyond the question of the net proceeds. Therefore I am in favor of exempting them.

Mr. KING. Mr. President, this question is a very important one and it is a very difficult one to comprehend in all its bearings; but let me make a suggestion. Suppose that I should offer an amendment here that every man should be taxed on the net profits of his business, whatever it might be. How many of you would vote for it? That is just simply the proposition you are making here. You go into any profitable mine there is in this territory or any other territory and you will find an immense amount of capital invested in its machinery. As my friend from Shoshone says, their land is not taxable, but the machinery that is necessary to make that land valuable and yield a net profit is taxable, and the result is in our county the men that own the mining machinery to work and develop those mines, about ten or a dozen of them, pay more than one-half of all the taxes to support that county government. In addition to that, you want to come right in here and say to them, after paying one-half of the taxation of the county, that you will tax them also upon their net proceeds. After paying all these expenses, paying the wages of hundreds and hundreds of men, furnishing employment to the railroads who are taking out one, two or three thousand tons of ore per month; furnish-

ing a home market for all the produce the farmers raise; supporting your merchants; and after they have done all that, and paid taxes upon the valuation put upon their property—as, for instance, I can cite two men or companies in our county, that I partly represent, that pay one-twelfth part of all the taxes of that county, and now you want to go on top of that and tax them on their net proceeds. If you are going to do that, then I shall make a proposition that every bank in this state, after paying taxes upon its capital, shall come in and pay a tax upon its net proceeds. I propose that every farmer, every stockman, after paying taxes upon his property that he has got invested in the industry, shall come in and pay a tax upon his net proceeds. I propose to say to the merchants, that if you pay taxes upon the stock you have got, I want you to pay a tax also upon your net profits. Wouldn't it be equally as just as to make the miner pay it? Why, certainly it would; there is no difference in principle. Then I say it is unjust. If the miner has paid the tax—because no mine I ever knew is a profitable mine until there is a vast amount of machinery that is subject to tax, mind you, put up—after he has paid the tax upon those improvements, you then ask him to pay a still further tax upon his net proceeds. Why, it seems preposterous; it seems to me absurd that men cannot reasonably consider this proposition of taxing a man twice. I hope that amendment will prevail.

Mr. MAYHEW. Mr. President, it strikes me that some of the members misconceive this thing altogether, and are making rather strange arguments. One gentleman from Alturas calls our attention to the exemption of church property and religious institutions, houses of worship. So far as I am individually concerned, I am in favor of taxing that class of institutions. While I have no interest particularly in any of the churches, although I desire to be understood as having been brought up a Christian, yet I do not belong to any church, and I think any Christian institution should pay its taxes on its church property, as well as anyone

else. So far as I am individually concerned about these Christian institutions, I may be considered something of a heathen on that proposition. I am willing to take my chances in the future world without any of the teachings of these churches. I hear one gentleman say "that is good." Well, I think it is good, and I am willing to stand by it. But I don't care anything about that. Now, gentlemen of the convention, I say, that striking out this section, "net proceeds," has this result: I presume that the legislature will provide that the property and the improvements and the machinery that may be brought into this territory for the purpose of developing a mine, and the erection of it, and putting it into operation, will be considered the gross valuation of that mine. I am opposed to taxing the improvements of a mining claim, the vast amount of machinery, which they have brought into this territory for the purpose of developing that mine; I am not in favor of having that property taxed at all until the mine itself gets beyond the expense of working the mine. I am in favor of exempting that machinery for the development of that mine until the mine gets into that condition whereby it produces a net profit. Whenever that net profit does arise, excluding the machinery that is brought into the territory from taxation, then the property of the mine should be taxed. Their owners are the wealthy people of this country; they are the great corporations. The great monied magnates of this country; they are the great railroad magnates and the miners. Will gentlemen pretend to say to me that the great mine owners of this territory, and of the United States are not the monied people of the country; worth always from one million dollars to one hundred and thirty million dollars, and how have they become wealthy? Because they have been excluded from the taxpayers of the country in a great measure. I maintain this, Mr. President, that I am in favor of equal taxation, notwithstanding that I am in favor of fostering every mining interest of the territory; and I believe this, that if a man has purchased a mine at high figures from miners, say for

\$100,000, and has brought into this territory a hundred thousand dollars' worth of machinery, that machinery should be exempt from taxation until that mine produces a dividend. That is my idea of it. But, if you put in this constitution a provision by which these mines are to be exempt eternally or for a number of years, then I think we are doing wrong. I am willing to exempt mines and their improvements until they do arrive at that point at which they pay a dividend. If we can arrive at that fact, then I say, Mr. President, we should tax them the same as anybody else. But I say that the people who own large and extensive mines in this territory are the wealthiest people there are in it, and I do not believe, notwithstanding I am representing a portion of the country devoted exclusively to mining, that they should be especially favored; but let us all be placed on an equal footing as to exemptions, and as to paying of taxes upon our property. I do not want gentlemen of the convention to understand that I am in favor of an amendment to the effect that if machinery is put into operation and the mine is immediately profitable, that it should then be taxed, because I do not believe that we can claim that as net profits. I believe every foot, every inch and every pound of machinery placed upon a mine should be paid for out of the proceeds of that mine before it should be taxed upon the net proceeds. That is my view of it. I believe in fostering and caring for these mines; but when they do arrive at that point I am in favor of their paying a tax the same as any other industry in the territory.

Mr. BATTEN. I did not intend to have anything to say upon this matter, but it does seem to me that it is a matter of vital concern to us all for various reasons, and therefore I desire to take up the time of the convention a moment or two. In discussing a matter of so much importance as this, we ought to get right down to the general principles. What is the general principle that underlies the whole matter of taxation? It is simply this, that all taxes should be uniform, equal and equitable. And each one of these words has a significant

meaning. The amendment, which is sought to be introduced to this Section 5, or this substitute for Section 5, I think to some extent violates that general principle. I am very well aware that sometimes general principles must yield to special cases; that sometimes special cases call for special treatment, and I think in some respects we have a special case in respect to these mines, and we are dealing with them in an unfair spirit. The burden of the argument in favor of this amendment is this: that mining is a precarious industry at best, and needs to be fostered. I will admit that, and this measure or substitute does foster this precarious industry. It simply goes to this extent; it says that so long as the industry is an uncertain one, has not yielded any profit or revenue, it shall be fostered, but the moment it becomes a productive industry—and you all know when it does become a productive industry it becomes very productive—that when once a mine begins to yield handsomely it soon enriches its owners immensely—the moment it ceases to be a precarious industry and becomes largely productive, then it should share its proportion of the burdens; and I think this measure proposes that. It simply amounts to this, that all along during the struggling period of the mine that shall be fostered, there shall be no tax levied; but the moment the mine passes out of that condition of struggle into one of absolute profit, then it should stand on a footing with all other property, and stand its reasonable proportion of the burdens of government. I think that is as far as this measure goes, and I think we can support it. For my part, I believe all the proviso in this measure ought to be stricken out.

Mr. SHOUP. Let me ask you a question. How do you know it will take ten years for a mine to get in that condition?

Mr. BATTEN. I was going to say, I am not in favor of so much of the proviso, although not particularly opposed to it. I believe all after the word "personal" in line 4 could well be stricken out. Up to that part we deal with the subject as it should be dealt with in

constitutions; simply as a matter of general principle. All after that is going into details, which I think properly falls to the legislature. I have just as a matter of curiosity glanced over what to me is a very excellent authority, Cooley on Constitutional Limitations, and he lays it down that the subject of taxation, dealing with it in the main and in detail, devolves upon the legislature,¹ and should remain with the legislature, so that I think when Section 5 simply says this: "All taxes shall be uniform,"—I would like to see the word "equal" there, "shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal;" and let it stop there; leave all those future matters of detail about mines and household effects to the legislature to deal with. I think that would be the proper thing to do. I think we are getting a very cumbersome and verbose document here at best, and I think that is as far as we need go. However, I shall not offer any proposition; just strike that out. I am content with it to some extent, not altogether content, but partially content with it as it is, although I think it would be wise to strike out that proviso.

Mr. BEATTY. If you strike that all out I would like to know under what provision you can exempt any property whatever. It says "all property shall be taxed." Now, what could you exempt?

Mr. BATTEN. Yes, there would have to be some provision; all property except what the legislature deems it expedient to exempt. Now, I see a very fruitful source of trouble in this matter. I know the grangers will complain here—I of course stand in that neutral position of being neither granger nor miner. I have dabbled in mines to my sorrow, and am able to deal with it as impartially as I know how, and I am trying to deal with it in that spirit; but I see a fruitful source of

¹—Cooley, Const. Lim., (7th Ed.) p. 698-708.

trouble and contention. If we adopt it as it is the people will say: You have discriminated in favor of one class of people as against another. The grangers will be in arms against it and say: We will never support a measure of that sort. And I think for that reason, as a mere matter of policy (although we should not always act upon policy)—I believe policy and principle alike should urge us and induce us to strike out this matter of detail and take the fore part of the section, the part I read, with some little amendment—"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; provided, that such exemptions as the legislature sees fit to provide for," something like that.

Mr. GRAY. I have an amendment.

SECRETARY reads: I move to strike out all of Section 5 from and after the word "personal" in line 4.

Mr. GRAY. I do it on the grounds suggested by the gentleman who just had the floor.

Mr. AINSLIE. Mr. President, do I understand the question is to strike out the whole of the section after the word "personal" in line 4? That is similar to the proposition of the gentleman from Alturas who just took his seat. If that is done, sir, there is no restriction upon the legislature as to the amount of property they can exempt from taxation. If you adopt the first four lines of that substitute for Section 5, the legislature has the exclusive power then to say what property shall be exempt from taxation; and what property shall bear the burdens of taxation.

Now, I have not read all of the constitutions lately of all the states in the Union, but I have been reading some of them, and I paid particular attention to the constitution of Colorado on account of the territory of Idaho being similarly situated. In fact, it approaches nearer the condition of affairs in Colorado than any other territory in the Union. The principal industry in Colorado

—in fact, it was first spoken of as Pike's peak was always spoken of, was gold mines. Afterwards they struck silver mines. Agriculture in Colorado today is secondary to the mining interests; and will be for all time, probably, or until those mines are exhausted, and we don't know when they will be exhausted, it may be hundreds of years yet. Idaho now is similarly situated to Colorado, as the mining industry in Idaho is the paramount interest. Now, I think we favor the mining companies sufficiently, or those persons who bring their capital here and invest in mines, by exempting from taxation the mine realty, as we might call it, at first.

In the first place, we cannot assess and tax property or real estate when the title is in the government of the United States. There is nothing to prevent those parties who own those gold mining or silver mining claims, either placer or ledges, from procuring their patents from the government. A mine under the substitute for Section 5, where the owner has only a possessory right—and ninety-nine hundredths of the gold and silver ledges are now held by persons operating them who have not taken the trouble to get patents from the government of the United States, and a great deal of our farm lands are held in the same way, patents not yet taken out—are exempt from taxation; but, as the gentleman from Custer remarks, it has been the habit of the assessors to tax the possessory rights. I don't know any law to prevent taxing possessory rights; it is like taxing a franchise; I don't think it would be contrary to any law of the United States to tax the possessory right of a person to a mine or to agricultural land. You tax his possessory right to occupy and use it as against any person except the government of the United States. Now, sir, if every quartz mining claim or placer mining claim in this territory was patented at the date of the taking effect of this constitution, parties who have probably paid hundreds of thousands of dollars—and some claims probably have been sold for as high as a million dollars—the property for which they paid that money is exempt from taxation under this provision for ten years. I

think that is a sufficient protection. A great many people believe in the protective tariff, but I do not agree with them on that theory. Exempting them from taxation on the amount which the corporation or individual invests in the mineral lands of the territory, under this provision, it is sufficient to exempt them from taxation for ten years, just exactly the same as it was in Colorado. At the expiration of ten years they may be taxed in such manner as may be provided by the legislature.

Now, my venerable friend from Kootenai considers this would be double taxation, if you do not exempt the proceeds. I think he is mistaken in that proposition. We do not tax the capital at all; like you tax the principal of a bank or bank shares; we don't tax the capital of the companies or the individuals who own these mining properties, but we do say, "Gentlemen, for having afforded you that protection by exempting you from taxation upon your capital stock, you shall pay taxes upon the net proceeds." And that is a very fair and liberal way of deriving any revenue whatever from the immense amount of capital invested in mineral lands. While we exempt the capital stock of your banking institution, Mr. King,—if we exempt your capital stock from taxation, we have a right then to tax your net profits. That is exactly where we are placing your mining companies today under this substitute. We say "Gentlemen, bring your capital into the new state of Idaho; bring in your millions and invest in government lands, either placer mines or quartz ledges; we will exempt the amount you have placed in there by saying that the property you have purchased or patented from the government shall be exempt from taxation for ten years; but if your enterprise proves profitable you should pay upon the net proceeds the same as the livestock man pays upon the increase of his herds." You assess a man today upon five hundred head of cattle; the next year, if his herd increases, he is taxed upon the increase. Why should not the miner or the corporation who has invested in your mines, when his whole capital stock is exempt from taxation (while the livestock man's capital is not exempted from taxation)—why should not the miner

pay upon the net proceeds when he realizes it? This is for the purpose of encouraging the mining interests of this territory; to exempt the capital of companies, which is the principal they invest in *the land itself*. But if we go to amending this to extend that protection to every other industry, you will have your farmers, as my friend from Idaho wants to exempt crops of grain grown by the farmer while in the hands of the producer. Upon the same ground the lawyer might say "I have invested my brains in trying lawsuits and bought some law books; I want you to exempt my library from taxation." And you will find every man engaged in any pursuit in your territory will come to you and say he is entitled to equal protection by the law, and that his net proceeds would be exempt from taxation. We cannot carry it that far. It is admitted on all hands that mining is one of the most important industries of the United States, and where men are willing to come into your state and bring capital from the east to invest in your mines and develop them, where nine out of ten prove a failure, it may be well to encourage them, to say that the amount invested in the mining claim is exempt from taxation; but let them pay upon the net proceeds, the same as any other person. I think the substitute is carefully drawn, and if it is all knocked out after line 4, it leaves it altogether in the hands of the legislature and there will be no constitutional restrictions upon them whatever.

Mr. MAXEY. I have an amendment.

SECRETARY reads: I move to strike out all of Section 5 after the word "personal" in line 4. Gray.

Strike out all after the word "personal" in line 4 to the word "law" in line 7. Maxey.

The CHAIR. The question recurs upon the amendment offered by Mr. Glidden. The secretary will read it.

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

Mr. CLAGGETT. Mr. President, I want to call the

attention of the convention, and particularly of my friend from Boise, Mr. Ainslie, to the peculiarities of this proviso. I have been studying it very carefully, and I find, when you come to read it critically, this to be the case: That it provides that from the date of the adoption of the constitution the net proceeds of mining shall be taxed, and that after the expiration of ten years the net proceeds shall be taxed, and the legislature may in addition thereto, tax the mine itself. That is just exactly the way it stands today. "That mines and mining claims bearing gold and silver or other precious metals, (except the net proceeds and surface improvements thereof) shall be exempt from taxation," as provided by law. That is to say, that at the expiration of ten years you may tax the mine, but in the meantime, at no time, either during the ten years or thereafter, are the net proceeds or proceeds of any sort exempt, either gross or net. Now, I do not suppose it was the intention of whoever drew this substitute to provide anything of that kind. I apprehend it was not intended there should be any trap set with regard to the phraseology but that is really the amendment.

Mr. AINSLIE. I think it is drawn from the Colorado constitution.¹

Mr. CLAGGETT. Yes, I know it is, and in reading that constitution itself I noticed the ambiguity, which arose from the language there employed.

Mr. MAYHEW. But that is not the construction placed upon it.

Mr. CLAGGETT. One court may place one construction upon it, and another court may construe it another way.

Mr. MAYHEW. I will ask the gentleman if he has not put a construction upon it.

