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 EIGHTEENTH DAY.

## MORNING SESSION.

Saturday morning, Sept. 21st.

Mr. PRESIDENT. Convention will come to order.

Roll call. Twenty-seven members present.

Reading of the journal.

Reports of standing committees.

Presentation of propositions.

Mr. HOLDEN. I desire to ask the members of this convention to excuse me from further attendance upon this convention after this evening's session, for the reason that my business at home is without a head. I have been here ever since the commencement of this convention, but owing to the lack of mail facilities I have not been able to hear from home once. My business affairs demand my attention.

Mr. CLARK. I doubt the power of the convention to excuse any one for the remainder of the session, but if it is absolutely necessary that the gentleman should go home, he might be excused from day to day.

Mr. PRESIDENT. I doubt the power of the convention to excuse any member for the remainder of the session. They may excuse from day to day. I trust the gentleman from Uinta will stay with us if possible. We need every man we have got here on the floor of the convention, we need their work and their services, and particularly the gentleman from Uinta. I trust he will stay with us if the sacrifice will not be too great to his own personal interests. The question is upon the motion to excuse Mr. Holden from day to day. All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails.

The report of the engrossing committee has not yet come in. There was fixed for the special order of the day the substitute for Files No. 35 and 57, on irrigation. A motion to go into committee of the whole on the special order of the day is in order.

Mr. JOHNSTON. I move we now go into committee of the whole.

Mr. PRESIDENT. The question is on going into committee of the whole. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails. Will Mr. Irvine take the chair?

Mr. CHAIRMAN. We have for our consideration the substitutes for Files 35 and 57, irrigation. The clerk will read the first section. Any objection to Sec. 1. Sec. 2. Sec. 3.

Mr. BAXTER. It is a matter of very great importance that it be declared here what shall constitute appropriation. It seems so plain to us who are familiar with this question of irrigation as to be unnecessary, but a few days since in riding from Denver to this city with some gentlemen who resided in Colorado, they informed me, much to my surprise, that the question had been raised in Colorado, as to what appropriation is, and it had been decided that appropriation meant the actual application of water to the land. Now unless I am much mistaken, the general understanding is that the appropriation of water is the beginning in good faith, and the prosecution without unnecessary delay, of the ditches which are necessary to convey water onto the land, and they have got into great difficulty because of no declaration as to what is the appropriation of water, and this section is the proper place to declare what is appropriation.

Mr. HOYT. In considering this matter the last two or three days the thought suggested itself to me that the word "utilization" should be used instead of the word "appropriation." I merely throw that out as a suggestion to the legal gentlemen present who are competent to consider this matter.

Mr. BAXTER. That brings out the point direct. The question came up in this suit as to what constituted appropriation. A number of gentlemen incorporated for the purpose of irrigating five thousand acres of land. They proposed to do the work as far as possible with their own teams. After they had commenced the ditch a second company was formed composed of wealthy men who were able to prosecute the work and finish it in a much shorter time and take out the water and get it on the land. And although the first company began their work much earlier, it was held that those men were not entitled to the water, but that the second company was. Now it seems to me that is wrong. If a lot of men commence a ditch for the purpose of reclaiming a piece of land, the only condition should be that they should do it without unnecessary delay, and that that is the matter the court should determine, if it should come into court. It was the absence of any declaration as to what should constitute appropriation, and the holding in Colorado was that it was the application of the water and not the beginning in good faith of the construction of the ditch.

Mr. BURRITT. In Sec. 3. I move to insert in the first line after the word "appropriation" the words "for beneficial uses."

Mr. CONAWAY. It seems to me, considering the importance of this matter, and the evident lack of consideration that we have given it, we should not pass these sections over so rapidly. I for myself feel that I am too ignorant to vote upon it intelligently, and I would like to hear it further discussed. Now I have examined the decisions of some of the courts of the arid country, and so far as my investigation goes, they do not exactly coincide with the decisions of the courts of Colorado, as stated by Mr. Baxter. The decisions in California and Nevada are to the effect that an actual appropriation of the water for beneficial uses is unnecessary. It dates back to the commencement of the work, and upon the question whether the work had been prosecuted with due diligence. That has been the result of the decisions as far as I have investigated. It seems to me this decision in Colorado, which I am entirely ignorant of, must have involved the point of reasonable diligence in the prosecution of the work by those irrigators. If they had prosecuted the work with reasonable diligence I do not see how a court could have reached such a decision.

Mr. BAXTER. I desire to offer an amendment to be added to Sec. 3. "Appropriation shall be construed to be the actual beginning of work necessary for carrying water onto the land to be irrigated, and prosecuted without unnecessary or unreasonable delay."

Mr. BURRITT. I desire to say just a few words covering this proposition, and the question of irrigation in this territory and contrasting it with the system in California and Colorado. In the first place I believe that we have got a bill here which without a single change, unless it be in the last section, is twenty-five years ahead of those two states, which places us twenty-five years ahead of any other section in the arid region. I do not believe it necessary or advisable to load this constitution down with definitions, with legislation or with anything else excepting the general principles which are to control our irrigation laws. In the first section as it comes from the hands of the committee, "the water of all natural streams, springs, lakes, and other collections of still water, are declared to be the property of the state." Now that ends right there. There is not a word in there about prior appropriation for beneficial uses, not a word in there about prior appropriation, or any other appropriation, and I desire to state right here that the state of Wyoming has nothing on earth to do with this territory on this question. A man gains a vested water right not by virtue of the United States law under which states rights are created, but those rights are different from what is generally understood. When a man builds a ditch and takes out water he has not the right against his country and all the world to the use of that water as long as he pleases. Behind it is another pow-

er to be considered. Notwithstanding all the legislation of congress, notwithstanding all the constitutional provisions of Colorado and Wyoming, water remains, so far as the right of the state to control it is concerned, with the state, just the moment that a state comes into the union. The right of eminent domain is inviolably in the state, and the state may, although there may not be a line in this constitution providing for the maintenance of the right of eminent domain, it may, if it sees fit, take the land that is within the state, by condemning it for their use and paying for it, and the very same thing is true of water. And it is upon this theory of eminent domain that this section stands. Now Sec. 3 says that priority of appropriation shall give the better right. It does not say that it shall give the best, nor a right that no one can deprive them of, but simply the better right. No appropriation shall be denied except when demanded by the public interests, worded so as to preserve the idea that we have advanced that this constitutional provision shall contain nothing as to hint even of a surrender of any of its rights of eminent domain. Now the amendment proposed by Mr. Baxter is simply a definition, and if it belongs anywhere it belongs in the statute. Now all the arguments made this morning are simply arguments in favor of certain requirements supplemental to a constitutional provision, for the purpose of carrying out the intent of the constitution. Now if you undertake to put in a definition of the word appropriation you destroy the whole theory upon which this irrigation and water rights bill is based by your committee. It has been assumed in every state where this question has been considered that the only water right of any consequence whatever is the right of appropriation of water for irrigation. In their anxiety to make the arid lands fertile, they have lost sight of all the beneficial uses to which water can be applied, except in California, where they have a provision as to mining rights. But there are other uses, there are other rights to the appropriation of water, for domestic purposes, for the watering of stock, for mining, for manufacturing, all of which, so far as our constitution is concerned, are entitled to equal protection and privileges. Now Mr. Baxter's definition of appropriation when applied to them, as to what shall constitute an appropriation of water, in my opinion, will seem very ridiculous, to the convention and to the gentleman himself. If there is a little stream running over my hundred and sixty acres, just large enough to water my stock and furnish water for my domestic uses and for the uses of my family, by the very fact that I have settled there, and appropriated water for the watering of my stock, and my domestic and family purposes, should by all laws of nature give me the better