Mr. CLAGGETT. Yes, I want this thing free from ambiguity, so that under no circumstances can the need of its construction arise. Leave it so plain upon its face that anybody can understand it. So far as the dis-

¹—Art. 10, Sec. 3.

cussion has developed, it goes to this extent. The gentleman's idea is that the improvements, in consequence of the uncertainty of the proposition should be exempt, but that the net profit should be taxed. I think that will be the general sense of the convention when the discussion is through. Now, if a mine should be exempt at all, while you tax the net proceeds, then why should the limit upon the exemption be put at any period of time? If the taxation of net proceeds is a proper method of taxation, and all the tax that ought to be imposed upon the mine, then if you propose to tax the net proceeds for all time, why not exempt the mining claim for all time, or until an amendment to the constitution? But instead of that we have exemption of the mine for ten years, and taxation of the proceeds forever. That is the plain language of this business. Now, Mr. Chairman, I want to say just one word with reference to this general proposition of the taxation of mining property. I am not in sympathy with the idea of making any pets of any one class of people or any industry or any enterprise. I say that taxes should be levied upon equitable principles, and that when we come to inquire as to what is equitable we must take into consideration the facts and circumstances, the nature and character of the property, and the business which is being taxed. And if in the nature of things there is a substantial difference between two different kinds of property, to levy a tax uniformly according to the then existing market value, independent entirely and without taking into consideration this radical difference, would be inequitable and unjust; although uniformity in terms it would not be uniformity in fact, and would be grossly inequitable and unjust. I believe the tax laws of every state should be, as far as possible, directed to make every man who casts a ballot pay some tax of some kind, in some shape, and at some period of the fiscal year. It is only by making a man pay a tax that you make a good citizen of him, and I have seen more than one man compelled to take an interest in the public affairs of his county simply because the laws were fixed in such a way that he had to pay

a tax upon his head. Just as soon as he contributes to the treasury he has an interest in the disbursements of the funds of the treasury, and you will get from him a more careful and conservative consideration of all public questions. For that reason I am opposed to exemptions, except where the circumstances are such that to refuse any exemption would be grossly unjust and inequitable, or calculated in any way, shape or form to prevent the development of the resources of the country. Now, so far as the question of the taxing of the proceeds of mines is concerned, I may as well state here that I drew and secured the passage of the first law that was ever passed on the Pacific coast for the taxation of mining property, and the first law that was ever passed was one which related to the gross proceeds. It was found that they could not be worked in such a way, but what it would be grossly inequitable, and it was repealed; and since then the general sense of the communities of the Pacific coast has been in favor of exempting the mine itself from taxation, but on the other hand, taking the net proceeds equitably arrived at. If those net proceeds can be equitably arrived at, I am distinctly and emphatically in favor of taxing them. Now, what constitutes the net proceeds? Here is a company or an individual that starts in with a mine—and Mr. Chairman, if my five minutes run out, I will not speak but once, and I request the indulgence of the convention—an individual or a mining company becomes possessed of mining property. They go on and work for years. If they have an unlimited amount of capital, it will nevertheless take about four years on an average to get that mine opened and developed when the money is in the treasury, and they are pushing forward the work of development to the utmost extent it can be carried on. Where, in addition to that, the mining prospect is owned by a poor man or a number of poor men, they will have to suspend operations and go out and work for a grub stake, and get money enough to come back and work on the mine, and keep that going five, ten, fifteen or twenty years, as has been frequently

done on the Pacific coast before they get the mine opened at all. Now, instead of making a failure, which is probably the case in ninety-nine cases out of a hundred—I think I am safely within the estimate when I say that only two out of a hundred are equipped in that way——

Mr. MAYHEW. I think perhaps that is an over-estimate.

Mr. CLAGGETT. Yes, I doubt very much whether there is one in a hundred. They may reach a point where they can go to work, and you can go into any mining camp where there are fifteen hundred to two thousand locations made within the district, and after five or ten years' time and work you will find that the actual paying, producing mines of any mining district will never exceed more than three or four or five. That is the actual cold-blooded fact; so that whenever a company or individual finally reaches the point of taking money out, then what is it or he compelled to do? I am supposing now that his mine is all completely developed. He has got to pay out all the necessary expenses of running the mine, of running his mill or reduction works, if he has one, or transportation or shipment of his ores if he has none. In addition to that, he has got to put up permanent improvements, which are taxed, and in addition to all that, if he is a mine owner at all, who understands anything about his business, he sets aside from his net profits, as long as they are coming in over and above operating expenses, a certain percentage thereof for the accumulation of a surplus fund, which remains undivided as between the owners of the claim. What is this surplus fund for? Sometimes for the purpose of erecting further machinery and improvements, which when built are covered by your tax laws; generally, however, it is accumulated and held unutilized entirely by the owners of the mine for the purpose of covering the thousand and one contingencies and uncertainties connected with mining operations. For instance, you have your ore chutes upon which you are at work. Your ore chutes, notwithstanding your tunnels may, in mining parlance, show so

many thousand tons of ore in sight, nevertheless perhaps ten feet further you may find your chute comes to an end, your vein pinches out, and the most expert operator is entirely at sea. Or take the case of striking water in large quantities, which may call for the erection of large and expensive pumping works. In order to cover the cost of running out of ore, and avoid levying assessments, which will destroy the value of the stock upon the market and bring the whole mining operation to a summary end, all mining companies accumulate a surplus and hold it there to meet these uncertainties and contingencies. Can you call it a net profit? Nevertheless, it is net proceeds so far as the operating expenses of the mine are concerned; but nothing ever becomes net profit to a miner until the money is divided up, which practically comes down to a question of dividends. And when it comes down to that I am in favor of taxing them, and taxing every dollar of it. To cover these points made in this brief argument I will offer the following amendment by striking out in the substitute all after the word "provided" down to the eighth line and inserting in lieu thereof the following:

"Provided, That mines and mining claims bearing gold and silver or other precious metals, and the gross proceeds thereof shall be exempt from taxation; but the surface improvements and net proceeds thereof shall be taxed, and such net proceeds shall consist of the gross proceeds of the mine remaining after deducting all ordinary and proper expenses of conducting the business of the mine, the cost of all permanent improvements made during the fiscal year in which the tax is levied, and any surplus fund accumulated and undivided and held by the owner of the mine for the purpose of making further permanent improvements thereon, or for the working thereof, or meeting any disaster thereto, or unfavorable development therein."

In other words, it defines what the net profits are in the strict mining sense, and then taxes them as such.

Mr. MAYHEW. I second the motion, in order that we may have observation and discussion upon the proposition proposed by my colleague, Mr. Claggett, of Shoshone. And there is so much of it, and it involves so

many principles and questions that I move we take a recess until two o'clock this afternoon.

Mr. CLAGGETT. You can get it printed by two o'clock.

Mr. AINSLIE. I request that it be printed by two o'clock.

Mr. MAYHEW. I move that we take a recess until two o'clock, and that the amendment be printed in the meantime.

Mr. MAXEY. I wish to withdraw my amendment, as the amendment just offered covers it.

The CHAIR. Without objection the gentleman will be permitted to withdraw it.

The motion to take a recess was put and carried.

AFTERNOON SESSION.

Convention called to order at 2:00 P. M.

Mr. REID in the chair.

ARTICLE VII.—REVENUE AND FINANCE—SECTION 5.

The CHAIR. The question before the convention is the amendment offered for the substitute to Section 5 of the report of the committee on Revenue and Finance. The question is first on the amendment offered by the gentleman from Shoshone, Mr. Glidden. The clerk will read it for the information of the convention.

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

Mr. HEYBURN. I understand the question is now on the amendment offered by Mr. Glidden.

The CHAIR. Yes.

Mr. HEYBURN. I desire to say a word on that amendment. I understand this amendment provides that the net proceeds of mines shall be exempted from taxation. I am in favor of exempting the net proceeds of mines from taxation for two very substantial reasons. One is, that it is double taxation on the same fund, in the hands of the same person. The other is, that it is an income tax, which is always obnoxious,

except in cases of great necessity, such as occurred in our country during the last war. I am perfectly well aware of the fact that double and treble taxation must occur on the same property in very many cases; but it is a very obnoxious constitution or law that provides the same thing shall be twice taxed in the hands of the same person under different names. The net income from a mine is money; it cannot be anything else but money. It is not property, it is money, cash, because until it is, it is not an income from anything in any sense of the word. When it is cash it is taxed then as income from the mine. Then it is taxed as cash. Our money in bank is taxed now, and our cash on hand under our present law and under all laws. So that without that fund passing from one man to another, without it changing its character, within the space of five minutes two taxes can be levied on that fund. One can be levied on it as income from your mine, and the other levied on it as cash on hand. There is not such another instance in the history of taxation in the world where that thing can be done. I have just been looking through the standard work or authority on that subject, Mr. Cooley on Taxation, a very recent work, published only three years ago, in which he reviews this entire subject; and if the time was not so limited, or I thought the occasion really demanded it, I should ask the indulgence of this convention to go with Mr. Cooley over those cases. But I believe the practical business sense of the men of this convention will see the effect of taxing a man's income under two different names in order that you may levy a tax on it twice.

Mr. MAYHEW. Under our territorial system of laws where is there an income tax provided for?

Mr. HEYBURN. When you tax the net proceeds of a mine, you tax it under "net proceeds" of the mine. You deposit the net proceeds of the mine, which must be cash, in the bank, and then it is taxed under the name of cash. I use the word income, because the proceeds of any investment is income; I care not whether it be a mine, a farm or a store.

Mr. MAYHEW. I want to ask another question. Suppose that the manager of a corporation, when the assessor comes around, and he gives in the net proceeds of that mine, and the proceeds may be deposited anywhere in the world, can it by any means be taxed as cash? If it can, I do not understand the law of equal taxation at all. I think it can not be done.

Mr. HEYBURN. I have before me the statutes of this territory, and I have investigated the law and the statutes of other states on the subject. We have to make a sworn return if required, of our money and our property, and all the money and property that is under our control, whether it is here or elsewhere.¹ Now, unless a man makes a false oath, he cannot avoid returning that money which he has received from that mine, in the shape of net proceeds, as cash on hand. That is taxed. Now, then, the income from the mine. We do not propose for the purpose of striking at some imaginary foreign corporation to do injustice to our single individuals who own mines and resident mineholders. There are a great many of our mines not owned by foreign corporations; a great many of them are owned by our own citizens, and we are not going to stab our own citizens simply because we want to get at some foreign corporation. So that I say this amendment is the most vicious system of double taxation. I don't want a miner to be exempted from any duty or burden to the state that any other man bears. I am not here asking for any special privileges for mining men, because if they need them they are not entitled to them any more than any other class. I do not believe the state wants to be sacrificed in order to foster any interests, whether mining or agriculture. I do not believe in this paternal government business, that we have got to pick this or that little industry and foster it and work it along until it becomes a profitable business. Men won't engage in a business that does not offer sufficient inducement of profitable returns to justify them in

¹—Sec. 1429, Rev. Stat. 1887.

investing their capital. I do not think it makes any difference whether one out of a thousand of every mine pays; we do that upon our own responsibility, on our own judgment. I want mines to stand exactly on the same basis that every other species of property stands on. I want it to be taxed once in some shape, and I don't want it to be taxed again in the hands of the same man who paid the first tax. I think the amendment offered by Mr. Glidden covers the proposition and cures the defect.

Mr. MAYHEW. I believe I have not spoken yet on this proposition. I cannot understand the position taken by my friend Mr. Heyburn. If I thought his proposition was correct, I certainly would favor this amendment. If you strike out this section as proposed here, that the net proceeds of mines shall be taxed, then neither the net proceeds or the gross proceeds of the mines can be taxed. You admit that as a proposition?

Mr. HEYBURN. How is that?

Mr. MAYHEW. Neither the net nor the gross proceeds can be taxed if the amendment offered by Mr. Glidden is adopted.

Mr. HEYBURN. Yes, you tax the result of it in the shape of money.

Mr. MAYHEW. What is the net result? Does the gentleman propose to say that because they may have the money on deposit in their banks or in their safes or elsewhere, that that is taxed independent of the net proceeds? Does the gentleman pretend to argue, or that Mr. Cooley on taxation lays down that as a proposition, that there is a direct tax or an income tax which can be enforced in this territory? I ask the gentleman to read any part of Cooley on taxation, and I say that he is far from concluding, as Mr. Cooley does conclude, upon that question. My proposition, or my idea upon that proposition is this: if the net proceeds of the mine are taxed, the assessor cannot turn around and say or ask, "How much from this mine have you got in deposit in any bank in cash?" The manager, whoever he may be, when he comes to give in his tax

upon the net proceeds, says that the proceeds of this mine are so many dollars; then when he pays taxes on that, they cannot turn around and say that we will tax you on the amount of cash you have on hand. That is the proposition of the gentlemen as I understand it.

Mr. HEYBURN. And that is what it is.

Mr. MAYHEW. Very well sir, no law in the world and no court and no constitution, as I understand, according to the provisions of this constitution, warrants any position of that kind. If the net proceeds of a mine shall be taxed then I say when it is once taxed you cannot go beyond that and inquire as to the amount of cash the mine owner has on hand. For instance, allow me to illustrate, Mr. President. Suppose this proposition: here is a mining corporation carrying on business three months or a year, and the net proceeds of the mine is \$10,000. That is the net proceeds after paying all the expenses of the mine, and everything that was exempt from taxation. We have \$10,000 on hand; there are the net proceeds. According to this article we are to tax this \$10,000; that is the net proceeds of the mine. Does the gentleman pretend to argue that you can turn around and say because you have that \$10,000 on hand that you can retax it?

Mr. HEYBURN. Yes.

Mr. MAYHEW. Well, sir, such a proposition as that I would not be in favor of; but if the gentleman can convince me by any logical reason or otherwise that such would be the principle by enacting this clause, sir, I will say that I would certainly be opposed to it; that would be double taxation, and I am opposed to anything like double taxation. But I insist that when the net proceeds of a mine are once taxed you cannot go around and tax it again as cash on hand. If such is the case, then I will stand in with my friend from Shoshone county; but I cannot see it in that light.

Mr. HEYBURN. I will read you the authority, if I am permitted, on that subject. Mr. President, I do not intend to take up time in reading this whole dissertation—

Mr. MAYHEW. Well, I hope the gentleman has the time, for I desire information from those legal lights such as Cooley on Taxation, and on Constitutional Rights, although I have seen this convention vote it down.

Mr. HEYBURN. After discussing at great length and most thoroughly the instances in which double taxation must necessarily occur, or even treble taxation (that is to say, where a property is mortgaged, and the mortgage is taxed and the farm is taxed for its full value; or where a man is taxed for the obligations that are due him as assets, and the other man is taxed on property he owes for—those instances are all right, because it is a tax against different individuals, it is not taxed twice in the same hands), Mr. Cooley says:¹ “There is a sense, however, in which duplicate taxation may be understood, and which we think is the proper sense, which would render it wholly inadmissible under any constitution requiring equality and uniformity in taxation;” and we have declared that all taxation shall be uniform.

Mr. MAYHEW. I agree with that proposition.

Mr. HEYBURN. (Reading) “By double taxation in that sense is understood the requirement that one person, or any one subject of taxation, shall directly contribute twice to the same burden, while other subjects of taxation belonging to the same class are required to contribute but once. We do not see, for instance, how a tax on a merchant’s stock, distinctively by value, could be supported, when by the same authority, and for the same purpose, the same stock was taxed by value, as a part of his whole property.” There is an instance right squarely in point.

Mr. MAYHEW. We do not propose to do that under this section.

Mr. HEYBURN. I am arguing about the effect of it. That is the principle. I read further: “This is a very different thing from one tax upon property and

¹—Cooley on Taxation, 3rd Ed., p. 394.

another upon the business, although the latter may indirectly reach the property." Now, passing to the section where it is considered more specifically as to the construction the courts put upon it:¹ "It has very properly and justly been held that a construction of tax laws was not to be adopted that would subject the same property to be twice charged for the same tax, unless it was required by the express words of the statute, or by necessary implication. It is a fundamental maxim in taxation that the same property shall not be subject to a double tax payable by the same party."

Mr. MAYHEW. That is the position I assume, too.

Mr. HEYBURN. (Reading) "either directly or indirectly; and where it is once decided that any class or kind of property is liable to be taxed under one provision of the statute, it has been held to follow as a legal conclusion that the legislature could not have intended that the same property should be subject to another tax, though there may be general words in the law, which would seem to imply that it might be taxed the second time."

Now the court will construe this statute or this constitution by that rule, because that is the universally accepted rule of construction in these matters. And if the question were raised in court on appeal from the taxation of money in a bank on the ground that they had once paid a tax on that money in the shape of an income tax, or rather a tax upon the net proceeds of the mine which that money represented, then the court, in construing this constitution, would have to hold, according to that rule of construction, that the second tax could not be collected. And yet, we have in our constitution a provision prepared by the committee on Revenue and Finance, that these moneys shall be taxed. I do not want to see the necessity of any construction of this section of the constitution; we might as well be explicit and plain about it. I believe in taxing this money if you have not taxed it in any shape; tax the money the

¹—Cooley on Taxation, 3rd Ed., p. 398.

man receives as the proceeds of his mine, but I do not believe in taxing his money and the net proceeds too, and that is the result of this measure as it stands without amendment.

Mr. MAYHEW. Mr. Chairman, I don't desire to speak more than once or twice on this question, but I understand the proposition as made by the gentleman. Suppose that the net proceeds of the mine should be \$10,000—I will illustrate it again—and before the assessor comes around this \$10,000 should be distributed among the stockholders of that corporation. Then, if you please, there is not a single dollar on hand. Then how are you going to tax the cash on hand, or the cash at all? Where is the double taxation? But if the fundamental law of this territory says that the net proceeds, if it was \$10,000, shall be taxed for \$10,000, and not as cash on hand, that is one thing; but if you distribute in the way of dividends to the many stockholders this \$10,000, it is no tax at all against that corporation, from the fact that they will have nothing on hand at all. But if you get down to the net proceeds of that mine, that \$10,000, then you tax it. Now, I do not care, for instance, whether that is \$10,000 or \$1,000, or the \$100 I may get in the way of a fee; it is mine, and I pay taxes on that. The person who has paid me that fee is relieved of that much. On the other hand, I have \$10,000 in my hands to be distributed around outside, to reach the parties who may be out of this territory, who pay no taxes at all, because the money is sent out of the limits of this territory. But the proceeds of that mine, that \$10,000, is taxed, and not by way of income. Certainly I should be opposed to any proposition, which is contrary to the principles as laid down by Cooley on Taxation. I say if the taxes must be double under the construction of this law—the gentleman says there is no such thing as construction upon the constitution; I say there is; there is a construction to be placed upon any law, whether fundamental or statutory; there is a construction to be placed upon it by the courts, and no court in the world would say or hold the proposition

to be true, that if you pay taxes upon the net proceeds, that you have also got to pay taxes upon the cash you have on hand. It is the net proceeds we wish to reach, and nothing more. I am as much opposed to double taxation as the gentleman or anyone else. I think it would be foolish, it would be wrong, and would be working a hardship upon any corporation or set of individuals that might attempt to develop a mine or any other industry in this territory. I cannot agree with my friend, although I regret to differ from him, on this proposition, knowing full well that he has for a long time thoroughly investigated these questions. Yet I say as to the proposition that he now makes, I think he is absolutely wrong upon it.