right, and it would be very wrong for Mr. Baxter to come in above me and take out a ditch above my place and divert the water of that little stream around my place to water a hundred and sixty acres of his land below it, notwithstanding that he might commence his ditch and continue it until he had got the water clear around my place. I have the better right. It is absolutely impossible to put in a definition of appropriation in this constitutional provision that will settle or will apply to the five different purposes for beneficial uses recognizable in this territory, and none of which are pre-eminent to the other in importance. All of these matters are matters for the legislature. All that the constitution needs in my opinion, Mr. Chairman, is the general principle that priority of appropriation for beneficial uses shall give the better right, and that no appropriation shall be denied except when demanded by the public interests. I think with the amendment that I have suggested with the words "for beneficial uses" be inserted that it will cover the whole question.

Mr. CHAIRMAN. The question is on the amendment offered by Mr. Burritt. All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails. Sec. 4.

Mr. BAXTER. Before we take up Sec. 4 I desire to offer an amendment to Sec 3, and I do so with the greatest respect for the very large fund of information which Mr. Burritt has given us on this. I have been delighted with his discussion, and I concede his full knowledge of the subject generally, but I still contend that it is necessary in order to avoid future trouble, for this convention to say what the appropriation of water for irrigation shall mean. I have had the idea so clearly in my mind that appropriation meant the actual beginning of the work necessary for the purpose of getting water to irrigate the lands, that it never occurred to me until this question was up by these Colorado gentlemen, that it was necessary to declare what appropriation meant. I thought everybody understood that. Now this board of control you are going to have may render decisions, and those decisions appealed from to the courts, and you are going to have them pass upon this question. Now it occurs to me that we should say what shall be appropriation for the purposes of irrigation. Shall it be the beginning of work necessary to carry water on these lands, provided that such work is carried forward in good faith and without unreasonable delay, or shall it be the actual application of water to the land? I am fully convinced, in view of the state of affairs in Colorado, that this convention should make some such declaration. I offer the following amendment: "The actual appropriation of water for irrigation shall be construed to date from the actual beginning of work necessary to wa-

ter the land to be irrigated, provided the same is completed without unreasonable delay."

Mr. HOYT. I agree with the gentleman who offers this amendment as to the object sought to be accomplished; think if the object could be reached by a word or two, it would be much better. It occurred to me as the amendment was being read that the word utilization would not cover the ground.

Mr. HAY. I am opposed on general principles to the attempt that is so frequently made here in this convention to make this constitution a code of laws, and I am opposed to making it a dictionary of legal terms. I think if after five or ten years we find it necessary to define the word appropriation the legislature can do so. If the constitutional convention do it, and do it wrong, it will be hard to remedy our mistake. We want to establish all these things on broad grounds, particularly a matter as important as irrigation. I think the best ability of this convention has been devoted to making this provision as near perfect as may be, and it seems to me covers the ground completely. We want to keep these details out of it.

Mr. SMITH. It occurs to me upon this proposition that we want to put nothing more in this constitution than will simply guide the legislature. We have advanced just far enough in water interests to realize the importance of this matter, beyond that we might say we know almost nothing. Now suppose we go to work and undertake to lay out a plan in the constitution by which they shall be governed, you may find it in five years wholly impracticable, and you are putting in something that you cannot change very easily. Now something has been said about making this a dictionary, now I think that is something this convention don't feel like doing. If I understand it an appropriation of water is diverting it from the natural stream to which it belongs for beneficial purposes. A Colorado case has been referred to. I think I had the case in mind. It turned on this question. The statute provides as to how the work shall be prosecuted, and that case turned on that point. That case turned on that point, and the work was not prosecuted within the statute. I have understood always that the appropriation of water was its diversion from its proper channel. So far as putting this definition in this constitution. It seems to me we are undertaking to do something that may turn out very disastrously in the future. My idea would be to have one section and then submitting the whole to the legislature. They can act from what they have learned from their experience, but if you tie it up, and set up a system as you do here, you may be doing a very disastrous thing. I think we should declare it to be the prop-

erty of the state, and then leave the entire matter to the legislature.

Mr. JOHNSTON. I know something about the working of this matter in Colorado, and the reason why this matter was not settled long ago was on account of local jealousies. What is good for one part is not considered good for another part. It is hard to get out of the old ruts. I am opposed to any other proposition than as set forth here. The decision of the California supreme court as stated by Judge Conaway seems to me to decide the matter.

Mr. BAXTER. I am as much opposed as anyone to putting legislation in this constitution. Now, the gentleman from Carbon says this is a new question, and we don't know anything about it. Now, I think if there is any question we do know something about it is the question of the appropriation of water. We don't know whether this proposed system is a wise one, yet we are putting it in the constitution. I believe this to be a wise course, but experience may prove it to be very unwise, and we may have to change it. Now if we do know anything it is what the appropriation of water ought to be, and it is altogether different from what the gentleman from Carbon says it is. He defines it as the diverting of the water from the stream. I don't understand it to be anything of the kind. Appropriation is the actual beginning of the work to divert the water of a stream, begun in good faith, and prosecuted without unnecessary delay. Now, if we understand it that way, why not put it in the constitution? Why leave the doors open for all kinds of trouble like our immediate neighbors have had in Colorado? They did not think it was necessary and left it out, and the question came right up in their own courts, and while I have never read the case, I know the gentlemen whom I heard discussing it could not have been mistaken about it, and the case did not turn upon the prosecution of the work. there was no question but the men who first commenced the ditch prosecuted the work with reasonable diligence, but it turned upon the construction of the word appropriation. Did it mean the beginning of the work, or the actual application of the water to the land? And the court decided that it meant the actual application of the water to the land. I think that the appropriation should be the beginning of the work to carry it on to the land, and if we all understand it that way, I cannot see any objection to saying so.

Mr. BROWN. I do not like to talk about a matter about which I am not very well informed, and I desire to confess to this convention that I do not think I am very well informed upon this question of irrigation. But there are some questions about which we may all reasonably differ. There are some things, however, about which we do not differ, and that is the

construction of language. Now as to this proposed amendment I am not in favor of it, because it seeks to put a limit upon the meaning of the word appropriation. Now a word may have a variety of meanings, and different courts may place a different construction upon each, but when you come to take this you had better leave the whole matter of deciding just what this shall mean to the courts of our country, rather than to try to place an original meaning upon it ourselves. If left to stand as it is the word then becomes, as it were, elastic, and the courts in applying the law framed on this question will give this word such a meaning as will inure to the best interests of the people. I am therefore in favor of leaving it just as it is, but I am most decidedly opposed to this section as it stands, and I am opposed to it for this reason. When you say prior appropriation shall give the better right, or if you say prior appropriation for beneficial uses shall give the better right, what do you mean? Let us understand this before we act on it. When a contest comes before the courts between individuals as to the right to the use of water, upon what proposition is the whole question determined? If you say in your constitution that prior appropriation shall give the better right, then the whole question is determined by prior appropriation. And no other matter under the sun is to be considered in that connection. It makes it final and determines the whole matter. Now if you say that prior appropriation for beneficial uses is to determine the better right, then you say that the man who first takes possession of the water and applies it to beneficial uses has the higher and better right, and not only a higher and better right, but has absolute title, and determines every question that may arise between the parties claiming it. I don't believe in that theory at all. We propose here to appoint a board of control, and for what purpose? We say that the state shall be the owner of this water, and shall have the right to control it. Are we to say in addition to that that any man who goes upon the public domain and takes up some portion of the water, shall forever hold that water to the exclusion of everybody else, because it is a prior appropriation for beneficial uses. I don't believe in the principle at all. When we appoint a board of control to manage this water system, that we say belongs to the state, let us give them authority to control it for the highest and best uses of the people of the state, and don't fix that control by saying that appropriation shall settle the matter. Leave it to the board of control to say what equities enter into this matter of the use of water, and let them consider every question that arises in connection with its appropriation, and then say under all the equities of the case who shall be entitled to the use of that water, and



not say that the matter of prior appropriation shall settle it. Now prior appropriation is an important matter to be considered, and I take it that the board of control would consider that matter, but in considering the matter and in determining the rights to the water, they may consider other matters as well as the matter of prior appropriation, and upon this and all the equities in the case determine who shall have the better right, but don't let any one thing determine it, the matter of appropriation alone.

Mr. HAY. I don't think the gentleman is confining himself to the subject before the house.

Mr. BROWN. That may be, but the other gentlemen have discussed the whole question, and I claim a similar right. Now the question presented by the amendment of Mr. Baxter of Laramie, raises this whole matter of appropriation, and while upon this question I wish to say further that the next part of this section, "no appropriation shall be denied except when demanded by the public interests."

Mr. CHAIRMAN. The question is the amendment to Sec. 3. The gentleman is not speaking to the question.

Mr. BROWN. I appeal from the decision of the chair.

Mr. CHAIRMAN. The chair has ruled that the gentleman was not speaking to the question, the amendment offered by Mr. Baxter of Laramie. Judge Brown appeals from the decision of the chair. Shall the decision of the chair be sustained? All in favor of the decision of the chair being sustained will please answer by saying aye; contrary no. The noes have it; the motion is lost. The gentleman will proceed.

Mr. BROWN. I have no desire to.

Mr. COFFEEN. As I understand it the vote will be on the motion to strike out. I shall vote in favor of striking out the whole section on the arguments presented by Judge Brown.

Mr. CHAIRMAN. The gentleman is mistaken, the question is on the amendment offered by the gentleman from Laramie, Mr. Baxter, as read by the clerk. Are you ready for the question? All in favor of the amendment will say aye; contrary no. The noes have it; the amendment is lost.

Mr. HAY. I want to ask with reference to the meaning of the last clause of Sec. 3. It says "no appropriation shall be denied except when demanded by the public interests." Is it the appropriation or the denial is demanded?

Mr. BURRITT. I will explain to Mr. Hay. The present system, as the gentleman well knows, is for a man to rush out to the creek, as has been done in the gentleman's own county, and without consulting anybody, finding out anything about whether there is any water there or not, he rushes in and begins a ditch, and rushes into court and begins a law suit. Now

this system proposes to revise the order of things, and instead of rushing all over the country, and beginning a ditch and taking the chances about getting any water, we propose to have them get permission to construct ditches from the board of control. In other words all the information necessary to enable a man to do the wise thing in this matter will be with the board of control. This provision is to revise this system from what we have it now, and instead of allowing ditches to be taken out without any system at all, to have a man find out from the board of control just what he can do.

Mr. HAY. The gentleman has lost sight of my question, the only thing I want to get at is what is demanded by the public interests, the denial or the appropriation?

Mr. BURRITT. The denial is demanded.

Mr. HAY. I want to offer an amendment to make this matter clear, after the word "except" insert "when such denial is."

Mr. COFFEEN. Even after that amendment is made there is still an ambiguity in another part of the section of much greater importance. I think the language is so broad that it may cause much difficulty and lead to much confusion. My objection is to the two words "no appropriation." It seems to me that is much too broad. I have no objection to the idea that no legal, proper and reasonable appropriation shall be denied by the board of control, except when demanded by the public interests, but to say no appropriation shall be denied puts it so that it may be taken advantage of and many demands made that are neither reasonable nor just. It seems to me if that language cannot be remedied it is better to strike out the entire sentence. I have been considering the matter, but cannot find any proper apt words which will express the idea. I therefore make the motion to strike out the last sentence of Sec. 3.

Mr. CHAIRMAN. The question is on the amendment to the amendment offered by Mr. Coffeen. Are you ready for the question? All in favor of the motion to strike out the last sentence in Sec. 3 will say aye; contrary no. The noes have it; the motion is lost. The question is now on the original amendment offered by Mr. Hay. All in favor of the motion will say aye; contrary no. The ayes have it; the section is so amended.

Mr. JEFFREY. I have no amendment to offer, but merely wish to obtain a little information. As I take it the file as presented by the committee seems to indicate that the appropriation and distribution of water would be entirely for one purpose, namely for irrigation. Now there are other interests that will probably require the use of water, and I merely wish

to ask those more learned in the law than I am, if these other interests and purposes for which water will be used are properly protected in this provision? For instance, manufacturing, milling and mining purposes. This priority would seem to indicate that it is merely between persons wishing to use water for the same purpose. Now as to who shall have the priority as between these interests, which shall have the preference, agriculture, mining, manufacturing or domestic purposes. That is what I wish to get at; whether this is sufficient to cover it?

Mr. JOHNSTON. The amendment inserting "for beneficial uses" covers it all, whether it be for domestic purposes, for watering cattle, irrigation or anything else.

Mr. CHAIRMAN. If there are no further amendments to Sec. 3 we will proceed to Sec. 4.

Mr. CONAWAY. I move to strike out the figure "four" in the first line of this section. I think it is sufficiently apparent to us all that it is not proper to say just what number of districts the state shall be divided into. We should leave that matter entirely to the legislature, and they may change the number as they may see fit.