Mr. AINSLIE. I don't believe I could frame a section that would exactly suit everybody. The only objection I have heard from the gentleman from Shoshone, who preceded Judge Mayhew, is that it would be liable to open the door to double taxation. And in order to avoid that I will offer a little proviso at the end of the section: "Provided, further, that duplicate taxation of the same property for the same year is hereby prohibited."

Mr. MAYHEW. I will support that.

Mr. MORGAN. To Section 5 of the original bill?

Mr. MAYHEW. No, to the substitute reported by the committee.

SECRETARY reads: Amend Section 5 by continuing the same as follows: "Provided, further, that duplicate taxation of property for the same purpose during the same year is hereby prohibited."

Mr. MAYHEW. I think that covers the question. I support the amendment.

Mr. HASBROUCK. I shall oppose the substitute for Section 5, also the amendment.

The CHAIR. I will state to the gentlemen that there is a printed substitute offered by Mr. Ainslie, a substitute offered by Mr. Parker, and a substitute offered by Mr. Claggett.

Mr. HASBROUCK. I will support the amendment

to the substitute to Section 5 offered by the gentleman from Ada (MR. GRAY), that is, to strike out all after the word "personal" in the fourth line, and to leave this whole matter of exemption of taxation to the legislature. I believe they can better attend to this matter than this convention can. I have listened to his discussion, and I believe the convention at the present moment is farther from a conclusion than when it commenced, and I prefer to leave the whole matter to the legislature. I believe they are better judges of this matter. I believe that as matters of taxation change, they will be better able to meet those matters. Therefore, I shall so vote. One gentleman says the taxation of net proceeds is inequitable. I agree with him. In principle it certainly is, because if you tax the net proceeds of one property or one enterprise, if you wish to establish equity in your taxation you must do so in all others. My friend Mayhew says the mines, or any improvements put upon the same, shall not be taxed until it can be shown that there is a profit derived from that investment. If that be true, carried to its logical conclusion, what is the result? Every other enterprise in the territory should have the same privilege; and I ask this convention then, where would you ever get any taxation? You have to collect taxes to get revenues to meet expenses; but where in the world would you ever get them? I admit, furthermore, that taxes are arbitrary; that it is impossible to make them uniform, it has never been done, and never will be done. The only thing we can do is to come as near to it as we possibly can. I undertake to say further, there are many men in this territory who are today paying taxes on what they actually owe, not on what they own. Merchants who own stocks, and owe for more than they are worth, pay taxes on that stock, and there is no exemption from it. As another kind, look at the taxes on mortgages. Every mortgage of a resident is taxed, while the non-resident mortgage is not. Therefore, people who wish to loan money in this territory simply cannot do it, and our lands in every county of the territory are being plastered over with non-resident

mortgages, whose holders pay no taxes, who do not live with us. who are not taxed. Now, that is an absolute tax in this city, it makes about four per cent, which the non-resident does not have to pay, and I think in almost every county of this territory it will be from two and a half to three per cent. Residents cannot compete, and the fact is they will not loan their money in that way. But I do not know any way to remedy it. There is a great hue and cry in this convention to see that mortgages shall be exempt from taxation. That is the working of it, and therefore I am in favor of leaving the whole matter to the legislature from time to time, as these matters shall arise.

Mr. MAYHEW. I desire to ask the gentleman a question. Supposing a person living out of this territory is loaning money upon farms, and he takes a mortgage upon a farm. Can we tax that mortgage?

Mr. HASBROUCK. No, sir, you cannot tax the mortgage. And that is the reason I say it is working a hardship upon parties who are residents, who wish to loan money.

Mr. CLAGGETT. Mr. President—

Mr. MAYHEW. What is Mr. Glidden's amendment?

SECRETARY reads: Amend Section 5 by striking out the words "net proceeds and" after the word "the" in line 5.

The CHAIR. The question is first upon the substitute offered by Mr. Parker. The clerk will read it.

Secretary reads Mr. Parker's substitute. Put to vote and lost.

The CHAIR. The question is now upon the adoption of the substitute proposed by Mr. Claggett. The secretary will read it.

Mr. VINEYARD. My amendment has not been acted upon.

The CHAIR. No, but the rule requires substitutes to be acted upon first.

Mr. CLAGGETT. Mine is not a substitute, Mr. President, but is to amend the one proviso in the substitute.

The CHAIR. Then the question is upon the amendment offered by Mr. Glidden. Having disposed of all substitutes, it reverts back to the amendments. The first is proposed by Mr. Glidden.

SECRETARY reads Mr. Glidden's amendment.

"Question, question." Put to vote and lost.

The CHAIR. The next question is upon the amendment offered by Mr. Vineyard.

SECRETARY reads: Amend the substitute to Section 5 by striking out all after the word "taxation" in the sixth line to and including the word "law" in the seventh line.

Mr. VINEYARD. Mr. President, this brings it down now to about what we contend for. It has not been held as the sense of this convention that the net proceeds of mining property shall be taxed. It is also stated, and it is the sense of this convention, that the improvements of all mines shall be taxed. This amendment exempts from taxation simply the mining claim, whether there is a patent to it or not. If the net proceeds of the mine, the very substance of the mine itself, are to be taxed, we in behalf of the mining industry desire that the mining claim, the ground from which the ores or net proceeds are taken, shall be exempt. It is further provided in this substitute that ditches, canals, flumes, owned by individuals or corporations, for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed, so long as they shall be owned or used exclusively for such purposes. Here is a plain proposition before this convention, to allow all irrigating ditches, all canals of every description whatsoever, that are used for the purposes of irrigation, and which contribute directly to the wealth of the state so far as agriculture is concerned, shall be absolutely exempted from taxation in the hands of the owners of these ditches. In other words, that they shall not be separately taxed. Here is an open, direct bid to juggle in a double sense, for the purpose of exempting a class of property that probably is as valuable as any other class

of property in this territory, so far as deriving revenues from it is concerned. Why should that be? Why should you make discrimination in behalf of these ditches owned by corporations and syndicates who operate them for the purpose of securing the profits that they may derive from the farming interests which they cover, and tax the mining industry from top to bottom all over; not only the soil itself, but the very substance of the inheritance itself, to-wit, the ore that comes from it? Is that fair, is it just, is it equitable? Would that be a taxation that would be uniform and equal, and just to all these various industries of this state? I stated this morning, Mr. President, that there would be thousands and thousands of dollars put into these mining claims when they came to be mines, when they yielded a revenue to the owners, in the shape of improvements and other resources, from which the state would derive a vast revenue. The small holdings that would be dependent upon these mines would be taxed; its machinery would be taxed; everything connected with the mine would be taxed except the mining ground itself, and if you do propose to close up that avenue and say it may be taxed from top to bottom, you might as well close the avenue forever against this industry; tear down your advertisement to the world that you invite mining men and mine operators into this territory, and tell them that they need not apply to this territory for any sort of protection, but that you are discriminating against them in favor of the agriculturist because he uses ditches, etc. I say that would not be right, would not be fair, would not be equitable; it would not be upon the basis that taxation should be uniform and equal. And therefore I am opposed to this whole business in that shape.

Mr. MAYHEW. I would like to ask the gentleman one question. He proposes by his amendment that the mine shall be forever free from taxation.

Mr. VINEYARD. The mining ground, the claim itself.

Mr. MAYHEW. That is your proposition.

Mr. VINEYARD. That is it.

Mr. MAYHEW. Now, Mr. President, I say I cannot support that amendment for this reason. I believe the miner who obtains a patent from the government of the United States for his ground should be subject to taxation upon the same footing, and upon the same ground, for the same reasons.

Mr. VINEYARD. I thought the gentleman wanted to ask me a question.

Mr. MAYHEW. Certainly, I do. I wish to get it so you can answer it. Upon the same ground, I say, as a person who owns a piece of agricultural ground. If a man owns agricultural land he pays taxes. If a miner owns a piece of mineral land, why shouldn't he pay taxes on it? How many mines are entered by a few dollars' worth of work, which they never attempt to work at all? They hold the real estate, and why shouldn't they pay in the same proportion as any other person?

Mr. VINEYARD. I will answer that. A mining claim would cease to be a mining claim. It would be open to patent like any other portion of the public domain if the owner ceased to keep it up by his annual labor.

Mr. MAYHEW. Let me ask the gentleman right there——

Mr. VINEYARD. If the mine——

The CHAIR. Does the gentleman yield?

Mr. MAYHEW. The gentleman is not stating the proposition. When a man enters land as a mining claim the representation ceases then as soon as he gets a patent for it. There is no use of arguing that proposition.

Mr. VINEYARD. Then if the mine is of sufficient importance to justify the party in spending \$500 worth of work upon it, and obtaining a patent for it. Besides, it is not likely that that ground is valuable for anything but mining purposes. If the owner of that mining claim ceases to work it, it becomes unprofitable. We know the character of the soil that comprises the

mining claims in this country when we refer to a quartz mine. It is a claim that is perfectly worthless for any other purpose than the ore it is able to yield. It is of no manner of account for agricultural purposes; it would not raise black-eye peas; it is worth nothing as an agricultural investment; and if it ceases to be productive as a mine it is of no value anyhow. The taxes upon that mining claim would not amount to five cents so far as its value is concerned, because the assessor would return it as having no value at all. That is my answer to the gentleman's question.

Mr. AINSLIE. As said by the gentleman from Shoshone, if the amendment proposed by the gentleman from Alturas is adopted, it would make mining claims not taxable perpetually. Now, I am opposed to that. If a man loans \$10,000 out at interest, he is taxed upon the amount he loans out, and next year he is taxed upon the amount of interest, because he has got to give it in as cash on hand. His net proceeds on that investment is taxed, and so is any other business. If a merchant has \$3,000 worth of goods on hand, that is his capital, just the same as the man with his \$25,000 mining claim. The next year if the merchant has made any profit, he is either taxed on the additional amount of stock he has on hand, or on his bank account. Take any business in the territory, and the net proceeds of a man's business is taxed the next year, and I don't see where a money exemption would be any exception to the rule. We have given them an exemption ten years, and still, like Oliver Twist, they are crying for more. The gentleman says that mining claims are often undeveloped after having had \$500 worth of work done on them, that they will not strike a lead, and therefore are worthless. I will call attention of the gentlemen to the fact that these desert lands are not worth anything without water, and still men will take them up and get their patents from the government, and they are assessable for taxes; and yet they are just as worthless as a mining claim, and are not productive until you get water on them; but still they are assessed.

Now, as to what those claims are assessed at by the different assessors, that is a matter for them. The assessor is not going to assess a claim at \$100,000 without the man has paid \$100,000 for it, at the end of ten years. He will assess it at any reasonable price put upon it, and if the man is getting anything out of his claim as net proceeds, he ought to be taxed thereon the same as the net proceeds of any other business venture. But I think when we exempt them ten years it is perfectly proper.

Mr. CLAGGETT. Mr. President, there is one thing that ought to be borne in mind by the members of the convention. That is the fact that you can draw no parallel between a mine and any other species of property in this state. In order that I may make myself perfectly clear, I will take a few illustrations, which have been made here in the way of drawing parallels. Take the case put last by Mr. Ainslie, of the merchant. The merchant will buy his stock of goods in the spring of the year and sell off a large quantity of them before ever the assessor comes around. When the assessor comes he does not pay taxes on all the goods he has disposed of during the year, but only those he has on hand. You take the farmer, and of course he has his crops. But when he comes to pay his tax upon what he has left of his farm produce at the time the tax assessor comes along, he simply pays tax on what he has that day. His farm is worth more than it was the year before; there has been no exhaustion of the substance of the estate. But when you come to an open mine you have what? You have a mine whose value consists entirely—because there is no power of recreation or reproduction in the mine, as there is on a farm or any other property—the mine consists entirely of the value of the ore that is within its limits.

Mr. VINEYARD. Within its walls.

Mr. CLAGGETT. Within its walls. You go then upon the theory of my friend from Boise, and tax the mine, or provide that the legislature may tax it, to the full extent of the value, which it has because of the

ore in it; then you take the ore out of it, and destroy the value of the property, and then you propose to tax the ore besides.

Mr. HEYBURN. Double taxation.

Mr. CLAGGETT. Double taxation? Well, I should say it was! Then, on top of all that, tax the surface improvements in addition thereto, and you have treble taxation. Then go and tax all the improvements which result directly from the labor of the material men, and the laboring men, and which are paid for and which are taxed in the way of houses and farms and everything of that kind, and you have quadruple taxation. Therefore, I say this amendment which I have proposed, which will come up to be voted on in its turn, will go as far as any consideration of equity requires anyone to go, or will permit anyone to go. I shall vote for the amendment offered by Mr. Vineyard, not because it disposes of the subject, because it leaves several other things to be considered hereafter, but it seeks to avoid this gross injustice to which I have referred, namely, taxing a piece of property, which is valuable for only what is in it, and then taxing what is in it besides, after it is taken out. You might as well say you tax the value of a safe that had \$100,000 cash in it at the value of \$100,000, and then take the \$100,000 out of the safe and tax it over again. That is your proposition.

Mr. MAYHEW. If I understand the gentleman's proposition it is this: That the tax collector comes around and taxes the value of your ore, and then if you sell your ore he assesses the value of the net proceeds of the ore. I do not understand that to be the proposition. To listen to the proposition as the gentleman argued it, it might strike the gentlemen of the convention that it was double taxation, but I do not understand it that way. If you once pay taxes upon the ore, you cannot be assessed upon the value for which that ore was sold. I would be opposed to anything of that kind, for that would be double taxation; but I do not understand this provision to go to that extent.

Mr. CLAGGETT. I am going according to the argu-

ments of the gentlemen here, and we are discussing one thing on a certain basis. I am going according to the matter which we are called upon to vote on, namely, this substitute to Section 5, which provides that mines and mining claims bearing gold or silver or other precious metals shall be exempt from taxation for a period of ten years from the date of the adoption of this constitution, and thereafter may be taxed as provided by law. The gentleman from Alturas moves to strike out that portion of it which provides for the taxation of the mines, if I understand it correctly. But in the meantime, neither before the expiration of the ten years nor afterwards, are the net proceeds to be exempted. In other words, the net proceeds are to be taxed for all time, and then in addition to that, if the legislature shall see fit to do so after the expiration of ten years, you can tax the mines besides. That is the plain meaning of this section, and I don't care whether it was taken from the Colorado constitution or not. It means that, and you will have to go clean outside the language of the section to attach any other meaning to it.

Mr. BEATTY. Mr. President, I have not troubled the convention upon this question, and I do not propose now to trouble it long. But let us see where we are drifting. This is a peculiarly drawn section. It is composed of exceptions and provisos. And a man must read it twenty times to see what it means; but so far we have agreed that the net proceeds of mines shall be taxed. We have agreed that the machinery and improvements on mines shall be taxed.

Mr. MAYHEW. I have not agreed to it.

Mr. BEATTY. That is just what the section so far provides. Now, in that connection I want to call the attention of farmers to what is proposed by this section. We propose by this section also to exempt the ditches of farmers. Now, gentlemen——

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

The CHAIR. Does the gentleman yield?

Mr. BEATTY. I will yield.

Mr. MORGAN. I would like to know how many mining ditches belong to farmers that have been taxed in this territory.

Mr. BEATTY. I did not say mining ditches; I said agricultural ditches.

Mr. MORGAN. Well, agricultural ditches have never been taxed. The farm is taxed, but not the ditch. Where the ditch is owned by a corporation it is taxed.

Mr. BEATTY. Then the farmers have been more fortunate than the miners. I know the miners have been taxed for ditches. Now, you exempt ditches on farms that stand in the same relation to the farm that——

Mr. AINSLIE. Where persons own the land as well as the ditch they shall be taxed together; cannot be taxed separately.

Mr. BEATTY. There are so many provisions in this that I confess it is hard to get it all; "*Provided, further,*. The household goods, tools, implements of every person being the head of a family, to the value of \$200 shall be exempt from taxation, and ditches, canals and flumes owned and leased by individuals and corporations for irrigating land owned by such individuals or corporations or the individual members thereof shall not be separately taxed so long as they shall be owned and used exclusively for such purpose, and lots with the buildings thereon, if said buildings are used solely for religious worship or for charitable purposes." That simply excludes separate taxation. It does not read as I thought it did. It excludes separate valuation.

Mr. AINSLIE. Yes, the ditch is taxed with the land, not separately.

Mr. BEATTY. Very well; I will go back to the taxation of mines. I see the section so far as we have adopted it provides, first, for the taxing of the improvements upon mines. Next, for taxing the net proceeds. Now, Mr. Vineyard asks to have this clause stricken out, "for a period of ten years from the date of the

adoption of this constitution, and thereafter may be taxed as provided by law." By striking that out it leaves simply the surface ground of the mine exempt from taxation; that is all it leaves exempt from taxation. You have agreed to tax the improvements and the net proceeds. That is further than ever the territory has gone by its legislature yet, but that we have agreed to so far. Now, all we ask, all Mr. Vineyard asks by this amendment of his, is simply that you shall not tax the surface ground. That proposition has not been argued before by anybody that I know of, to tax the surface ground. My objection to that is this: there is no just way of arriving at what the surface ground shall be taxed at. What is it worth? Are you going to estimate the ore that is under the surface, in taxing it? If so, then as has been said by my friend from Shoshone—

Mr. SHOUP. What did you pay for it?

Mr. BEATTY. It is no matter what I pay for it. Suppose I paid \$100,000 for it; do I pay that for the surface ground, or the ore that is within the mine? I pay for the ore within the mine. Now, when that ore is taken out you propose to tax the proceeds.

Mr. SHOUP. I mean, what do you pay the government for the land?