Mr. BURRITT. I desire to call the attention of the convention to the drainage map of Wyoming which has been prepared by the state engineer. It is not like the maps of Wyoming that have been prepared from carelessly prepared maps of the United States survey. This map is absolutely correct as to the drainage basins and the streams. Now the present objection to our present territorial law is the fact that the water districts are so divided that one portion of a stream is in one district and the rest in another, and there is actually one case on record where the prior right to the waters of one creek in one water district is decreed in one man, and right across the line, another ditch taken out by another man is decreed to have the first right. Here are the four natural water basins, and no water commissioner can determine in reference to the desirability of allowing a ditch to be constructed without knowing how much is appropriated and what the condition of things is in the streams. The drainage basins have been marked out by the engineer, and you can see just where they are. In the northeastern part of the territory there is the Powder river, the Belle Fourche, and the Little Powder, all running north into the Little Missouri, here we have one water shed. Here in the west is the Sweetwater, Green river and Snake river, in one water shed. Not a single stream but finds its way into the Sweetwater or Green river, they are all in one water shed. Here in the south is the Platte. The Big Horn and the Stinkingwater forms another. They are all just as

separate as if separated by a stone wall twenty feet high beneath the surface of the soil. Now it is highly desirable to fix this in such a way that one water district may not be put into two different basins. We have for instance here the Big Horn river lying between two districts and extending into a third. We want each drainage basin in one district.

Mr. CLARK. I have no doubt that the state engineer has carefully prepared that map, but for one I am not willing to take the field notes of the United States survey as to what these drainage districts are. It is a notorious fact that in many parts of Wyoming the field notes of the United States survey are as absolutely false as any official document could possibly be. In our county, or in Sweetwater county rather, quite a large tract of land has been withdrawn from public sale under the land laws of the United States, owing to the fact that the surveys are so incorrectly made as to constitute no survey whatever. The sections are of all shapes and of all sizes, and the surveyor could not have even looked over the ground in making their survey and field notes. It seems to me we shall be perfectly safe in providing it shall be divided into districts without fixing the number of districts, and of what they shall consist.

Mr. BURRITT. I want to say in answer to Mr. Clark that another object to be gained in dividing the territory is to limit the state board of control. I do not wish to put it into the power of the legislature to make a water district for each creek and thereby multiply the number of officials. These water commissioners by this bill are made with the state engineer, the state board of control, and by limiting it to four districts makes a state board of control of five, which in my opinion is as large as it should ever be. This map has been very carefully corrected and verified by Prof. Mead, and I believe is absolutely correct.

Mr. HOYT. I am sure that this section presented by the committee has been carefully prepared and wisely drawn. It makes little difference if the survey makes a wrong section line or not, everybody knows there are certain great divides in this territory, as stated by Mr. Burritt and I think this should stand just as it is.

Mr. HARVEY. While I believe this is a piece of legislation I believe it is good legislation, and I shall therefore favor it.

Mr. CHAIRMAN. The question is on striking out the word four. Are you ready for the question? All in favor of the amendment will say aye; contrary no. The noes have it; the amendment is lost. Sec. 5.

Sec. 6.

Mr. FOX. I propose to amend. After the word "waterways" insert the "sale or rental of water."

Mr. JOHNSTON. I object to that amendment on this ground. In Colorado one of the largest ditches taken out of Clear creek and which appropriates the most water, has been constructed and owned by the farmers themselves. They don't sell any water to anybody except those who are stockholders in the concern. It appropriates most of the water in that creek. They carry it by ranches that are not stockholders in that ditch, and they can get nothing out of it. I know of farmers that have been compelled to sell their land. If you put in this clause as suggested it covers nothing at all.

Mr. BURRITT. I desire to say that although this report is signed by the chairman, and although I consented to this last section, I did it without a full understanding of it, and with the belief that I would hear from certain gentlemen on this floor, a good and sufficient reason for the insertion of such a clause as this in a fundamental law of the territory. I more particularly refer to the gentleman from Laramie, Mr. Fox, who seemed to have a great anxiety about this. I believe the whole matter is covered by the preceding sections of this bill. I believe the bill as presented by the committee needed no amendment in any material respect, and would give us the most perfect water system that has been tried in this country. It is the system that has been adopted by all the irrigation countries in the world except the United States. If I cannot hear some good reason why this section should be retained I shall vote to strike it out.

Mr. FOX. Since I have heard so much discussion in regard to this matter I have come to the conclusion that the best thing this convention can do is to strike out the whole business and insert a chapter stating that the legislature shall make such laws as are necessary to govern the water rights of the state. That will cover it and leave it where it properly belongs. My object in introducing this proposed amendment was to cover certain cases, and which is the argument I propose to present. If we are going to pass laws to regulate this water rights question, something of this kind should be inserted, and is what we need. My object in offering this section and wanting it in the constitution was to protect settlers who want to settle upon the public lands, but where they cannot get water. I will cite the Laramie plains, where there is excellent land ten or fifteen miles from the river, and if a person takes up a government section he is not able to get water for the land. He cannot get water unless he buys the railroad section. I want some provision so the Laramie plains can be settled, and they won't be settled in the next twenty-five

years to come unless some provision is made whereby a poor man can get water, and I want some provision whereby these parties who have constructed this ditch and taken out all the water shall be compelled to supply these settlers with it, and that they shall sell it to them at the same rate they would to a man who owns a railroad section. I think where a ditch is constructed like a railroad, for the purpose of carrying water, it should be a public carrier, and should be regulated under the corporation laws. This was my idea of it.

Mr. BROWN. I don't understand Mr. Fox exactly. It seems to me if I understand his amendment, it will prevent the very thing he wants to accomplish, he says these ditches shall be declared common carriers. The case referred to by him on the Laramie plains for instance. There is a company that owns a large tract of land, alternate sections, they have constructed a water way for the purpose of conducting water upon their own land. As I understand it they do not propose to sell it to anybody. They are not conveying water to sell. But they simply say to the people if you buy our land we will allow you so much water to go with the right to the land, as a part of their vested right to the land itself. They are not public vendors of water in any way, selling it to the public that may demand it. They sell it as an interest attached to the land itself. That is they sell the land and deliver so much water with the land. If that is the situation it will defeat his object it seems to me.

Mr. FOX. I guess that is the situation. I think the amendment contained in this report would cover it better than any amendment.

Mr. COFFEEN. This is my position on this whole irrigation question. I shall favor striking out everything except the first section, declaring the right of the state to the waters of the state. This is a first and fundamental principle which I believe properly belongs to a constitutional convention to declare, but I am opposed to all the rest of this proposition excepting that the state shall be divided into four grand water divisions. That is all I am in favor of.

Mr. BAXTER. I move to strike out Sec. 6.

Mr. POTTER. I have not been heard on this subject of irrigation, but if this motion is made I would like to amend it. My only reason for desiring to strike out Sec. 6 is because of the failure of the amendment to accomplish, if I understand it, the object desired by the amendment. It seems to me when you declare all of the ditches of the state public carriers, that you subject them to the enforced selling of water. I may have three or four hundred acres of land, and only water necessary to irrigate that land, now some man may settle along my ditch

and I would be compelled to give him half my water. It should not be entertained for a moment. If you will allow the section to stand and amend it so it will read "operated for the purpose of selling or supplying water, shall be deemed public carriers" I think it will be all right, but as the section now stands it ought to be stricken out.

Mr. SMITH. I want to ask what the amendment is before the house.

Mr. CHAIRMAN. The question before the house is the amendment of Mr. Baxter of Laramie to strike out Sec. 6.

Mr. SMITH. I move to amend the amendment of Mr. Baxter so as to strike out Secs. 1, 2, 3, 4, 5 and 6, and insert a new section in lieu thereof, as follows: "Sec. 1. The waters of all streams, springs, lakes and other collections of still water within this state is hereby declared the property of the state, subject, however, to appropriation for beneficial uses, under such rules and regulations as may be provided by law."

Mr. JOHNSTON. I hope this motion will not prevail. This report has not been prepared carelessly. It has been prepared after consulting the best authorities in the country with regard to this matter. It has been submitted to them and considered by them to be the best constitutional clause that there is in existence in regard to this matter. Now if we are not prepared to take the advice of those who have given this a great deal of study. I think we are making a great mistake. It has been found necessary in all states where irrigation is known, to have some head to this, and Colorado has adopted this system of superintendents which we have proposed here. They found it absolutely necessary that something of that kind should be done. Now why not provide it here and settle it beyond a doubt and not leave it to the mercies of the legislature. It is conceded that it is absolutely necessary that we have something of the kind, and I sincerely trust this motion will not prevail.

Mr. HOLDEN. As a member of your committee on irrigation and water rights, I would like to state some of the reasons that lead this committee to present this report. In the first place we believed that the doctrine contained in Sec. 1 was sound. That it was not only founded on good sense but on justice. Again, the legislatures of this territory have attempted to deal with this question, and from time to time demonstrated their ignorance of the whole matter, legislating in one direction at one session, and undoing all their work the next. Now in order that the work of irrigation and reclamation shall move forward, it is necessary that we should have some fixed laws by which we act. We thought it wise to take this matter away from the legislature and adopt a rule that

shall have some wisdom in its method, and then abide by that rule until such time as it is apparent to the whole state that these things are actually founded on injustice. Consequently we considered, in view of the fact that this territory was naturally divided into four grand water divisions or water sheds, that it would be best to place the control of this water in the hands of the state engineer and four assistants, who shall control this entire matter. This was the conclusion arrived at by this committee after a good deal of laborious work, and as my friend from Converse, Mr. Harvey, has said, that notwithstanding this may be legislation, it is good legislation, and we therefore ask reasonable consideration of this matter. We believe we have given more attention, more hours of labor to this matter, than perhaps any other members of this convention. It has occupied our attention since the beginning of this convention, and I believe we have reached about as excellent a result as could be reached. For this reason I am opposed to the motion.

Mr. CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from Carbon, Mr. Smith. Are you ready for the question? All in favor of the motion will say aye; contrary no. The noes have it; the amendment is lost. The question is now on the amendment as offered by the gentleman from Laramie, Mr. Baxter, I believe, that Sec. 6 be stricken out. All in favor of the motion will say aye; contrary no. The motion prevails.

Mr. RINER. I move that when this committee arise they report back this file with the recommendation that it be adopted as a part of the constitution, as amended.

Mr. BROWN. I am opposed to the motion. I am opposed to it on the ground of Sec. 3 as it now stands. It is in the way of a proper application of the waters of the state. Sec. 3, as it stands, priority of appropriation gives the better right. I am opposed to any such doctrine. I believe it is pernicious and an outrage upon the people. Would you say that because a man goes out first and appropriates a portion of the water, that that not only gives him the better right, but that the matter of appropriation shall be conclusive? You are establishing a precedent that you cannot get away from, and one that will control the distribution of waters in this state as long as this constitution shall be in existence. I don't believe in it. I believe that priority of appropriation should be considered as between parties, but that it should be considered with all the other equities in the case.

Mr. JOHNSTON. I know this was Maj. Powell's idea about this matter.



Mr. COFFEEN. I had several conversations with Maj. Powell in regard to this matter, and had no such idea or information advanced, and I do not think that it is a good thing to consider as an argument in this. I believe, as the gentleman has stated, that before we leave this we should consider this a moment. I think in leaving this stand as we were about to leave it stand, we were cutting off all other considerations of equity, and they should be considered in the adoption of this. I am therefore opposed to rising and reporting at this time.

Mr. CHAIRMAN. The question is on the motion that when this committee rise and report, it report back this file with the recommendation that it be adopted as amended. All in favor of the amendment will say aye; contrary no. The ayes have it; the motion prevails.

Mr. RINER. I move this committee now rise and report.

Mr. CHAIRMAN. The question is on the motion that the committee now rise and report. All in favor of the motion will say aye; contrary no. The ayes have it; the committee will now rise.

Mr. RINER. I move the report of the committee be adopted.

Mr. COFFEEN. Does that correspond to recommending it for final reading?

Mr. PRESIDENT. It only adopts the report of the committee.

Mr. COFFEEN. To test the matter I move that the report of the committee be adopted with the exception of Sec. 3, which shall be referred back to the irrigation committee.

Mr. BURRITT. I rise to a point of order. The only question that can be properly considered is the motion to adopt or reject the report. If the convention wishes to reject the report in order to rectify it, it can do so, but it cannot be done by way of any amendment.

Mr. PRESIDENT. The chair is of the opinion that where a report of a committee is made and the question arises on its adoption, it is not parliamentary to move an amendment to the motion to adopt. We may reject or we may adopt, or on a motion of the convention that the matter of the report is devisable it may be reported, and the sense of the convention adopted on the several portions recommended. This report contains but a single recommendation. The motion is that we adopt the report of the committee. The committee reports this matter back with the amendment with the recommendation that it be incorporated in the constitution. As the matter stands it is not a proper motion to amend the motion to adopt.

The question is on the motion that the report of the committee be adopted. All in favor of the motion will say aye; contrary no. The ayes have it; the motion is adopted.

Mr. RINER. I move the committee take a recess until 2 o'clock.

Mr. PRESIDENT. The question is on the motion to take a recess until 2 o'clock. All in favor of the motion will say aye; contrary no. The ayes have it; the convention will take a recess until 2 o'clock this afternoon.

#### AFTERNOON SESSION.

Saturday afternoon, Sept. 21, 1889.

Mr. PRESIDENT. The convention will come to order.

Mr. PRESTON. I ask the unanimous consent of the convention at this time to be allowed to submit a report by Committee No. 2, referred to them for their consideration. I would state that Mr. Holden did not sign the report.

Mr. PRESIDENT. Is there objection to report of Committee No. 2 being received at this time? The chair hears none and the report of the committee may be presented.

(Report of Committee No. 2.)

Mr. PRESIDENT. Gentlemen, you have heard the report of Committee No. 2, what is your further pleasure?

Mr. NICKERSON. Committee No. 9 would like to make a report.

Mr. PRESIDENT. What is your pleasure, gentlemen, as to Committee No. 9 being received at this time? The chair hears none. The report of Committee No. 9 will be read.

(Report of Committee No. 9.)

Mr. PRESIDENT. What is your pleasure, gentlemen, as to the matter reported by Committee No. 9?