Mr. BEATTY. Five dollars an acre, but you don't make any provision that it shall not be taxed higher than five dollars an acre, and the assessor may tax it \$1,000 an acre or \$20 an acre; he may tax it for all the ore value within the mine, and then, as I say, when I take that ore out I must pay on the net proceeds of the ore. Now, there is a very serious objection to taxing the net proceeds of mines. We have to have our mines developed by eastern capital entirely. If you put that kind of a tax on the mines, you give the eastern capitalist to understand that the surface ground of their mines is exactly in the power of the assessors of the state. How many eastern men are coming out here to invest their money in property that will be so uncertain as that? I claim that you may tax a man's mine out of existence with that power placed in the hands of the

assessor. You place no limit upon it; he can tax it any rate he pleases. But the point is this: if you tax the surface ground simply at what it is worth, it would be taxed very little; but you don't say so; you do not say it shall be taxed in that way. You leave it open; the assessor may tax it at any rate he pleases, and then comes in, as has been remarked by other gentlemen, a double taxation; when the proceeds come out you tax those also. I think it is very objectionable to undertake to tax the surface ground of claims, first for the uncertainty, and second, for the great objection that it will prevent eastern capitalists from investing where their title is left so uncertain as it would be under this provision for taxation. It seems to me that when you come to tax the surface improvements, and tax the net proceeds you have gone as far as anybody ought to go.

Mr. Vineyard's amendment will simply leave it so that in the future the surface ground shall not be taxed; you can still tax the net proceeds and the improvements.

Mr. MORGAN. Let me ask you a question. If you could only tax the improvements and the net proceeds, then to make taxation equal on all the people we should tax the improvements on farms and the net proceeds from year to year; that is, the grain and cattle, and keep the farm forever untaxed?

Mr. BEATTY. Very well, to make that equal you should tax the improvements on the farms and tax the net proceeds of the farms, and tax the net proceeds of merchants and of all other pursuits.

Mr. MORGAN. And leave the farms exempt.

Mr. BEATTY. Not by any means. The surface ground of a mining claim is of no earthly value, save for the easement; while your farm is the substance of the whole thing. There is a vast difference between a farm and the mere surface ground of a mining claim. If you were to tax the surface ground of a mining claim at its real value, and leave out of consideration the value of the ore within the mine, you might be getting at the justice of the thing; but the difficulty is that you put no limit upon the assessor, and the assessor might tax

the surface ground of the mine, not alone for the value of the surface ground, but for all there is in it; and there is nothing in the world, under this provision, to prevent him doing it.

Mr. HEYBURN. Mr. President, I am with the gentleman in theory, but he has lost sight of the fact that this empowers him not to assess the surface ground, but the mine. A mine consists of the ore that is in the ground. The ground that does not contain ore is no part of the mine at all, except simply for the convenience of working it. It is only in recent years that the law has recognized any title to anything except the ore itself. Under our present mining law congress has given us a right to locate so much surface ground for the uses and necessary purposes of working the mine; simply for the convenience of it. It is no valuable portion of the mine, and it is not that that is proposed to be assessed.

Mr. BEATTY. I claim that under this law they will assess not simply the surface ground, but include all that is beneath the surface.

Mr. HEYBURN. This law does not say anything about surface ground; it says "assess the mine," which is the ore in the ground; that is the mine, and nothing else. The result of it, Mr. President, will be this, that nobody will patent their mining claims, and the government of the United States will not get the \$5 per acre that it now gets for its land, for there is no law compelling a man to patent his claim, and so long as he does not enter it in the land office he does not have to pay for it to the government, and the result will be there will not be a claim patented in this state, except by some very thoughtless person. There is nothing in the world to prevent an assessor, under the provisions of this substitute for Section 5, from assessing a mine at the value that he may estimate the ore to possess.

Mr. MYER. I would like to ask the gentleman a question, whether or not the assessor can do that work before the legislature provides he can do it by law?

Mr. HEYBURN. Certainly, he cannot do it until he is authorized by law to do it; but we are here legis-

lating for the future, because of course we must look beyond the date of the adoption of this constitution to see its effect upon the subjects of which it treats. This section provides: "that mines and mining claims" may be assessed after ten years, that is the effect of the provision; that they *may be* assessed. Now, you have already said that this ore shall be assessed in the shape of the net proceeds from the mine. That is another case of double taxation, as suggested to you by Mr. Claggett. You are going to tax this ore before it is taken out, and then tax it after it is taken out. Now, I suggest this as an illustration: If you tax the money of the banker which he has in his bank, and then put a per capita tax on him equivalent to the three taxes which you propose to put on mining properties, proceeds and improvements, you would have his bank just about broke.

Mr. MAYHEW. I have an amendment to offer.

SECRETARY reads: Amend in line 6 after the word "thereof," to include "mills and all reduction works thereon."

Mr. HEYBURN. I send up an amendment, Mr. President.

SECRETARY reads: Amendment to the substitute for Section 5: Strike out in line 6 the words "for a period of ten years."

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

Mr. SHOUP. Mr. President, I am very sorry to see some distinguished gentlemen in this convention going back on their records they have made in the convention. They have worked ever since this convention has been organized to do something for the development of the resources of this state. I have heard that word at least a thousand times I think, since I have been in this convention. Now, what do they propose to do? Why is there a law requiring an assessment of \$100 a year to be worked on all mining claims? The object of that law is to compel those men who take up those claims to do some work on them, to develop them; but, if they are patented, that is not required. Now, I am in favor of

assessing them if they are patented; not putting a fabulous valuation on them, but make it reasonable; say five dollars or ten dollars an acre, or five hundred dollars a claim, something like that, and compel every one of those men to pay something every year on those mines. As it now stands, speculators and drones get hold of these mining claims and hold them year after year. They do nothing on them whatever, but they wait until somebody in the district, or near them, works and develops a mine and opens it, and then they step in and want the benefit of an undeserved and unearned increment. That is just where it leads to; it is right in opposition to the development of the resources of the state, which the gentlemen have contended for on this floor ever since this convention has been in session.

Mr. ALLEN. There are two propositions, Mr. President, which to my mind are before this convention. For the purpose of comparison I will illustrate by referring to the equalized assessment rolls of 1888, as shown in the official auditor's report. He says the total assessment value of the territory should equal \$40,000,000 annually. Just above that we find this merely in regard to mining property: "The assessment abstracts from different portions of the territory, which possess the bulk of mining property, contain but little indication as to its real value. It is a matter of common knowledge that large quantities entirely escape the tax they ought to pay"; and then he gives the total amount of the assessed valuation of the territory for 1887: the territorial tax amounts to \$58,070. I merely call attention to this fact, the proportion which the mining interests of this state, pay to the expenses of running the territorial government. It has been said that the mining interest is almost the entire interest of this territory; that if you take that out there would be nothing left worth accepting as a gift. I wish to call attention to the facts; I do not care to prejudice anyone against the mining interests; but I think while a subject is under discussion facts should be presented. The livestock val-

uation of the territory alone is over \$6,000,000; land and improvements \$6,500,00; railroad property alone, \$5,250,000. Now, for the purpose of comparison, entered mining claims, \$25,000; improvements on mining claims \$102,000; smelters \$52,000; stampers \$74,000; concentrators \$61,800; concentrates \$245,200, or a total of \$560,000, out of a total of \$21,000,000, whereas, it should be at least \$40,000,000. Now, this is for the purpose of giving the companies who develop the mining property—

Mr. VINEYARD. (Interrupting) May I ask the gentleman a question? What was the valuation of smelters?

Mr. ALLEN. The total assessed valuation of smelters \$52,500.

Mr. VINEYARD. Why, the Philadelphia smelter at Ketchum alone cost \$3,000,000.

Mr. ALLEN. Very true. (Laughter.) I am giving the gentlemen what is given here in this report. It is simply for the purpose of calling attention to the fact that the mining property does not pay its due proportion of the taxes of the territorial government. Four items, which I can refer to, pay a total of \$20,000,000 of the total valuation of the territory; livestock, lands and improvements, railroad property and merchandise; leaving for miscellaneous and mines to pay on \$1,000,000, of which mines alone, patented claims, any, everything, comprise \$560,000. I think that proportion is too small. I shall vote for the motion made by Mr. Gray to strike out all after the word "personal" in the substitute for Section 5, and submit this to the legislature to adjust.

Mr. MAYHEW. In what line?

Mr. ALLEN. Line 4.

Mr. PARKER. I have here a letter from a very distinguished citizen of Blackfoot, the honorable Norman B. Willey, who has twice presided over the deliberations of the legislative council of this territory, a man who stands in our county head and shoulders above everybody else, and Mr. Willey requests information on this very question which we are now discussing relative to

the taxation of mines. Mr. Willey writes me with regard to the taxation of mines:

“The rule that prevails in Nevada of taxing the net product seems to me to be the correct one. The mining industry should certainly do something toward sustaining the public burdens. In California they used to assess mining claims, even when patented. They assessed unpatented mining claims the same as other land, at so much an acre, which was unjust, because the land might not be worth twenty dollars an acre for farming purposes, or might be worth \$20,000 an acre for mining purposes. There is, of course, no other way to reach unpatented mining claims except through the net products.”

Now, Mr. President, I think this committee who had charge of this subject, do not really know what they want themselves. (Laughter.) First of all, they brought us in a substitute for their original report, and now they are offering an amendment to their substitute, which goes on and provides for the taxation of the net product, and then provides a way by which that net product can escape taxation. Now, Mr. President, I am a mining man myself; I come from a mining county, and I have lost a good deal of money in mines; in fact, I am a poor man today from having owned mining lands. But I will go as far as any man in this convention to encourage foreign capital to come in and develop our quartz and placer mining claims; and I think the best way to do it is to put in our constitution a straightforward clause providing that mining claims shall be exempt from taxation, and that the surface improvements alone shall be taxed. Tax the surface improvements and the net products of the mines. Tax church institutions, and charitable institutions the same as any other private property, and that is all we need to put into this constitution, and I shall vote against everything else that comes up.

The CHAIR. The first question is on the amendment offered by Mr. Vineyard, to amend the substitute to Section 5 by striking out after the word “taxation” in line 6, to and including the word “law” in line 7.

The vote was taken, and the chair being in doubt

required a rising vote, which resulted: Yeas 13; Nays 33; and the amendment was lost.

The CHAIR. The question is now upon the amendment offered by the gentleman from Logan (MR. ARMSTRONG), to amend Section 5 by inserting after the word "mines" in line 4, the words "not patented." (Vote and lost.)

The CHAIR. The question now recurs upon the amendment offered by Mr. Shoup.

Mr. SHOUP. I would like to make a suggestion in regard to that amendment. There is an amendment pending to strike out all after the word "personal." If that is done, of course there will be no necessity of voting on this amendment. I therefore ask to have it passed until the vote is taken on the amendment of the gentleman from Ada (MR. GRAY.)

The CHAIR. Is there any objection?

Mr. CLAGGETT. I object.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Custer. The secretary will please read.

SECRETARY reads: "Insert after the word 'that' in line 8 the following: 'All farm produce, while in the hands of the producer.'" (Vote and lost.)

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Ada (MR. GRAY.)

Mr. MORGAN. I offer a substitute for the amendment offered by the gentleman from Ada.

SECRETARY reads: Strike out all after the word "personal" in line 4 and insert as follows: "Private property of the United States and of this state, and church property not exceeding in value \$4,000, and cemeteries not used or kept for profit, shall be exempt from taxation." (Seconded.)

The CHAIR. The question is on the adoption of the substitute offered by the gentleman from Bingham for the amendment offered by the gentleman from Ada. (Vote.) The chair is in doubt. (Rising vote.) The result is: Yeas 23; Nays 23. The chair votes Nay, and

the amendment is lost. The question now recurs upon the amendment offered by Mr. Gray, to strike out all of Section 5 from and after the word "personal" in line 4.

Mr. BEATTY. I offer as a substitute for the amendment pending to strike out the whole section-substitute. (Seconded.)

Mr. BEATTY. Mr. President, I move to strike out the substitute. Mr. Gray's motion is to strike out from the word "personal" in line 4, leaving only the first three lines and a half of the substitute.

The CHAIR. The substitute has not been adopted, and therefore the motion to strike out would not be in order. The question before the house is to adopt the substitute, and to that various amendments have been proposed.

Mr. BEATTY. The amendment of Mr. Gray is to strike out all after the word "personal" in line 4. My objection to that is that it leaves it in such a way that it virtually amounts to no law at all. My proposition was to strike out—

Mr. HEYBURN. It is not in, and it cannot be stricken out.

The CHAIR. That question is not before the house. The main question will be put after we dispose of the amendments. The question is now upon the amendment offered by Mr. Gray.

Mr. GRAY. I do this believing it would be best for us, especially under the circumstances, and the manner in which we have been handling this bill, nearly all of this day. As I stated before, I have confidence in the legislature, and I believe they will be as competent to handle this question as this body is. The fluctuations of property, the different conditions of property at times need different treatment, and assessments may be different. The rights of the legislature should be somewhat sustained, and we should not make any iron rule here, which might be injurious alike to the mining interests, and to other interests. I for myself would not object to allowing the land, the mine, to be untaxed; but I do

believe that the net proceeds, and the improvements upon the land should be assessed. That is my idea. But I believe I will leave that, with your consent, to the legislature, and let them provide such laws for the assessment of property as may seem proper; and I believe it would be to our best interests. As I have claimed almost from the beginning of this convention, I think we are going too far, we are going too much into detail; we are making too specific, too ironclad rules, when we are trying experiments here, and so I say, let the legislature try these experiments, and if they do not work, then they can cure them themselves in a reasonable time.

Mr. BEATTY. I agree with Judge Gray that it would better be left to the legislature. But my question is this, whether if you strike out as you propose, it will be left to the legislature; whether by the last provision of that clause they will not be compelled to assess all property of every kind, church property and everything else.

Mr. GRAY. "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

Mr. BEATTY. Can they exempt anything under that provision?

Mr. GRAY. I think they can when we do not prohibit them from exempting. There is no prohibition here. If there was a prohibition in this section, I would agree with the gentleman from Alturas.

Mr. MORGAN. I ask leave of the gentleman to offer this amendment to carry out the suggestion, and have it read for information.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4 and insert: "Provided, That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just."

Mr. GRAY. I will accept the amendment. But there is one matter I want to speak about in relation to this, what is spoken of here as the taxation of ditches, canals, flumes, etc. As a matter of course, the convention well knows I have not agreed with it but very little in relation to the distribution of water; but I will now say that I know of a system of irrigation that has not been spoken of here at all. It is across the river. Every man who buys a right to that ditch is a stockholder in it. The lands are not owned in common, but the ditch is owned by the stockholders of the ditch. Now, as it is in this provision, it would seem that that ditch could not be assessed, except as it is assessed in connection with their lands, and their lands are in severalty, but the ditch is owned as a water right jointly. Now, I can see no reason on earth, any more than in the statute at the present time, for assessing the improvements on the lands than there is for assessing the lands themselves. You might as well assess the ditches at their worth and assess the lands at their worth. I can see no reason for such a provision in the bill. And I want to speak of another class of mining grounds. There are placer mining grounds in this territory which yield enormously. No provision seems to be made for them at all. I want the net proceeds of those mines to be taxed, and I want the mines to be taxed. I can cite one in Lemhi county, probably my friend at my left can vouch for it, Goose Creek mine. It has been yielding year after year when worked. There is an immense amount of land there; the water controls the land; that land can be cultivated, too. That very same land (as has been often said here that when the substance was gone it was good for nothing), why, this is tillable land, as thousands of acres that I have seen in California, which I supposed was not good for anything, but which is now producing good crops, and are vineyards, I might say. There have been years that this claim has been yielding \$20,000 to \$25,000. Now, shall that be left untaxed?

Mr. SHOUP. It has been yielding a good deal more than that.

Mr. GRAY. Well, the gentleman from Custer knows all about it. Now, there is a great deal of such land in Idaho; the land all along the Snake river, waste land of that kind, yet much of that land is very productive for mining. There seems to be no regard paid to that land, but everything is placed upon quartz mines. My idea is, as I have said, to leave this to the legislature. Let them have some liberty in this matter, and not let us take it all to ourselves and claim that we possess all the knowledge, or all there will be in the territory hereafter, and that they must be prescribed within this iron rule, which leaves no latitude at all.

Mr. MORGAN. I wish to say one word about this matter. We have spent nearly this whole day wrangling over this subject of taxation. We have a very good law upon the statute book now, which exempts certain classes of property, among others, mining claims, I believe. This amendment I have submitted leaves this matter entirely to the legislature. In order that we may get through sometime I hope we will be satisfied to leave it to the legislature where I think it belongs.

Mr. CLAGGETT. I would like to hear it read again.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4, and insert: "Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just."

Mr. CLAGGETT. The objection I have to that motion of the gentleman from Ada, as an amendment to the motion of the gentleman from Bingham, is, that it does not accomplish the purpose which it is aimed to accomplish. It does not leave this question to the legislature at all. As bearing upon that question I will read it: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal." If the matter stopped there it would not be a question, but by a provision of the organic law

no property could be exempted from taxation. It is proposed to add to it an amendment that the legislature may hereafter provide such exemptions, but none as yet have been provided. The Schedule committee will report a section which was read this morning, and which undoubtedly will be adopted, continuing the laws of the territory not repugnant to the constitution; but the law of the Territory would be repugnant to the constitution if you leave it in this shape, for the reason that the law of the Territory would be repealed if you adopt it in the way it is now, and there could be no exemption whatever until the legislature of the state saw fit to initiate a new system of taxation. That proposition cannot safely be gainsaid. But if we can come to a wise conclusion with regard to this matter of taxation, it ought to be put in the constitution; but if we cannot, then it would better be left broadly to the legislature by striking the entire section out, and leaving the whole thing to them. It seems to me that the general expression of opinion here has been in favor of the taxation of the net proceeds of mines, and the surface improvements; but I don't believe it is the desire on the part of the majority of this convention to go beyond that in the matter of taxation. If it is, then I would not only rather leave the whole subject to the action of the legislature, but I was almost ready to say I would rather leave it to the determination of Jack Cade, or any other gang of men that might be gathered up, for they would undoubtedly have some idea of justice with regard to the imposition of a tax; but if we are ready to go ahead and confine this taxation to net proceeds and surface improvements, then it ought to be put in the constitution. And for this reason: Whenever it comes to the question of making an investment of a few dollars in the way of settling upon a piece of land where a man does his own work, and where all he wants, for the first years, particularly if he has no family to provide for, is his grub, and a little matter of help in the way of a team, that is one thing. No matter where you go, you will find plenty of men who have the ability to put in

their labor and that small amount of property in the matter of improvement. But when it comes down to the question of spending hundreds of thousands or millions of dollars in the purchase and improvement and development of mining property, then you must have, in order to secure the investment of that amount of capital, a fixed and certain fiscal policy with regard to its taxation, or you will drive it out of the country. As it is today, your territorial laws have made at least a temporary provision; but if you simply leave the whole matter to be the football of the legislative session, there is never anybody who will ever know two years in advance as to what the laws with regard to mining property are going to be, and it will be a terrible discouragement to the investment of capital. As I said before, I object to this amendment in the shape it is, because it does not leave the matter to the legislature, but does repeal all existing exemptions, unless in the Schedule you specify, "Provided, that the taxation of mines shall be left where it is," or the exemptions of property shall be left where they are until changed by the action of the state legislature.

Mr. MORGAN. That is the report of the committee, is it not?

Mr. CLAGGETT. No sir, the report of the committee is to the effect that all existing laws not repugnant to the constitution are continued in force, and if you have a constitution, which requires all property to be taxed without exemption, until exemptions are imposed by the state legislature, anyone can see that provision of the constitution is repugnant to the system of the territorial statutes. I call the attention of the gentleman, who made the motion to that effect.

The question upon the amendment offered by Mr. Morgan was put by the chair.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4 and insert: "Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just." The vote was taken, and the

chair being in doubt, a rising vote was required, which resulted: Yeas 33; Nays 14; and the amendment was adopted.

The CHAIR. The question now recurs upon the amendment offered by the gentleman from Shoshone (MR. CLAGGETT.)

Mr. MORGAN. If it is in order, I would move that the substitute as amended be adopted. (Seconded.)

The CHAIR. The secretary will read the amendment proposed by Mr. Claggett.

Mr. HEYBURN. I understand the motion is that the substitute as amended be adopted.

The CHAIR. That is pending, and to that there are three or four amendments. No, the motion made by the gentleman is that the substitute as amended be adopted; but there were three or four amendments ahead of his motion. They should be disposed of.

Mr. MAYHEW. What is the question now before this convention?

The CHAIR. It is the amendment proposed by Mr. Claggett, which the clerk is proceeding to read.

Mr. MAYHEW. Do I understand the substitute for Section 5 has been stricken out to the word—

Mr. HEYBURN. All after the word "personal."

Mr. MORGAN. I rise to a point of order. All the section has already been stricken out after the word "personal," and the substitute of the gentleman from Shoshone proposes to strike out all after the word "provided," and it has been already stricken out.

The CHAIR. The point is well taken.

Mr. CLAGGETT. I do not so understand it. I understand it to be the case that the motion was made by the gentleman from Ada to strike out all after the word "personal." To that the gentleman from Bingham offered an amendment, and we voted upon the amendment.

The CHAIR. The gentleman from Ada accepted the amendment and it became a part of his, but as there was a misunderstanding, the chair will put the question again. The question is now upon the amendment of the

gentleman from Ada who has accepted the amendment of the gentleman from Bingham, which makes it one amendment. The clerk will read it as an entirety.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4 and insert: "Provided the legislature may allow such exemptions from time to time as shall seem necessary and just."

The CHAIR. The proposition now before the convention is to strike out all after the word "personal" in line 4 and insert: "Provided that the legislature may provide such exemptions as may seem just." As many as are in favor of that proposition—

Mr. BATTEN. Is not that to be voted for in connection with the amendment offered?

The CHAIR. It is all one amendment, the gentleman from Ada having accepted it. It is an entirety now.

Mr. BEATTY. In other words by voting for this amendment now—

The CHAIR. You strike out all after the word "personal," and insert the proviso as follows: "Provided, the legislature may allow such exemptions from time to time as shall seem necessary and just."

Mr. BEATTY. We will adopt by this motion the first three and a half lines of the substitute for Section 5, and the additional provision asked by the gentleman from Bingham.

Mr. CLAGGETT. If that is the case I offer an additional amendment to the amendment to cover the point which I raised.

SECRETARY reads: Add at the end, "And all existing exemptions provided by the laws of the territory shall continue until changed by the legislature of the state."

Mr. MORGAN. I have no objections to that, but the schedule will continue that in force until after the meeting of the legislature.

Mr. CLAGGETT. I think we had better put it right in here. I know any general proposition in the schedule continuing all laws not repugnant to this con-

stitution will not continue these existing exemptions, when the constitution says that until the state makes exemptions all property shall be taxed.

Mr. MORGAN. The constitution does not say that; but I do not object to the amendment; I will accept it.

Mr. HOWE. I would like to submit an amendment.

Mr. MAYHEW. I raise the point of order. There has been an amendment made, and an amendment to the amendment, and now, you cannot make the third amendment.

The CHAIR. The first one proposed was accepted by the gentleman from Ada, and became thus a part of his proposition as an original question. Then the gentleman from Shoshone proposed an amendment to it, which is the first amendment; and now, there can be another amendment proposed to that.

Mr. MAYHEW. When the amendment prevails that all after the word "personal" shall be stricken out with the exception of the addition that has been offered by my friend Gray, and the amendment by Mr. Morgan has been adopted, then that adopts the section as amended, and you cannot offer any amendment to it.

The CHAIR. But the chair will rule that the vote was under a misapprehension, and intended to submit that question again.

Mr. MAYHEW. Then I understand the chair was mistaken.

The CHAIR. No sir, the chair was not mistaken, but the members were mistaken, and voted under a misapprehension, and I propose to submit it again. The secretary will now read the amendment of Mr. Howe.

SECRETARY reads: Strike out in the third line after the word "laws," the following, "which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal." (Seconded.)

The CHAIR. That is an amendment to the section, and will take its place with the other amendments in its order.

The CHAIR. The clerk will now read the amendment of Mr. Claggett.

Mr. HEYBURN. That has been accepted by Mr. Morgan.

The CHAIR. Does Mr. Gray accept the amendment of Mr. Claggett?

Mr. GRAY. I do.

SECRETARY reads: Strike out all of the substitute for Section 5 after the word "personal" in line 4, and insert, "provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory shall continue until changed by the legislature of the state."

The CHAIR. Now, the vote is upon this entire proposition to strike out all after that line, and make those two provisos. (Rising vote, Yeas 41, Nays 10.) The amendment is adopted. The question now is upon the amendment proposed by Mr. Claggett.

Mr. CLAGGETT. I understand that amendment was disposed of.

The CHAIR. I think it is.

Mr. CLAGGETT. I withdraw the amendment.

The CHAIR. The question is now upon the amendment proposed by Mr. Ainslie.

Mr. AINSLIE. I haven't any amendment there now.

Mr. MAYHEW. I offered an amendment.

The CHAIR. It will be next in order.

Mr. BATTEN. How can that be amended, which is *functus officio*?

The CHAIR. The amendment of Mr. Ainslie was to add to that section.

SECRETARY reads: Amend Section 5 by continuing the same as follows: "Provided further that duplicate taxation of property for the same purpose during the same year is hereby prohibited." (Seconded. Carried.)

The CHAIR. The question is now upon the amendment proposed by Mr. Mayhew.

Mr. MAYHEW. Well, I don't know now, Mr. Pres-

ident. I am like the boy that lost his dinner bucket. If you strike out all that section that I desire to amend, I don't see where my amendment comes in. (Laughter.) I thought it was going to be a very good one, but the gentlemen have taken it by the horns and struck it all out, and if you have no objection, I will withdraw it.

The CHAIR. The question is now upon the amendment of the gentleman from Shoshone (MR. HEYBURN).

Mr. HEYBURN. The part I proposed to amend was stricken out.

The CHAIR. The question is then upon the amendment proposed by Mr. Howe.

Mr. HOWE. Mr. President, the object of the—

Mr. MAYHEW. Let us hear it read first.

SECRETARY reads: Strike out in the third line after the word "laws" the words "which shall prescribe such regulations as shall secure a just valuation for taxation of all property real and personal."

Mr. HOWE. The disposition of the convention seemed to be to leave the matter with the legislature; and that was the object of that amendment. But the object has been gained by the amendment proposed by the gentleman from Shoshone, and I will withdraw this with the leave of the convention.

The CHAIR. The gentleman from Nez Perce withdraws the amendment. The question now recurs upon the adoption of the substitute for Section 5 as amended.

Mr. MAYHEW. I desire the reading of it as amended.

SECRETARY reads: "Section 5. All taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real or personal; Provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory shall continue until changed by the legislature of the state; Provided further, that

duplicate taxation of property for the same purpose during the same year, is hereby prohibited.”

The CHAIR. The question is now upon the adoption of the substitute as amended for the original Section 5 in the report of the committee on Revenue and Finance.

Vote and carried, and Section 5 as amended was adopted.

SECTION STRICKEN OUT.

Mr. HASBROUCK. I move to strike out Section 6 in the original report of the committee. (Carried).

The CHAIR. The question now recurs upon the adoption of the entire article as amended.

SECTION 15.

Mr. HASBROUCK. Before we pass from this article, I would like to call the attention of the convention again to Section 18 (15). It will be remembered that section caused a good deal of discussion and was adopted by a close vote, and I wish to ask the consent of the convention to give my reasons for reconsidering the vote by which it was adopted, and offer a substitute.

The CHAIR. Does the gentleman move to reconsider that section?

Mr. HASBROUCK. I do. (Seconded.)

Mr. HASBROUCK. In the first place this section contemplates that there will be some outstanding warrants, but it does not really say whether they will be the original and old indebtedness after the constitution is adopted, or whether they will be such indebtedness as will occur from year to year from the fact of there not being sufficient revenue collected to meet the current expenses. I agree with the section insofar as conducting the business of the counties upon a cash basis, and my substitute that will be offered will meet that question.

Mr. MAYHEW. I would like to ask, before I leave the hall, if the question is debatable.

The CHAIR. Yes, the gentleman made a motion to reconsider, which is being considered, and as I understand it, that is debatable.

Mr. CLAGGETT. Mr. President, I would like to suggest to the gentleman from Washington, if he will send up his substitute and have it read, and then address his remarks to the differences between the two, we can pass more intelligently on the question of reconsideration.

SECRETARY reads: "Section 18 (15). The several counties of this state shall conduct their business on a cash basis. If, at the close of the fiscal year it is found enough revenue has not been collected to meet the current expense, a special tax, in addition to other taxes shall be levied the succeeding year to meet the deficit of the preceding year."

"Section 19. The outstanding indebtedness of the several counties shall be paid from a special fund created for that purpose."

Mr. HASBROUCK. As the convention will observe, I have divided the question, and I propose that the current expenses of the county are conducted upon a cash basis. That is the first proposition; and I make the proviso in that section which will meet that. And in the second it provides in a separate section that will meet the outstanding indebtedness at the time this constitution is adopted, and where working under the state government. I do that for the purpose of not having them so they will be considered together, but might stand alone and separate by themselves, and there can be no misconstruction of them. I am satisfied that this section as it now stands is liable to more than one construction, and the debate upon yesterday showed that that was the fact. I wish to say in regard to the last two lines of the section that was adopted, it says "all moneys in the county treasury at the end of each fiscal year not needed for current expenses shall be transferred to said redemption fund. The redemption fund provided for before that is presumably to pay outstanding indebtedness at the time the constitution goes forth. But what is the practical working of it? On the first day of January the county has a certain amount of money in its expense fund, so-called. Then it devolves upon the county commissioners to estimate how much

of that fund that may remain there will be needed for the current expenses from the first day of January until more taxes are collected, in order to meet the current expenses. Now, as every one knows, it is an impossibility to do that with any degree of correctness. Many emergencies may arise. I have known where a term of court, the first term of court in March or April, where a lot of criminal prosecutions were had, would perhaps cost the county three or four thousand dollars, which no one had supposed would occur at all; and it is probable the commissioners would not provide for that. Therefore, if you are going to pay your expenses in cash you must have money to do it. If it has been turned over to this redemption fund, there is no money to pay, and no authority to issue warrants to pay those who are entitled to their pay. Another objection to this is, that it provides that all moneys in a county treasury at the end of the fiscal year not needed for current expenses shall be transferred to this redemption fund, no matter what fund, whether hospital, road or any other fund. I think that is a serious objection. I am in favor of the principle of a cash basis, and I hope it can be so worded that there can be no misconstruction of it. It will be observed by this second section I have offered that I have provided that this indebtedness shall be amply provided for. You will observe that for the purpose of this redemption fund it says in the old section adopted yesterday that only ten mills on the dollar shall be levied in any one year. That, according to some gentlemen, would not be sufficient to meet that indebtedness, therefore I have left that matter as to the amount and as to the manner of creating this redemption fund wholly with the legislature.

The CHAIR. The question is to reconsider the vote. Are you ready for the question?

Mr. CLAGGETT. Mr. President, I hope this motion to reconsider will not prevail. Section 18 (15) as it now stands was reported by a special committee, and I will say that the committee was made up of the gentlemen, who upon the floor, had antagonized the first

proposition submitted to the convention, and gave various reasons and theories regarding the matter, aided by the committee on Finance, the chairman of which was consulting with the special committee. The proposition is to change Section 18 (15), so as to make it read as follows: "The several counties of this state shall conduct their business on a cash basis." It is perfectly plain on the face of things that if you put that in the organic law you practically cut out the legislature with regard to the matter. Section 18 (15) as it now stands reads: "The legislature shall provide by law, such a system of county finance, as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that when any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners in addition to other taxes provided by law, shall levy a special tax, not to exceed ten mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax, all warrants issued before such levy, shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund." But here you leave in the organic law that, independent of any legislature or anything of that kind, they shall conduct their business on a cash basis without legislation, and which it will be utterly impossible to do. Then the second clause, if, at the close of the fiscal year it is found enough revenue has not been collected to meet the current expense, a special tax, in addition to other taxes, shall be levied the succeeding year to meet the deficit of the preceding year. There may be in any one given year an enormous increase of obligations. The court house buildings may burn down; there may be extraordinary expenses; and yet in the following year, under all circumstances, they must levy a tax to cover any possible deficit that may exist. It is not the case as it is with the treasurer of the United

States, where the imposition of a trifling tax in addition to those already imposed will make an enormous sinking fund. It is a case where we are dealing with counties, all severely burdened; and to put this in the constitution is to defeat Section 18 (15) and substitute nothing in place of it except greater confusion and doubt than exist at the present time. Section 19 proposes, "the outstanding indebtedness of the several counties shall be paid from a special fund created for the purpose." That is provided for already in Section 18 (15). It needs no further provision with regard to it, except that in Section 18 (15) a limit is placed upon the power of the county commissioners, of ten mills on the dollar in any one year for the creation of a special fund; whereas, here there is no limit on it, and they could go ahead and levy any tax they saw fit, and pay off every dollar of outstanding indebtedness right at once, even though the county might be in debt \$50,000, \$60,000 or \$100,000. It seems to me the proposition as contained in Section 18 (15) all the way through is a great deal better considered, and better calculated to accomplish the end we have in view, than the one which is offered by the gentleman from Washington.

Mr. HASBROUCK. I call the gentleman's attention to the last Section 19 (16) as it is now. "The legislature shall pass all laws necessary to carry out the provisions of this article." For that reason I left that matter out of the substitute I offered; it is not necessary to be repeated again.

Mr. AINSLIE. Mr. President, it seems to me if you take Section 18 (15) as adopted yesterday by the convention, and compare it in connection with Section 3 of Article VII. (VIII.) reported by the committee on Public Indebtedness and Subsidies, there appears to be no necessity for this amendment offered by the gentleman from Washington. Section 3 already adopted and gone to the Revision committee, I believe, says: (Reading) "No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability in any

manner, or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void." Now, I do not see how the several counties in this state—the gentleman's amendment says "if at the close of the fiscal year it is found enough revenue has not been collected to meet the current expense, a special tax in addition to other taxes shall be levied the succeeding year to meet the deficit of the preceding year." Now, they are prohibited from incurring any liability or debt in excess of the revenue to be derived during the fiscal year. I do not see that there is any danger at all, because under Section 18 (15) as drawn and adopted yesterday, they shall provide by law such system of county finances as to put it on a cash basis. The county commissioners when they come to levy the county tax for that year, have all the county taxes before them; they make an estimate of what will be required for the different offices, for salaries and the contingent expense of the county, and they invariably put in a few hundred dollars more than necessary to make up for delinquent taxes at the end of the year. If they do not, it is their own fault. If you allow them any latitude to create indebtedness, as that would by implication, by levying a special tax to be collected next year for the amount they incur indebtedness over and above the amount provided for, I think it is opening the door to a great deal of abuse.