Mr. RUSSELL. I move that the report be referred to the committee on printing and ordered printed.

Mr. JONES. Second the motion.

All in favor of the motion to print will say aye; contrary no. The ayes have it; the motion to print prevails.

Gentlemen, Files No. 25 and 57 reported back by the committee of the whole, unless otherwise ordered by the convention will be referred to the committee on engrossment, with the amendments that were adopted. Substitute for Files 9 and 36 have been reported by the committee on engrossment as correctly engrossed. They are now on the general file for final action. If there is no objection they can now be taken up and the matters on the general file for final action now disposed of.

Mr. RINER. I move that the files now ready for final action be now finally read.

Mr. BURRITT. Second the motion.

Mr. PRESIDENT. It is moved that the files reported as correctly engrossed be now finally read and put upon their final passage. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails.

Mr. HAY. Has Rule 4 been suspended? I move it be suspended for the afternoon.

Mr. PRESIDENT. If there is no objection Rule 4 will be suspended for the afternoon by unanimous consent. The secretary will read the substitute for Files 9 and 36.

(Final reading of the file.)

The question is on the passage of the file as read. So many as favor the adoption of the file as a part of the constitution will say aye as their names are called; those opposed will say no. The secretary will call the roll.

Mr. PRESTON. Maj. Baldwin has been called home on important business and has requested that he be excused by the convention. He could not avoid going.

(Roll call.)

Mr. PRESIDENT. Gentlemen, the vote is as follows: Ayes, 35; naves, none; absent, 14. By your vote, gentlemen, you have adopted substitute for Files 9 and 36 as a part of the constitution. The next file is substitute for Files 51 and 56. As five department. Final reading of the file. The question is on the final passage of the substitute for Files 51 and 56. As many as are of the opinion that the substitute do pass as a part of the constitution will say aye; those of the contrary opinion will say no. The secretary will call the roll.

(Roll call.)

Gentlemen, the vote on the substitute is as follows: Ayes, 36; absent, 13; noes, none. By your vote you have adopted the substitute for Files 51 and 56 as a part of the constitution. This disposes of the matters on the general file for final passage.

Mr. RINER. I move that the file in relation to the judiciary department, as reported by the committee of the whole be considered the engrossed file, and that it be put upon its final passage this afternoon. I do this for the reason that there are a number of gentlemen here who are interested in that matter, and they have the right certainly to vote upon the question, but they will be necessarily absent next week.

Mr. BARROW. Second the motion.

Mr. TESCHEMACHER. The engrossing clerk is now at work on that bill.

Mr. RINER. I move that the committee on engrossment be requested to return the bill to the house.

Mr. PRESIDENT. It is moved that the substitute for File No. 50 in relation to the judiciary department, be taken as the engrossed copy and finally read and put upon its passage, and that the engrossment committee be requested to return the file to this convention at once. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails.

Mr. POTTER. When this substitute comes up for final reading I desire to say I will have some amendments to offer.

Mr. TESCHEMACHER. Mr. President, your committee No. 19 beg leave to return File No. 50 as requested.

Mr. PRESIDENT. Gentlemen, the file is now before you for your action. Do you wish to have it read finally, or section by section, or call for sections which you desire to amend?

Mr. POTTER. I desire to offer an amendment to Sec. 4.

Mr. PRESIDENT. Sec. 4 may be read and the gentleman may offer his amendment. I desire, before there is any amendment offered, to state the situation as to this file. When I come to recall the action of the convention the motion was that the file be called up, taken as the engrossed copy and finally read and put upon its passage. I doubt whether under that action of the convention it is open to amendment, but if the convention desires to have it that way, the chair is willing it should be so, but the other motion would seem to cut all amendments off.

Mr. POTTER. The amendment I have to offer is in reference to the supreme court, and I respectfully ask this convention to consider it. If this amendment is carried I have several others to make, and I will state that the amendment I propose to offer will change this entire measure. It relates to the organization of the supreme court, and I wish to state by way of personal explanation, that these amendments are in opposition to my previous record in voting in committee of the whole. It has been said outside of the convention that the legal fraternity had created this measure, that the others had not expressed their opinion fully on the matter, and that there was very great danger if this bill passed as it is at present, the constitution would not be ratified by the people, largely on this account, and I am willing to waive my own inclinations as to the proper organization of this court, because I believe that the most material thing we wish is the ratification of the constitution. The substitute I desire to offer for Sec. 4 is as follows: "The supreme court shall consist of four justices, to be district judges, and their terms shall be six years."

Mr. BURRITT. I would like to ask Mr. Potter if this is the best form for a supreme court?

Mr. POTTER. In answer to Mr. Burritt I would state that I don't believe under all circumstances it is the best form for a supreme court, but as I said before we are going before the people with this constitution. I am informed that the organization of a supreme court, with three separate and distinct judges from those of the district court, is meeting with great opposition in all parts of the territory, and I would rather forego having a supreme court than not have a state. I would rather forego having a supreme court as we have adopted in committee of the whole, than to have our constitution fail to be ratified, and for that reason I offer the amendment.

Mr. BURRITT. I presume, Mr. President, it is within the remembrance of every gentleman on this floor that the gentleman from Laramie, Mr. Potter, very eloquently the other day besought this convention and every member of it if he be found occupying a position inconsistent, that he did not believe was right, that his attention be called to it. Therefore in all friendliness to the gentleman from Laramie I now call his attention to the fact that he is inconsistent. He says it is not right, and yet for policy sake he desires to make the amendment.

Mr. POTTER. I wish to make an explanation before this is discussed, because I wish to say that this cannot be discussed in my judgment until I explain what my theory is in reference to it. We cannot meet the whole thing at once. I have here further amendments providing that the legislature may provide for a separate supreme court.

Mr. MORGAN. I believe that the best possible supreme court is an independent supreme court. I am willing, however, to change my mind whenever I please when sufficient reasons are presented to me. Now the proposition of the gentleman from Laramie provides that for six years there shall be four judges, who shall constitute the supreme court. Now that is better than the method we have heretofore had. Now I am satisfied to reverse my position upon this matter, because I will get to a certain extent what I want in regard to it. We cannot expect to get everything all at once, and because we take part of what we want is no abandonment of what we really desire as a whole. If I get about one-half of what I want I am pretty well satisfied. Therefore I intend to support Mr. Potter's amendment, and concede to the opposition, who are afraid of this supreme court business, for six years, but all the time retaining the principle upon which I started out that a separate supreme court is the most perfect one.

Mr. CLARK. For several days I have been sitting still in my chair, or as still as I could sit, while this poor little supreme court business had been tossed about from pillar to post in this

convention. I had hoped that the matter was finally settled as far as this convention was concerned. I had hoped for the reasons so eloquently presented by Mr. Potter, from Laramie, we should have a separate supreme court. I am unable to see any reason to change my conviction from the very first, that the only way to make a supreme court is to make an independent supreme court. I see no reason why the gentleman at this late date is converted, unless it be his apparently insane desire to make amendments. There is not any reason which he presented on last evening, or on other days when this matter was discussed, not one which he has presented but has equal force at this time. If he was right then, if he was honest, he is right now. I came here to try, to the best of my ability, to serve the people of Wyoming. I cannot serve the people of Wyoming to the best of my ability unless I ask in this constitution such a provision in regard to the courts shall be presented to the people for their adoption as I consider the best. I will not vote for a measure in this convention that I do not think is the best on that proposition. I will support any measure that is adopted by the convention, but I will not give my support in the convention and as a member of the convention to a proposition that I do not consider the best, and I ask any of the gentlemen of this convention, I ask the same questions that are asked by the gentlemen from Johnson, is the proposed amendment, striking out this supreme court, would it be the best thing for the people of the territory of Wyoming? I believe not, and as I started I will finish, I believe that the only supreme court is an independent supreme court.

Mr. HARVEY. I only desire to express my astonishment at this new method of framing a constitution. This matter was brought before this body, we deliberated upon it, and came to a decision. Now we are to rush out upon the street and ascertain what may be the popular idea, and come back and alter our convictions of right and justice. I deny that the people are opposed to a supreme court. I ask authority upon this subject. Who was his informant that the territory does not want an independent supreme court? There has been some opposition to it in this convention, but the opposition in this convention was apparently converted. This has a very peculiar aspect to me. I am astonished at this sudden change. Why was it not brought up before? I can see no reason for changing the course already taken by this body. I am astonished, if nothing else, I must admit.

Mr. BARROW. I would like to give my friend one good reason why the supreme court as made by the suggestion of Mr. Potter is preferable. The only argument advanced so far, to my knowledge, against statehood, is the matter of expense.

I think that every gentleman in this hall will bear me out in saying that there is a strong opposition, at least an opposition worthy of consideration, against statehood in this territory. The question of expense is the only argument they have to stand on. An independent supreme court strengthens that argument, and gives them something to argue on. If we can save six or nine thousand dollars by the method proposed by Mr. Potter, we destroy absolutely the only argument against statehood. I know there is a strong feeling in this matter throughout the territory. I learned something of it before I came here and more since. At least one member of this body has already left for his home, I refer to Maj. Baldwin, muttering threats against the action of this convention in advocating a separate and independent supreme court. He will go back among his people, and if that feeling exists in Fremont county, he will ferret it out and add to it. I don't believe that any man will say that a supreme court consisting of four judges, three to sit on a case, the man who has already passed upon the question to be debarred, is nearly as effective or as fair in the administration of justice as an independent supreme court, but I do believe that we must consider this question of economy if we are going to submit a constitution to the people of this territory acceptable to them, and in view of the protest that has been made, I think the only wise thing for this convention to do is to accept Mr. Potter's amendment.

Mr. HOYT. I believe we are all here for the purpose of getting the best possible result, and I think it should be understood to be the privilege of every member who has expressed an opinion upon any measure brought before this convention, to consider and reconsider and to hold his opinion responsible to none but the people who have sent him here, to the very moment that he is obliged to give his vote upon the final passage of a measure, and I do not think that because the gentleman from Laramie had one opinion yesterday, and has another today, in view of all the circumstances involved, and perhaps all the facts were not before his mind yesterday to the full extent, should be called inconsistent. In my own opinion he would be more inconsistent to vote for it against his judgment. I voted last night in favor of this proposition, not however without misgivings, without some anxiety of mind as to whether we had done the best possible thing, but hoping that before final action was taken there might be an opportunity to correct errors committed, if there should be shown to be any. Am I not correct in this, that we are to be free to act, so long as we act at all, and to call no one inconsistent. I supported this measure because I believe in an independent supreme court, I believe that the measure as it has been adopted by the commit-

tee here is a wise and just and reasonable measure. I believe it will promote the interests of justice in its workings out, but I realize as does the gentleman from Laramie today, and as did our friend from Laramie yesterday, I realize that there is another consideration, the judgment of the people as to what is wise and best, and we must pay some deference to their wishes, to what they want to do, and accordingly it has occurred to me to prepare an amendment, which might perhaps be a new section to be added to this file, unless already anticipated by Mr. Potter. It so happens that I did not clearly and distinctly hear his proposition when read. First, my conviction is that the measure is a good one, we shall have a supreme court as soon as we can have it, and second, we can afford to wait for it as a concession to the people who are slaving in these hard times, and who feel more and more the pressure of circumstances, and they will therefore consider very carefully the amount of money involved in this statehood proposition to be laid before them with our constitution. Having traveled about a good deal I know that the question in many localities is a grave one as to whether it is wise or not, they are as patriotic as ever, as much desire admission as we, but they think it a mistake to apply for admission now on account of the condition of the territory, and that it will increase taxation too much. My amendment is this: "Until the valuation of property in the state shall equal . . . . . millions of dollars, the judges of the supreme court provided for in this article shall not be elected, and said court shall not be organized; upon the attainment of such valuation the legislature shall by special enactment provide for the election of such judges, and the organization of said court. Meanwhile the three district judges provided for in Secs. 10 and 13 inclusive of this article, shall constitute the supreme court, formed and continued as the supreme court has been formed and continued, and as shall be prescribed by law." This allows our constitution to stand as perfect as we can make it, with an independent supreme court in it, and prepared to go into operation just as soon as the state can afford it, and we can induce the people to ask the legislature to set in operation the supreme court.

Mr. RINER. I have sat here for two or three days and listened with considerable interest to the discussion had for the last two days, in regard to this supreme court. I think it is pretty well understood in this convention what my views are on that question, although I have not up to this time found it necessary, or thought it necessary, to say one word, because a mere statement of the facts to an intelligent body of men seemed to me to take away all necessity for argument,



upon such a proposition. I take it, Mr. President, that one of the principal things we want, if we are going to be a state at all, is to take us out of this objectionable territorial condition under which we are now. I say, Mr. President, if the people of this territory refuse to ratify a constitution that contains all of the machinery, and the proper machinery, and I may say the only proper machinery, for a state government, let us remain a territory until they are willing to ratify such a constitution. One of the great evils of a territorial government, and it is conceded by men who take the opposite view, that one of the evils and one of the great evils, is that our people are deprived of their right of appeal. They are deprived of a right which they are entitled to have so as to have their property rights protected, to have their rights retried by three impartial men in an independent supreme court. Now it is argued here that with these judges, by allowing one to go off, you would have comparatively an independent supreme court. It is apparent to every intelligent man that you would make your court worse instead of better. If we are going to have four judges, let us have them all on the bench, so that when I have occasion to criticize any of their opinions I may do it to the man's face and not be misrepresented. I say, Mr. President, that it is to the credit of the judges of the district court to say that they are unfit to sit in the supreme court on their own cases. True, in the hurry of a trial, a judge may commit errors, which he would himself be glad to correct. But in that case, when there is filed in his own court a motion for a new trial, and it is argued by counsel, he is fully informed on all the facts, and if he is a man fit to fill his position he will not reverse himself in the supreme court. I say to you, when you say our people are not deprived of the right of appeal, you cannot go into the supreme court without at least the judge who tried the case below against you. It is a compliment to that judge, because if he is fit to fill his position in the district court he will be against you in the supreme court, and everybody knows that. If he is a man who is going to change his opinions, as members of this convention do, with every whiff of the wind, then I say get him out of the district court, for he isn't fit for a justice of the peace. I don't believe this thing that the people of this territory will not ratify the constitution, if we frame a careful constitution, and put it in shape to put into operation a full and complete machinery for a state government, just because some member of this convention says "I don't believe in a supreme court." You must all concede that it is the only court that can be called a supreme court at all, if you concede, as I do, Mr. President, that the judges are honorable men and competent to fill their places. I may say,