Mr. HASBROUCK. I do not agree with the gentleman. I am not afraid to trust these matters to the county commissioners. I admit a great many of them do not know very much, but this fact exists certainly,

that they often have the interests of their county at stake more than anybody else; and I am not afraid of their running the county in debt unless they are absolutely obliged to do so, and if they do, I don't want that debt to run any further than the second year after it is incurred.

The question was put by the chair and a division demanded. Rising vote, Yeas 5; Nays 18.

The CHAIR. The question now recurs upon the adoption of the article as a whole. It is moved and seconded that the article be adopted as amended. (Carried.)

The CHAIR. The question now is that it be referred to the committee on Engrossment and Revision.

Mr. MAYHEW. I move it be reported tomorrow morning at nine o'clock. (Carried.)

ARTICLE XVIII.—COUNTY ORGANIZATION.

The CHAIR. The next thing under consideration is the report of the committee on Names, Boundaries and Organization.

President Claggett in the chair.

Mr. REID. I will ask unanimous consent that the bill be considered reported back without amendment, and we proceed with it in convention as if adopted in the house.

Motion seconded. No objection and it was so ordered.

SECTION 1.

Section 1 read, and it is moved and seconded that it be adopted. Carried.

SECTION 2.

Section 2 read, and it is moved and seconded that it be adopted.

Mr. PARKER. I have an amendment.

SECRETARY reads: "Substitute for Section 2. No county seat shall be removed until a majority of the qualified electors of the county voting on the question, shall have voted in favor of its removal." (Seconded.)

Mr. GRAY. Mr. President, by the act of the legislature last fall there was a provision made for a vote at the next general election for the county seats of two newly formed counties.¹ I am afraid this might affect it in some manner.

Mr. MORGAN. I offer an amendment.

SECRETARY reads: Strike out "four" and insert "six" in line 5.

Mr. REID. If the gentleman remembers, the Schedule committee provides for that.

Mr. GRAY. I think it does myself, although they seem to be partially in conflict.

Mr. REID. If you struck out the two sections together, I think there is no doubt but what the existing law would prevail. I hope the amendment proposed will not prevail. I mean the substitute offered by the gentleman from Idaho. This section was adopted by the committee after mature deliberation, and it the same law in existence in most of the states of the west. It provides that no county seat shall be removed unless a majority of the qualified voters of the county first petition for it, and then after the petition has been presented and adopted, it requires two-thirds of the qualified voters to move it. We thought best to limit it in this way, because, as gentlemen are aware, there are a great many county seat fights and counties are torn by dissensions on that subject. And its location being a matter of paramount importance to the people, we think to remove a county seat ought to require at least two-thirds of the voters of the county, and that the subject should not be agitated unless a majority of the qualified voters of the county wish it, and submit that this agitation in no instance should be oftener than once in four years. This provision is identical with that in the California constitution.² If the convention see fit to change it, or think it ought to be relegated to the legislature, the committee will acquiesce.

¹—Sec. 6 of Act of Feb. 7, 1889, "Creating and Organizing the Counties of Elmore and Logan." [Sess. Laws 1889, p. 37].

²—Art. 11, Sec. 2, Cal. Const. 1879.

Mr. HEYBURN. I ask for information, if we have not already considered this section once in committee of the Whole, or in connection with some other article; this provision that it shall not be considered—

Mr. MORGAN. That was in the legislative department.

Mr. REID. The gentleman who is now presiding proposed that it should be removed on the vote of two-thirds, provided there was no general law.

Mr. HEYBURN. Where were we considering it?

Mr. REID. In the article on Legislative Department.

Mr. HEYBURN. Do we provide for it in that article?

Mr. MAYHEW. Yes, once in six years.

Mr. REID. Yes, but that provides that the legislature may do that if there is no uniform law, and we are enacting means whereby the legislature may provide a uniform law. The amendment proposed by the gentleman from Shoshone only provided that that should be done only in case the legislature did not provide a uniform law.

Mr. HEYBURN. It seems to me that provision in the legislative bill has rendered this one unnecessary. If we have authorized the legislature to do it in this way, I do not see the necessity for providing for it in this article.

Mr. MAYHEW. I would ask if we cannot call for the reading of that section?

The CHAIR. There was an amendment adopted to the last section of the legislative bill, wherein there was a prohibition against passing special laws changing county seats, and the amendment as finally adopted provided that in the absence of a general law upon the subject the legislature might pass a special law; but that the power should cease as long as the general law was in existence on the subject, but that no law of any kind should be passed, which would authorize the removal oftener than once in six years.

Mr. REID. And I call the attention of the chair to the fact that it was not to be upon the petition of any

citizen. It provided the legislature might pass an act submitting this to the people, and it should be adopted only on a certain vote, but required no petition whatever, and the consequence would be you would have a lobby at every legislature from any particular county that wanted a county seat removal. If you adopt this, you leave the matter right at home, and petitions will have to be circulated, and attention will be called to it, and they will have to have a majority of the citizens to submit, and then two-thirds majority to adopt it.

Mr. MORGAN. I have offered an amendment there to strike out the word "four" and insert "six" in line 5, so that if this section is adopted it will correspond with the section already adopted in the legislative bill.

Mr. REID. I will state to the gentleman the reason the committee put in "four." We hope this will be a rapidly growing state, and in four years it may be necessary for good reasons to divide a county or remove a county seat.

Mr. MORGAN. Won't it conflict with the one adopted?

Mr. REID. Not if the legislature adopts a uniform system of legislation.

Mr. MAYHEW. I ask for the reading of the other section.

SECRETARY reads: "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * Changing county seats; unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed; provided, that the power to pass a special law shall cease as long as the legislature shall provide for such change by general law; provided further, that no special law shall be passed for any one county oftener than once in six years."

The CHAIR. The first question arises on the amendment offered by the gentleman from Bingham, to strike out "four" and insert "six" in line 5.

Mr. SHOUP. I send up an amendment.

SECRETARY reads: Add to the section, "no person shall vote at any county seat election, who has not resided in the county six months, and in the precinct ninety days."

Mr. SHOUP. I move its adoption.

Mr. REID. It says "qualified electors," and under the suffrage bill he will have to reside in the county six months and twelve months in the state; but I will accept the amendment.

The CHAIR. The question recurs on the amendment offered by Mr. Morgan to strike out "four" and insert "six." (Vote and carried.)

Mr. HEYBURN. I move the adoption of the section as amended.

The SECRETARY. There are two other amendments here yet. (Reads) Add to Section 2 the following: "except as provided by existing laws."

Mr. REID. I think this is included in the report of the committee on Schedule, but I have no objections to it. As I stated to the gentleman, I think the committee has provided for that.

Mr. MAYHEW. There is no objection to it if the matter is not provided for.

Mr. GRAY. I am inclined to think, as the gentleman from Nez Perce says, that the Schedule committee does provide for all these laws. It does, without this provision, so long as they are not in violation of this constitution. There has got to be an election some time as provided by statute now, for two counties voting for their county seats; it was so provided in the bill forming the counties. Now, the only trouble that I see that might occur in this, is that it might be claimed that a vote upon that would be in violation of the constitution, except it be as provided in this bill.

Mr. MORGAN. Is not your schedule a part of this constitution?

Mr. GRAY. It is; but there is one provision in the schedule, which says that all these existing laws shall remain in force except they be in violation of this constitution.

Mr. MORGAN. I should be in favor of changing that proposition in the schedule, to read that all existing laws should remain in force until the close of the first session of the legislature, or sixty days after the close thereof, and that would fix it. We cannot go on changing one of these sections all the way through simply because the schedule is not sufficient. I believe in correcting the schedule.

Mr. REID. I will accept the gentleman's amendment, to save time. I don't think it is necessary.

The CHAIR. The amendment having been accepted by the chairman of the committee, the question recurs upon the substitute offered by the gentleman from Idaho.

SECRETARY reads: "No county seat shall be removed until a majority of the qualified electors of the county voting on the question shall have voted in favor of its removal." (Vote and lost.)

The question upon the adoption of the section as amended was put by the chair. vote and carried.

SECTION 3.

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

Mr. BEATTY. I move to strike it out. (Seconded.)

Mr. BEATTY. Mr. President, and gentleman of the convention, this section is to me, and to the people I represent, of more interest than any other question in this constitution. If this were an old state, possibly a provision of that kind might be proper, but this is a new territory, and I hope it will soon be a new state. Our county lines must necessarily be changed from time to time to meet the wants of the people, to meet the changes of the centers of population and interest. This provision, if it becomes a part of the constitution, practically prevents any changes in county lines in this state from this time on. Let us look at it. "No county shall be divided unless a majority of the qualified electors of the county vote on the proposition," etc. "No county shall be divided." What is included within that? It does not say whether it shall be divided in the middle,

at one end or how. It will preclude the cutting off any portion of one county and attaching it to another. In my opinion it would be construed as an absolute prohibition against the segregation of any portion of a county. It is not a provision against dividing one county into two; that is not it; but simply that a county shall not be divided. Now, I think any lawyer construing that will be compelled to say that; that at least will allow of the construction that no county shall be cut off, no part of the county shall be segregated; what is the result? Why, before that can be done, or before any portion of a county can be cut off you must first get a majority of the voters of that county to consent to that proposition. Now, I ask you in all honesty, where can you in this territory get a majority of the voters of any county to consent that they shall lose one foot of their sacred soil? Wherever that question has come up in the legislature from time to time in the past, we know how ardent all representatives of the counties have been to hold on to all their soil. They don't expect to be asked the question whether they are doing injustice to the people that live off in the distant corner of the county. The only question is whether they shall lose any part of their territory, and invariably they are opposed to losing any portion of it. I claim you cannot get a county in this territory, by a majority of the voters of that county, to consent to losing any portion of its territory. Now, I tell you, Mr. President, where this shoe fits very closely, for I have nothing to conceal. The last legislature of Idaho territory, to its shame be it said, made a division of Alturas county, which is the most outrageous in my opinion of any law that ever was enacted. They have left what was once a princely domain, a county of too large dimensions I admit, but a county of about \$4,000,000 worth of property, reduced to a little pitiable \$750,000 worth of property, as the assessor informed me a few days ago when I was at home. That is what is left of Alturas county; and included in that is three or four hundred thousand dollars worth of burned property recently destroyed by

the fire at Hailey. They have left, in other words, of Alturas county two little towns, the town of Hailey and the town of Ketchum to pay taxes; but not only that; they have left upon that county a burden of debt that even the large counties of this territory cannot well sustain. They have left us a large extent of territory, I admit, but nearly all hills and mountains; they have left us no property with which to bear the burden upon our shoulders.

Mr. MAYHEW. Are there no mines there?

Mr. BEATTY. The mines are there, but I am sorry to say—

Mr. MAYHEW. I will ask you if your own representatives of that county were not in favor of it?

Mr. BEATTY. No sir, only a part of them; those who lived in—

Mr. MAYHEW. Allow me to correct the gentleman. I happened to be a member of that legislature, and I don't think it is right to reflect upon that legislature, unless he reflects upon his own members. The council consisted of two members from Alturas county; and the house of four members; and one member of the council was in favor of the division of that county and two members of the house; and the legislature took their view of the matter and adopted their theory. If there is any reflection upon that legislature—although I am not advocating the supremacy of the last legislature—I want the gentleman, if he reflects upon anybody, to reflect upon himself, and not the balance of the legislature; because I take it for granted, when the gentleman reflects upon the members of the legislature last year he makes that reflection upon his own members, and not upon the members generally.

Mr. BEATTY. Mr. President, I was not a member of the last legislature, and of course I cannot reflect upon myself, and I was not an advocate of all that was done. I was an advocate of the cutting off of Elmore county, I admit; and I say further that the members of the legislature from Alturas county did not all sustain that; but only those members that lived in the parts

cut off. Those members, I understand, did generally join in the discourteous bill which cut up Alturas county in the shape it did. Now, Mr. President and gentlemen, regardless of whether that legislature was right or wrong, and without reflecting directly upon the legislature—

Mr. MAYHEW. But you have already done it; no use now to try to smooth it over.

Mr. BEATTY. But I do undertake to say that the act was a matter of injustice, and that this convention should not now justify it by putting a provision in this constitution that will saddle for all time to come that injustice upon us. There can be no doubt in my mind of the result of it. You enact that, and it simply leaves us to remain in the condition in which we now are; it leaves us to remain without property to meet the burden upon our shoulders, for it must be conceded that no other county will ever consent to lose a foot of soil to aid the people of Alturas county as they are now situated. In other words, we would be compelled to remain just within the borders we are now, and within those borders there is not enough property, taxed at its full value, to ever sustain any respectable county. We would not have enough to pay the ordinary running expenses of the county, much less enough to meet the immense burden that is upon our shoulders. Now, Mr. President, that does not apply alone to Alturas county, but I admit that is where the shoe fits. I say in all frankness, we do expect and hope that some future legislation will remedy this evil, will grant us some relief, at least, and put us upon some respectable basis by which we can exist as a county, instead of going out of existence or going into bankruptcy. And I am not talking for mere talk. I say, that unless relief of that kind is granted, the territory of Idaho has one county that will be virtually bankrupt, and we cannot help ourselves. We have this year levied the same assessment that we levied before, three per cent, and we will not be nearly able to meet the indebtedness upon our shoulders. You will hear before the next year comes in that Alturas county

is not meeting its debts, and its warrants now, instead of being ninety-five cents as they were when this bill was passed, are almost worthless; you cannot now get fifty cents on the dollar for our warrants, although one paper has a notice published by a party that he will give ninety-five cents, but that is only for effect; it is not true. Now, I will ask you whether you will pass an act and put in this constitution a provision that will forever tie us down in the situation we now are, and prevent the legislature in the future from granting us the relief which I think we are entitled to.

Mr. CAVANAH. Does the gentleman suppose warrants will be paid when the county pays such ridiculous salaries to its officers? You pay more to your officers than all of Elmore county's salaries—nearly a thousand dollars more.

Mr. BEATTY. The gentleman is mistaken about that. I do not know just what salaries are allowed the officers for this year, but those salaries were allowed upon the basis of Alturas county as she existed, and those officers were elected when it was a solid body. As a matter of fact, Alturas county will bring her salaries down as low as others, but at the time those allowances were made the county commissioners had no other guide or rule to go by but to take the assessment which had been returned, and allow those officers the salaries they were entitled to at the time they were elected. That is the reason those salaries were allowed, as they are now, although I do not know the amount that is allowed the different officers. So far as I am personally concerned, I will go as far as the gentleman or any other one in putting the officers' salaries down to a reasonable amount, and at no time do I advocate high salaries. Now, Mr. President, this section does not apply alone to Alturas county. It applies to all the counties of this territory. I ask you, under this section, how any county in this territory can be divided; how can the immense county of Bingham be divided; or any other county be divided? How can you cut off a strip from one side of one county and attach it to another for the benefit of the

people? It simply ties the lines of the counties to where they are now, and I don't believe the line of any county in this territory will ever be changed with such a law as that in the constitution.

Mr. GRAY. I want to talk a minute, not upon this personal matter. I am in hopes we will while here, and I believe we are trying to, legislate for the common good. I hope the legislature will not be troubled, as the legislature was last year, with matters of this kind; for if it is, little or no good is done by a legislature when they come with the purpose of dividing counties or holding counties together or subjecting a large section of territory to the rule of people by which they say they are improperly treated. It is even taxation without representation to a great extent; but I say this, keep that from the legislature; if you do not, the legislature amounts to nothing. You commence from the first day you come into the legislature; it is trade here and trade there; stand by me and I will stand by you. Let such be the case, and your legislatures, when they have got through, have amounted to nothing at all. And I hope it never will be at any one again, as I can prove by my friend from Shoshone there, that things do not appear as they should in the legislative body.

Mr. MAYHEW. I seconded the motion of my friend from Alturas to strike out the section, but I shall vote against it. That may strike the gentleman as rather strange, that I would second the motion and then change my mind. I am convinced by the very argument that he has made that this section as it is proposed by the committee should remain in the organic act. While I do not desire to discuss the merits of this proposition, I desire to have something to say when language comes from the gentleman from Alturas reflecting upon men that were members of that legislature, I think equally honorable to any members of this convention or any other body in the world. How does this matter stand? I ask the gentleman himself, if it was not by his own delegation, if it was not by the representatives from Alturas county that the bill was first introduced in the

legislature for the division of that county? It never came from an outside member, but it was introduced in both houses, two bills, to divide that county; and if I recollect right, the gentleman was here on the outside of that legislature, figuring and working as a lobbyist either to prevent or foster the division of that county. I know this, Mr. President, and when the gentleman says it was the infamous action of the members of the last legislature, I suppose he includes himself among the balance. I do not desire to change his opinion; I do not desire to say a word to change his view of any member of the last legislature. The gentleman can entertain what opinion he pleases of the last legislature and I presume to say that the last legislature can entertain their opinion of the gentleman, being as this is a free country, upon that subject. The facts, Mr. President, are these: that when at the last session of the legislature these bills were introduced, they were introduced by the members from that county, and that county alone; and I know that the members went to that county's own members and asked them and appealed to them all not to get up a discussion and create controversy and discord, so as to disturb the harmony of the legislature, and they were told, *and told*—by whom? By the members of the legislature from Alturas county, to attend to their own business, and they could attend to theirs. That was the conduct of the members from Alturas county, and after the dissension and discord in the last legislature was caused by the members from Alturas county, now, when the bill is passed, they attempt to reflect upon the members of the legislature. *You* (MR. BEATTY) were the first man who threw the fire-brand into the legislature. *You* (MR. BEATTY) were the first man who introduced this discord and this dissension—

Mr. McCONNELL. I raise the point of order and refer to rule 11.

The CHAIR. The chair is of the opinion the point of order is well taken.

Mr. MAYHEW. That is right, call me to order. I

supposed you would do it, and I supposed this chairman, president of this convention, would sustain it, but Mr. President, you have permitted this gentleman to go on and reflect upon that legislature, and when I undertake to vindicate it I am called to order. I submit to your order, I submit to the chairman, the president of this convention; but I say that the declarations made by the gentleman in his reflections are not true.

The CHAIR. The chair understood that the gentleman from Alturas did not reflect upon the member at all, but was referring to the effect of the bill.

Mr. BEATTY. That was all.

Mr. MAYHEW. "The infamous legislature."

Mr. BEATTY. I desire to rise to a question of personal privilege. It is possible that in the heat of debate—and admitting that, I have not a tongue as nimble as my friend from Shoshone—I may have said those words, which possibly could have been construed as the gentleman has construed them. I did not mean to reflect upon the legislature. I meant simply to say this, that the act of the legislature had resulted in such great damage to us that it was beyond any act of any legislature we had here before. That is an inference, possibly, to be drawn from what I said; but my words were intended, however poorly I may have expressed them, to be directed to the effect in itself; and that is what I rise to explain. I would have liked to interrupt the gentleman before.

Mr. MAYHEW. It always strikes me that a man in discussing a question should be guarded in his language and in his reflections. If the gentleman didn't mean it, then what I have said doesn't count. (Laughter.) By unanimous consent, gentlemen, that doesn't count. Now, like my friend the other day proposing to expunge something, by unanimous consent what I have said must be expunged. (Laughter.) But, so far as I am individually concerned I don't propose to retract a word.

Mr. WHITTON. The gentleman from Alturas claims that they are overburdened with debt. Now, under this

law dividing the county of Alturas,¹ it provides that both Logan and Elmore shall take their part of the indebtedness. He did not mention that fact. And it provides further, that the counties of Logan, Elmore, Bingham and Alturas should each appoint an expert commissioner, and three of those counties appointed three experts as commissioners. Alturas refused, or did not appoint; and consequently that debt has not been adjusted, but it is only the fault of Alturas county that it has not been adjusted.

Mr. BEATTY. I would like to ask the gentleman to state the facts.

Mr. WHITTON. I state those are the facts, sir.

Mr. BEATTY. I will ask the gentleman if he is not aware that this question is now pending in the supreme court of the United States, and if that is not the reason why no adjustment has been made of the debt, and that there cannot be until that question is settled by the supreme court?

Mr. WHITTON. That may be. But going on and adjusting the debt could have been done just as well, if I properly understand it, and let the case be pending in the supreme court. Furthermore, now, I was a commissioner from Alturas county, and know something about it. I was not elected on the regular ticket, because they would not allow the commissioner to be elected; they had to be independent.

Mr. MAYHEW. Yes, I believe I had a talk with the gentleman on the railroad.

Mr. WHITTON. Yes, and I was one of the commissioners that set those salaries. This bill for division passed the house on the 7th of February, and on the 12th of February we fixed the salaries. And I tried to have the county rated, to get the amount of the assessment roll then levied in the county and rate the salaries accordingly. Would not do that. No. And we set the salaries on the 12th. On the 13th the minutes were

¹—An act "Creating and Organizing the Counties of Elmore and Logan." [1889 Sess. Laws, p. 37].

read and approved. On the 14th I made a motion to reconsider the salaries and reduce them to the minimum. That motion was voted down. That day I went to California. After I was gone that day, the salaries were not high enough to suit them; they went and erased the record and raised the sheriff's salary \$500, raised the district attorney's salary \$500, and the probate judge's salary \$200. The book is there to show for itself. I made those charges before, and am responsible for them. Now, then, they got the salary of the sheriff at \$5,000, which is \$1,350 to a cent more than we pay the officers of Logan county altogether, including the commissioners. And the salary of the district attorney, including the deputy is \$350 more than we paid all our officers together, including the commissioners. Then they come in and play the baby act. It reminds me of the man who killed his father and mother and then claimed he ought to have sympathy because he was an orphan.

Mr. VINEYARD. I will demonstrate, if I can express what is in my mind, the injustice which this Section 3 contains. "No county shall be divided unless a majority of the qualified electors of the county voting on the proposition at a general election shall vote in favor of such division." Let me illustrate how that works. Suppose there are two counties; take the counties as they exist over there today, Alturas and Logan. That immense stretch to the west of Hailey known as Camas prairie, is a farming community, generally understood to be in sympathy with old Alturas county, and desires to be a portion of the territory within the limits of that county. By the act of the legislature last winter that portion of Alturas county, without any voice or vote in it, was placed within and now constitutes a part of Logan county. There was an act of the legislature without the approbation of those people whatever upon the subject. Now, if that section is adopted it will forever preclude those people who desire to be and remain a part of Alturas from ever coming back into that county; because the question would be submitted

to the people of Logan county at a general election, and the balance of the inhabitants, which lie south of that line would override the people of Camas prairie, and they would be handicapped and tied down where they are for all time.

Mr. MAYHEW. On that very proposition the amendment was prepared; to meet the very views that the gentleman has expressed here, and the delegation and members of the legislature absolutely rejected it. And now, I propose to use names, so far as that is concerned; and that is Mr. Perkins. He rejected my own amendment to meet the view of the gentleman.

Mr. VINEYARD. I do not propose to be bound down here in the discussion of a section that affects the entire population of this portion of the territory over there by charges and reflections upon any members of the legislature from that county. There were none of them in sympathy with me. I voted them all imbeciles, and by the imbecility of that delegation that was over there, this injustice was done by the Territory at its last session of the legislature.

The CHAIR. The gentleman will please confine himself to the matter under discussion. The chair holds that although any part of the bill may be referred to, if it is to illustrate the matter before the house, to go into details in these controversies is out of order.

Mr. VINEYARD. I am merely answering the question of the gentleman from Shoshone county, and I shall refrain from any comment upon the action of the legislature upon that subject. What we want now is for the door to be left open whereby we can have justice done at some time in the future by the legislature; whereby a minority, or the people that are to be affected by the change, shall be heard and not be voted down by a majority against them, if they should happen to be in a county where these changes exist. That is all we ask. We ask nothing except even, open-handed justice at the hands of this convention upon that subject. My friend Gray all at once has grown distrustful of the legislature. He has been wanting to throw every-

thing open for the legislature to consider here, until it comes down to this question. Then "let us keep this thing out of the legislature." Let us tie these boundaries of these various counties so tight that it will be impossible for any future legislature ever to tamper with them, whether the people want it so or not. That is the object which is to be effected by the change. That is where the injustice is; that is how we will be affected if this section remains as it is here. A majority of Logan county lying south of this agricultural country known as Camas prairie, which desires to be in Alturas county, would stifle their voice and prohibit them from ever being attached to Alturas county. That is the proposition before this convention, and which you are to grapple with if you propose to hold up the ends of fairness and fair play. If you propose to gag us, if you propose to say these lines shall be iron-bound, and no relief against them, I presume it is in the power of this convention to say so, if it is ratified by the people.

Now, so far as the salaries of those officers are concerned, I do not know anything about that, how they were raised or upon what basis, nor do I care. That is not germane to the proposition in hand. The only thing that addresses itself to this convention is, will it not work a wrong and hardship and outrage upon inhabitants of sections of those counties that desire to have those lines changed so that they may convenience themselves for their own individual prosperity? There is no question about it. Should it be left in the hands of a majority of the remaining portion of the county to say that it shall never have that changed when they are the only ones to be benefited or receive the benefits? There is the point in this question. I say it is an outrage for the convention or any body of men to undertake to foist upon us a proposition so iniquitous as this.

Mr. GRAY. I have not lost confidence in the legislature. What I said was this. It obstructed legislation. And I will ask those that know anything about the legislature last winter, if it was not the very fact of these bills that were brought before it. I am not here

to state personally what I know about this case. It may be said that I have investigated it to quite an extent, and know a great deal about it, and I know a great deal about how the bills were put through, and what was the cause of it, and I shall have to say something or other in favor of the gentleman from Shoshone. If they had been willing to let Elmore county go, then they would probably have had no trouble with Logan.

Mr. MAYHEW. That is what they would have, but they would not have it; their own members too.

Mr. GRAY. But the only question is, the gentleman says: Don't gag us; let the minority rule. We want it so that the majority of the people can have nothing to say. It is the minority we are after." They want minority rule, assisted by their neighbors on the outside. Is that the correct principle? Do not the majority of the people have something to say about the question, or is the minority to represent us? I have not, as I say again, lost faith in the legislature; I do not say the legislature cannot be trusted. Perhaps they went further than they would have done last winter had it not been for the people themselves of that county; and I do not say these gentlemen were to blame for that, but they forced this measure as it is, and it is there now, and they are organized counties. But the idea is, we must not pass any law that will not allow a minority of them to lead, if we can really legislate up to that pitch.

Mr. REID. I would like to be indulged one moment. I want to hasten the consideration of the bill. The gentleman in his excitement speaks of a desire to perpetrate an outrage upon the people of Alturas. I will say to the gentleman when we drew that section, no thought of Alturas ever entered our heads, and it was only after the section was agreed upon that we understood it would affect that county. No, it was to avoid the very thing the gentleman spoke of that we put this section in. Sections 2, 3 and 4 must be taken together. Section 2 provides how you may remove a county seat. We all agreed on that, and have gone so far as to provide that if the legislature does not give us a uniform

law we will go back to that special law that was put in the legislative bill. Now, we come to Section 3. "No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division." Now, what does that mean? It means, if Alturas county wants to get a slice off that Camas prairie country from Logan, and put it on to Alturas, that Logan county shall have something to say about it. It means, if my friend in Latah county wants to take that country up there from Nez Perce and leave her emasculated, that Nez Perce shall have something to say about it. I think the people ought to settle it themselves: How will it be? The first legislature that meets, there will be a lobby from Alturas and one from Logan; and as the gentleman says, it will block up business by combinations being formed; it will obstruct legislation, and then what? The people of Logan will be put to an expense of coming up to lobby against it. Now, why don't you leave that among the people themselves, and settle it at the ballot box? In this we provide for the removal of county seats and cutting off counties, and the next section provides for the forming of a new county. If the legislature in its wisdom sees fit to take part of two counties and form that into a new county, it can do it by the next section without submitting it to the vote of the people. The only prohibition put on that is that they shall never form any county of less than four hundred square miles. I hope the report will be left as it is. While it would work a harm to our friends in Alturas, yet suppose they come up and cut off this part of Logan. Is it not leaving Logan in the same condition they are?

Mr. BEATTY. No sir, by no means.

Mr. REID. Well, when you see it from the other side you will think differently. You will think all over the territory in the same way. Whenever a man sees a nice, rich strip of land adjacent to that county he will say, "Let us go down to the legislature and get up a lobby and pass that through, and then our mem-

bers will go after something else." In other words, every legislature will be the scene of contention over the cutting up of counties. Why not leave it to the people themselves? I hope the convention will adopt the section.

Mr. SHOUP. I am in favor of striking this section out. Not on account of this old quarrel between Alturas, Logan and Elmore counties, but for other reasons. Where I live in the Pahsimeroi valley, the county line runs right through the center of the valley. The ranches are divided. My own ranch is half in one county and half in the other, and the result is it cannot have any school districts, any roads running across the valley, or anything of the kind. Now, I want that valley to be either in Custer county or in Lemhi county. If it is put to the vote of Custer county it will be against it, and if Lemhi votes on it it goes against Custer. And if this bill passes we shall stay as we are forever.

Mr. MAYHEW. How can this convention change the county line? We are only recognizing it, and it can be done only by a majority of the people.

Mr. SHOUP. If this bill passes it will be left in such a condition that the people will never vote to change the county lines, and they will always have to stay just as they are.

Mr. Morgan in the chair.

Mr. MAYHEW. But to change it and have it cut your ranch, it might cut somebody else's ranch also.

Mr. SHOUP. Not at all, if you take the mountain, the valley and the stream, will all be in one county or the other. It won't cut any ranch, if you go up on top of the mountain.

Mr. BEATTY. I will not deal in anything that is personal. I regret that I uttered a word to throw the house into a temper that has led to anything of the kind. But I hope this convention will not act upon the representations that have been made as to what the members of the legislature from Alturas county may have done; that is not the question here.

Mr. MAYHEW. We do not propose to do it, but you raised that question yourself.

Mr. BEATTY. No, Judge, I said nothing about them at all. I know that some members of Alturas county did not do what their people expected them to do, and what was just. Neither do I want to be reflected upon as a lobbyist. It is true, I was here, my friend Mayhew, but did very little, and I was an advocate of Elmore county, cutting Elmore county off, and tried for one to avoid this trouble, and finally got disgusted and went home. That is the truth about it.

Mr. MAYHEW. Well, I will take back then about your being a lobbyist.

Mr. BEATTY. I was not a lobbyist, but looking after the interests of my county some little, and tried to avoid the difficulty we got into. I hope the convention will not hold the whole of the people of that county responsible for what some of the members of the legislature for that county may have done. That is not the question here, and it is not simply the question whether Alturas county is the only one damaged. I do say it is greatly damaged. Neither will I stop here to answer my friend Whitton. That is rather of a personal nature. There are facts, if I had the time to go into it and explain them to you, whereby I could put it to you in a very different light from what you have it. It is true things have been done wrongly, but the question now is, are you going to leave us in a position where we are, for all time to come, or as long as we hope to live, virtually bankrupt, or are you going to submit the matter to the legislature and leave them to settle the matter as may be equitable? My friend Reid says it will make a row in the legislature. We cannot help that if it does; it is the business of the legislature to rectify wrongs; that wrong has been done, and it is the right and duty of the legislature to correct that wrong, even if it does make a row. There is no danger of any great row. It is true that last winter we had one over this question. Probably there will be very little difficulty over this or any other question in the

future, but the point I make is this, this is a new territory; we cannot leave county lines as they are now; they must be changed in the future to meet the wants of the people. If you make this provision of the constitution, there is no way by which you can ever get the county lines changed, except where a majority of the people seek to do it, and I claim that the majority of the people of a county will not consent to lose any of their territory. That is the whole thing in a nutshell. It applies not only to Alturas county, but to all the counties; but we of Alturas county are specially interested in that county, and hope this convention will not leave it so that we may not get relief in the future if the legislature is willing to grant that relief. Mr. Chairman, the proposition was made by somebody, not from the members of Alturas county, so much as from some others, to have this convention attempt to change the lines. We, as the representative of that county, said, "No, this is not the place for it; leave that to the legislature"; but we do hope this section will be stricken out, and I was in hopes that it would not be reported. In fact, I had a partial promise of some of the members that this would not be thrown in here, because it would be a firebrand and would do us great injury, and I hope now that this convention will not undertake to hold the people of Alturas county responsible for what some of its members in the legislature may have wrongly done, but look at this matter in the light of justice and give us such opportunity in the future to correct the evil that has been done as justice alone demands.

Mr. CLAGGETT. It seems to me we have struck something of a snag; not on the Alturas proposition especially, but on the broad question that is contained in this section of this article. If any injustice has been done to Alturas county, and if any particular section of that county has been cut off and added to Logan county, where the people in it did not desire it to be done, it does not seem to them that this convention by putting a provision in the organic law, should perpetuate that injustice forever. Neither, on the other hand, do I

think this convention should legislate in its organic law specially in regard to any county. So far as all of these matters are concerned relating to Alturas county, they may be brought up as illustrations, of a danger of a certain power being left to the legislature on one hand, or the propriety of denying it on the other hand; but they do not constitute any particular argument, so far as that is concerned. But here is where the question comes up, and here is where it is vital in its nature. Really, the only argument which has been suggested here upon this floor in favor of retaining this provision in this article, is to keep it out of the legislature. Now, does it keep it out of the legislature? I say it will not keep it out one particle. I say if you retain this provision, this section in this article, the legislature will be subject to the same considerations that it was before, and in addition to that you will deprive the legislature, where a majority of the people are not concerned especially with regard to it, of an opportunity of rectifying a great many wrongs which may arise in the future of this state. In the first place, before ever this question goes down to a majority vote or the submission of it to the majority of the popular vote of the county, they have got to go to the legislature to get the law through dividing it. Is not that true? If a majority of the people of the county, like they are in this case, this portion of them that live in Elmore and Logan counties, combine and constitute a majority, you would have this double proposition on hand, with the same trouble exactly with the legislature, and then they would submit it, and by the majority carry it. In other words, it takes nothing out of the legislature and cures no evil, while it does prevent as stated by the gentleman from Custer, the legislature from time to time adjusting the county boundaries in such a way as will be just and equitable to all the inhabitants of the county. And for that reason I shall vote, for one, to strike it out. If it would settle this business I might say then, for the purpose of future peace and security, let us do injustice to one particular county; but it will settle nothing. for

there has certainly got to be some kind of an enabling act passed by the legislature for the taking of the vote upon the question of division. That throws the whole proposition into the legislature again; the same controversy will be had to get the law for submission that is now had for securing the division. The only thing that it would cut off will be this: just such a case as stated by way of illustration, where a small number of people for convenience sake or otherwise may desire to be detached from one county and added to another. But in all cases where a division is supported by a majority of the people you will have the same controversy in the legislature that you have now; therefore it cures nothing.

Mr. REID. I beg pardon for rising again. I did not intend to say anything on this question at all, but to let the convention do as it chooses, if the gentleman had not charged that it was an outrage—but I do not propose to let the thing go under the sophistry of the gentleman from Shoshone. The proposition he makes now is something like that offered about the taxes. The argument he made the other day in the amendment he offered to the legislative bill answers the very argument he has put here this evening. He offered an amendment that if the legislature did not pass a uniform law, then you might go and remove county seats. Well, this section says no county shall be divided unless the qualified electors vote. They will not have to go to the legislature every time to get a division. The legislature can pass a uniform law, that whenever the people petition and submit this question to them they can go on and do it. Just like that petition to have the county seat removed, or a petition on any other subject, little local option laws. Whenever a certain number of people petition, then the people themselves submit the election; then a uniform law will be passed, because they have been prohibited from passing special laws. Now, they will meet and act on the subject of counties; that whenever a majority of the people petition the board of commissioners they shall submit the question of removal, and whenever two-thirds want it, it can be removed.

Mr. BEATTY. Suppose a small fraction of the people in some distant border of the county desire to be attached to some other county.

Mr. REID. Then the county they are to be cut off from must vote that they will go.

Mr. BEATTY. How will they get it submitted to the people?

Mr. REID. The legislature will supply all those requirements. We put in two lines here, as Mr. Gray said repeatedly, all the way through; all statute law is to be left to the legislature. We go on and initiate the broad principle that no county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off voting on the proposition at a general election shall vote in favor of such division. Now, the legislature provides what the machinery shall be to ascertain that voice, but it must be done by uniform law that will exist all over the territory. So, we won't have it come to the legislature at all. There will be a general statute enacted to carry out this principle. As the gentleman says, "if you want to cut off a corner of a county, the whole county has got to say that it must go," but that is not so when you go to making new counties. The legislature can make a new county itself, but when you want to divide counties—I know all over this territory one county may be selected out of two counties, another may be sliced out of another county, and we will want to straighten the lines of this county or that, and all that sort of thing. But I go upon this broad principle, if a county has existed for some time, a county has been established, the people go and locate with reference to the location of the county seat, its convenience and everything of that sort, invest money and make improvements and make business plans and start enterprises based upon the future, if those are to be disturbed every time the legislature meets, all very well; but if you want to have it so that the entire people who pay taxes and erect jails and locate county seats and establish permanent local county seats and try to build them

up shall have a voice in it, then you must adopt this section.

Mr. CLAGGETT. Just one thing I want to say. If we should assume for the purpose of argument that it would be possible for any legislature that will ever be convened in this state to pass an operative general law upon this subject, I should certainly be still more strongly oposed to this proposition. In the first place, I deny that you will ever get a general law unless that general law is adopted by the same powers and influences that will prevent, as has been stated here, any change ever being made in the boundaries of a county. That is the only kind of a general law you will ever be able to secure, and in the meantime there arise these special cases, which do call for relief, and where year after year and decade after decade injustice will be done to extreme points of settlement far away from your county seat, and you will never have any power to change it.

Mr. REID. If the legislators will come in and swear to support the constitution and see these provisions made and the work left them to do to provide the machinery to carry it into effect, and then they will not do it, there is no use of putting it in a constitution at all. That is the effect of the gentleman's argument.

Mr. CLAGGETT. Not at all.

SECTION 2.

Mr. PARKER. In order to bring the matter to a head I will offer a substitute for Section 3 (2). I want to know why it should be made so difficult for the majority of the people in any county of this territory to remove the county seat, when a majority can divide the county. I say that it should be made just as easy for a majority of the people to remove the county seat as to divide the county. Under the report of this committee they have made it necessary that a majority of the qualified electors of the county shall petition somebody—it does not say who or what; it may be the county commissioners or it may be the legislature—and

after an election is held this Section 3 goes on to describe that and says; "No county shall be divided unless a majority of the electors of the territory proposed to be cut off voting on the proposition at a general election shall vote in favor of such division." Now, I say this convention has no right to prescribe what shall constitute a majority in any county in this territory. A majority is a majority, and you have no more right to prescribe two-thirds majority shall remove a county seat than you have to say that two-thirds shall elect a county treasurer or a county auditor or any other officer. I say a majority is a majority if it only constitutes one. And I want to know how it comes that the removal of a county seat shall be hedged around with all these restrictions. It is possible, Mr. President, the committee who got up this report were turning grindstones and grinding axes for somebody who had property in some county seat. I know nothing about that, but if this thing goes into the constitution with those two contradictory sections, the one following the other, you make 2,000 votes against the constitution right here and now. In my own county we have three rival towns, and each of those towns wants to get the county seat, and if the voters in those towns read those two contradictory sections, each of those towns will vote down your constitution on that question alone. Why, Mr. President, one-half of our towns in our territory are ambitious to have the county seat. I say it is a very laudable ambition, and they have a right to work for it, and the majority of these people, if they can carry the election, ought to be entitled to the court house. Those people are full of western snap and vinegar, and if they have snap enough to come forward and get the county seat away they ought to be encouraged in it, and so I say these two sections are contradictory, and I should like to have my substitute adopted so as to have uniformity. (Seconded.)

SECTION 3.

SECRETARY reads: Section 3. No county shall

be divided unless on petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county voting on the proposition at a general election, shall vote in favor of such division. A proposition to divide the county shall not be submitted in the same county more than once in four years.

The CHAIR. It is moved and seconded that the substitute of the gentleman from Idaho for Section 3 be adopted.

Mr. REID. The gentleman has flung at the committee about the section. There were two gentlemen on the committee from some county over which there was a contest about a county seat, a very bitter one. Those two gentlemen got together and settled this between themselves, and we thought it would be a good gage as to future controversies. They were conservative enough, and yet they knew that the town of Grangeville might want to get the county seat from Mt. Idaho.

“Question, question.” The question was put by the chair. Substitute lost.

The CHAIR. The question is now upon the motion of the gentleman from Alturas to strike out Section 3. (Vote.)

The chair being in doubt a rising vote was required.

Mr. CLAGGETT. I call for the yeas and nays.

Mr. BATTEN. I am from Alturas county and while my honest convictions are in favor of this section, still if it will in any way alleviate the terrible suffering Alturas is laboring under I will cast my vote Yea.

Roll call.

Yeas: Allen, Batten, Beatty, Bevan, Clark, Crutcher, Glidden, Heyburn, Lewis, McConnell, Myer, Moss, Pefley, Pierce, Pinkham, Savidge, Shoup, Stull, Underwood, Vineyard, Wilson, Mr. President—22.

Nays: Ainslie, Armstrong, Beane, Campbell, Cavanah, Chaney, Coston, Gray, Hampton, Hasbrouck, Hays, Hogan, Howe, Jewell, King, Kinport, Mayhew, Melder, Parker, Pyeatt, Reid, Robbins, Sinnott, Whitton—24.

And the motion was lost.

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

Mr. BEATTY. I have an amendment.

SECRETARY reads: Add at the end of the section the following: "Provided this section shall not take effect until five years after the adoption of the constitution." (Seconded.)

President Claggett in the chair.

The CHAIR. The question is upon the amendment offered.

A rising vote was taken which resulted: Yeas 10; Nays 23; and the amendment was lost.

The CHAIR. The question is now on the motion to adopt the section. (Carried.)

SECTION 4.

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

SECTION 5.

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

SECTION 6.

Section 6 was read.

Mr. REID. I think it necessary to explain that a little. It is punctuated a little badly there; I won't put it on the printer this time. We provide there for the election of county officers, combining the offices of district clerk and county auditor and recorder. That was done at the suggestion of the Judiciary committee after a full debate, and after consideration by our committee. We did it, however, on the recommendation of the Judiciary committee. We also combine the office of county treasurer and public administrator the same as they are now. We combine the office of probate judge with that of superintendent of public instruction. The county assessor is tax collector now. We provide that no other offices shall be established. We limit the county offices to those specified in the section, and restrict the legislature from creating others; but in the same sentence we clothe

the legislature with the power by general and uniform laws to provide for township, precinct and municipal officers. We have a precinct organization in our territory at present. If the legislature chooses to keep that up, or if they choose to leave that and go to the township organization hereafter, they are left to provide for that for those offices, and fix their duties and pay. We also provide that the legislature can provide for the collection of fees, and that the officers collecting the same shall account therefor. The reason of this is, when you come to the next section you will find that officers are paid by fees, and the maximum and minimum limit is fixed. That is the reason it is put in. With that explanation I move that this section be adopted. (Seconded.)

Mr. WILSON. I have an amendment.

SECRETARY reads: Strike out all between the word "surveyor" in line 6, Section 6, and the word "fees" in line 9, and insert the words "and such other county, township and municipal officers as the public convenience may require, and shall prescribe their duties and fix their terms of office."

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 6 by striking out in the third line the words "who is ex-officio." (Seconded.)

Mr. SINNOTT. I have an amendment.

SECRETARY reads: Strike out the words "Clerk of the district court, who is ex-officio" after the word "sheriff" in the third line.

Mr. SINNOTT. I offer that amendment for the reason this is already provided for in the election of the clerk of the district court. In Section 17 (16) of the Judiciary report of the committee it states: "A clerk of the district court for each county shall be elected by the qualified electors thereof at the time and in the manner prescribed by law, and shall hold his office for the term of four years." Now, by these words "clerk of the district court" inserted in the third line of this section in the article in question on county organ-

ization, it brings this article in direct antagonism regarding the tenure of office to what is provided for by Section 17 (16) of the Judiciary report.

Mr. REID. I am glad the gentleman called attention to that. I shall ask unanimous consent to change that Judiciary article from four to two. The reason we put in clerk of the court here is to get in that ex-officio auditor. The object as I take it of the amendment of the gentleman from Shoshone is that the clerk in his county, and it may be in some other counties, cannot perform all the duties that are required. To meet that exigency I propose to add after the section, "the county commissioners are authorized to employ such clerical aid as their offices may require." If you offer that kind of an amendment, we will accept it, but I hope the two offices will not be severed, for this reason: In most of the offices the clerk of the court is paid by fees, and we propose by the next section to pay them entirely by fees. The clerk of the court can perform the duties of clerk and they do very little business in some of the districts, and also can perform the duties of auditor and recorder, and both offices will pay him the amount we provide in the next section. It will save by combining the two offices, the amount of \$15,000 to the territory. I mean to the counties. It will save \$15,000 in the entire territory to the counties, because that is their salaries now. We pay the auditors about \$15,000 in the way of salaries. We propose to virtually abolish that office and combine it with another. By keeping that office up you will take from the taxpayers or from the people who have business with the office that amount. I appreciate the circumstances in Shoshone county, where they have a large amount of business, and the clerk has to employ three or four assistants, and it may be so in this county. In Alturas and other large counties where one man cannot attend to it, I propose to relieve them by putting a clause in, if the gentleman will draw it, that the county commissioners are authorized to employ such clerical assistance for the auditor as may be necessary. That leaves it with them. If the gentleman

will draw such an amendment as that we will accept it, but I hope that just to relieve his county we shall not strike it out from the other counties. There are at least nine-tenths of the other counties, or at least eight-tenths of them, where this officer can perform the duties of both offices.

Mr. HEYBURN. The difficulty is this. One of the duties imposed upon the auditor is that he is clerk of the board of county commissioners, and he must be in attendance, and in our county they are in session ten days or two weeks at certain periods of the year, of necessity, in adjusting taxation and matters pertaining thereto. The auditor, ex-officio, is clerk of that board, and the court is in session, as it was last fall, right at that time, and how is it possible for a man to perform the duties of these two offices? I understand all the fees will be paid into the county treasury; the fees collected by the recorder's office in our county are somewhere in the neighborhood of \$18,000 a year. Of course that goes into the county treasury. Now, the recorder is the responsible officer through whose hands all abstracts of title and certificates pertaining to records must pass, and he should be always where one can get at him, especially in a county like ours where he is required constantly. He should always be there, and if he is compelled to be in attendance on the court, his attendance must be constant because the clerk should not be absent when the court is in session. How is it going to be possible, not sitting in the same room, for him to perform the duties of those two offices? Of course, deputies may do some of the things, but a man under heavy bonds with his responsibility is not always willing that matters of that kind shall pass through the hands of deputies. Our recorder pays \$3,600 a year for clerical hire; that is what he paid last year. And then in Section 7 you provide that this bonded officer shall not receive to exceed \$3,000. Why, he pays \$600 a year more than that for his clerks alone. It is unfortunate that the affairs of some one county are of such a peculiar character as to disturb this whole arrangement; but I

think it would be absolutely impossible to carry out any such arrangement as this in that county.

I do not know about the affairs of other counties, but I presume the gentlemen here do. Our auditor, who is clerk of the board of county commissioners, cannot be clerk of the district court and perform his duties; he cannot send a deputy into the board of commissioner's room to do his work. He is responsible for it. Then he must draw all of those warrants for the payment of all persons, and right at the time that his whole attention is demanded in the courtroom by the judge, and the court; and if you take him out of there, or allow him to be interrupted, you interrupt the whole proceedings of the court, and thereby you incur the expense incident to delay in those matters. I would like to see at least a license given to the legislature, that in counties where it is necessary, or to the commissioners in the counties where it is necessary, that they should have the privilege of electing a sufficient number of officers to perform the public duties. If you do not do it you cripple their government. It is true in some of the smaller counties where there is not much business this system would work very well; but it absolutely will not work in the county situated like ours. There are some counties where the court does not sit at the county seat; there have been such times in our county, but there you take the recorder and the auditor away from the county seat and tell him to attend court somewhere else.

Mr. MAYHEW. That was under territorial organization.

Mr. HEYBURN. Well, the district court might be held somewhere else. But I think every member from our county will see that this arrangement could not be carried out up there, and the salary will not pay his clerks, and we are able to pay more than that because the income of the office is enough to pay a very handsome salary to those officers, and pay their clerk hire. The income from the recorder, county auditor and clerk of the district court in our county will run up close to \$25,000 a year.

Mr. MAYHEW. Do I understand you to say that the county clerk and auditor was \$18,000?

Mr. HEYBURN. The income of that office last year in fees was a little more than \$18,000.

Mr. MAYHEW. Now, with the addition of the fees you pay the clerk of the court it will raise it certainly to \$22,000 or \$23,000 a year.

Mr. HEYBURN. Probably it would and there is no reason why we should be cut down to less than a competent government, because the state is not benefited at all by it.

Mr. REID. On the gentleman's statement I offer the following amendment:

Mr. BEATTY. This is an important matter and one-half of the convention is absent, and as the hour of adjourning has arrived, I move that we adjourn until 9 o'clock tomorrow morning.

Mr. HEYBURN. I would like to have this amendment read.

SECRETARY reads: Add to the section: "The county commissioners may employ such clerical assistance for the clerk of the district court and auditor and recorder as may be necessary for the prompt transaction of the public business."

Mr. REID. Now, that amendment will just meet the case. In any county where the auditor and recorder and clerk of the court cannot transact the business, it is left discretionary with the commissioners to employ such clerical assistance as he needs.

Mr. MAYHEW. How about fees and salaries?

Mr. REID. The employment carries with it the price. The statement of the gentleman proves what I say. You are empowered up there to pay your auditor and recorder \$25,000; the clerk I think he says gets \$25,000.

Mr. HEYBURN. Oh no, the fees of all the officers probably amounts to \$20,000.

Mr. REID. What does your clerk make?

Mr. HEYBURN. \$3,500.

Mr. REID. The clerk in most of the states gets

more than that. Anyway, we have the receipts of the auditor's office alone at \$18,000. Now, the clerk's \$3,500, that makes \$21,500. The two offices make \$21,500; that is the income. Now, you can get men to perform that duty for the maximum we have fixed. Suppose you pay a man \$3,000; that leaves \$18,500, and then you pay the clerk of the court and the auditor \$3,000; that leaves \$15,500. Then you hire a young man to clerk for him at \$100 a month.

Mr. HEYBURN. You can't get them.

Mr. REID. You can get fifty of them. Then if you pay him \$8,000 to hire clerical assistance, you pay into your county treasury \$12,000. Now, that is what we want to do. In some counties it won't come up to that. That is just the workings of the system.

Mr. HEYBURN. There is no provision for making a deputy. Let me ask the gentleman a question. He asks for unanimous consent to change that Judiciary bill to two years instead of four. The object discussed in the Judiciary committee was to make it the same term; you would not have the clerks changed in the middle of the term, of course.

Mr. REID. Well, we will change this. We do not claim this is infallible. I am glad the gentleman proposed it. We want to keep the principle; we want to combine the offices. The principle all through is to get the cheapest county government we can and be efficient, for the reasons stated the other day. We want to save enough on the present system of county government to make the state government cost us less than the present territorial government. I mean, to make the state government with its increased cost cost us less than we are paying now. As the gentleman says, it is getting late and I will give way to his motion to adjourn, and in the meantime I will try to draft the substitute.

Mr. WILSON. I think the difficulty can be obviated in this new section which I attempted to amend by my amendment.

Mr. REID. I now renew the motion that the convention adjourn until tomorrow morning at nine o'clock.

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

Whereupon the convention adjourned until eight o'clock A. M. August 3rd, 1889.

TWENTY-SIXTH DAY.

SATURDAY, *August 3, 1889.*

Convention called to order by the President.

President Claggett in the chair.

Prayer by Chaplain Smith.

Journal read and approved.¹

The CHAIR. The special order at this hour is the final reading and passage of the article relating to Revenue and Finance.

Mr. HASBROUCK. The committee on Engrossment asked for further time to report this afternoon. The engrossing clerk has not had time to engross this article.

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

Presentation of petitions and memorials. None.

REPORTS OF STANDING COMMITTEES.

Mr. SWEET. Mr. President, I call for the report of the minority of the committee on Schedule.

The CHAIR. The minority report of the Schedule committee has been called for by the gentleman from Latah. Has it been presented?

The SECRETARY. It has been presented.

The CHAIR. That is a part of the unfinished business of yesterday. The secretary will read it.

The report was read by the secretary.

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

Reports of standing committees. None.

Reports of select committees. None.

Final readings. None.

The CHAIR. Gentlemen of the convention, this fin-

¹—The notes do not show that the roll was called.