as some others have said, that I have talked with the people about this question, and I go about this territory perhaps as much as any other man in this convention, I have talked with men in Sweetwater county, and with men in Uinta county, and I don't speak of those men who have property rights which must be passed upon by the courts, I have talked with men in Sheridan county, I have talked with men in Carbon county, in Albany county, and men in Laramie county, and I find that the universal sentiment is very largely in favor of a supreme court, and an independent supreme court, where a man knows when he takes his case into court, he can go there and get full and impartial justice. Now I say that all the argument and the only argument that can be brought against this proposition is the one of expense. Here we prophesy that we are to be a great state, Mr. President, and yet the argument is used here that because a supreme court is going to cost us six thousand dollars a year, we should give it up. We expect to be a great state, let us then here frame a constitution which will put into operation full and complete machinery for a proper state government, and I believe the people will ratify it and gladly ratify it. If we are not far enough advanced to do that, let us remain in our territorial condition until we are. If by statehood we are not to better our condition, let us remain as we are, and let the United States pay for our judges. That is the way I feel upon this question, and if six thousand dollars, Mr. President, is to prevent the people of this territory from ratifying this constitution, then I say let them vote it down before we ever submit to such an amendment as suggested by Mr. Potter. He himself, as a lawyer, concedes that the principle of the thing is wrong, and he is honest when he says that, yet for policy's sake he sacrifices the principle, and puts us in the same condition that we are in today, when the purpose of forming this constitution is to get us out of that condition and to better ourselves. If we are to sacrifice principle and lay aside everything but the question of policy, then let us adjourn tonight and go home. We are not here for that purpose, Mr. President, we are here for the purpose of framing a constitution and preparing all of the machinery for a proper state government, and unless we can do that and do it from principle, let us quit at once and go home. There is not a man I have talked with that is opposed to this entire thing but what says I concede the supreme court is the best, it is the thing that ought to be done. Why deprive them of the right of appeal for six years? If it is wrong today it is wrong every day that it exists. You say that the principle is wrong, yet you are going to deprive the people of this territory for six long years of a right which you say they should have. I think when this convention

comes to consider this question they won't change their views from those expressed here in committee of the whole last night.

Mr. HOLDEN. I do not care to discuss this question for the reason that this matter has been pretty well ventilated by various members of this convention already. I desire to offer but a single remark. When I was a boy I remember reading a story which is doubtless familiar to all the members of this convention, and it is substantially this. On one hot summer's day an old gentleman and his boy started across the plain. They had one little donkey, and as it was impossible for them both to ride, the father said to the son: "Boy, you are younger than I and perhaps you won't feel the effect of the burning rays of the summer's sun as I will, so I will ride and you can walk." In this way they started out, and they had not gone a great ways when they met a party of people, and they said, "What sort of a father are you, what sort of affection do you have for your children, that you ride along at your ease, while your child is plodding along through the heat?" The old gentleman reflected a moment, and said to his boy, "Well, boy, perhaps I am wrong, you get on and ride, and I will walk." They had not gone far in this way when they met another party and they said, "What sort of an ungrateful child are you to let your old father walk along through this burning heat; why don't you both ride?" Well they thought perhaps that would be a good plan, so they both got on the little donkey, and they met another party who said, "Why don't you carry the little thing instead of making it carry you?" So they tried that and found that didn't suit the next party. Now sir there is a moral to be learned from this little fable, and I have during the entire course of my life been endeavoring to reduce that moral to practice. The only desire I have upon the face of God's earth is to know I am right, and if I have the approval of my own conscience, feeling that I have the approbation of my Father in Heaven, I tell you, gentlemen of the convention, I don't care if all the people in the universe say I am wrong. I did not come here, sir, for the purpose of pleasing the people of Uinta, nor the people of the territory of Wyoming, I am here, sir, for the express purpose of framing a constitution which shall be right in all its provisions. I believe, sir, that the principle involved in an independent supreme court is right, and rather than go into the union without an independent supreme court, as the gentleman has just remarked, I would prefer to remain in a territorial condition until we can come in with it, and are able to set up business on my own account. I suppose that the charge that this measure comes from the bar will not properly apply to me. I am a simple ranchman living ninety miles from

the county seat, simply conducting my little ranch and taking care of my cattle and horses. That is all I have or expect to have.

Mr. PRESTON. Several gentleman in this convention have made some bright remarks in regard to the necessity of a supreme court. I will say to you, gentlemen of the convention, that had I known that this question was coming up for argument this afternoon, in order to lay in the shade everything that has been said why we should have a separate supreme court, I would have got from the stenographer a copy of Mr. Potter's speech and delivered it here this afternoon upon this question. They claim that we should not have a supreme court for the reason that the people of the state of Wyoming will be so poor that they cannot pay the extra expenses. The same gentlemen who have advanced that idea to this convention, when the proposition was presented to you for your consideration to reduce the expenses of this territory of Wyoming, by having one representative on the floor of the senate from every county in the state of Wyoming, asked for an increase of senators that will heap upon the taxpayers of this state an increase of taxation from three to six thousand dollars a year, and I say to you, gentlemen of the convention, that the state senate is no comparison to the importance of the supreme court. It is true that the governor of the state and the other officials of the state are of some importance to the state, but the machinery of the state is in the supreme court, and unless the machinery of the state and the policy of the state is such as will administer justice to all alike, then I say to you, gentlemen of the convention, as Mr. Riner has said, let us adjourn and go home. We have not come here, as I said last night on this question, for the purpose of considering the hobby of any man, or for the purpose of considering the hobby of any politician in the territory of Wyoming. Now it is claimed that if the question of an independent supreme court is embodied in the constitution of this territory that the people will vote down this constitution. As it has been already inquired, I would like to know where this authority comes from. It has been said in this convention that Maj. Baldwin left this convention simply because they had decided to have an independent supreme court, I simply say to you, gentlemen of the convention, that the gentleman who made that statement has simply been misinformed. It is true that the major did object to an independent supreme court, and there are many other things that the major thought are inexpedient, but that is not the reason he left the convention. It was simply for the reason that important business called him home, business that he could not avoid going there to look after.

Mr. HOLDEN. Maj. Baldwin told me this morning that he thought the principle was right, that we ought to have an independent supreme court.

Mr. PRESTON. Now then, gentlemen of the convention, if the rights of the people of Wyoming, if the rights of those who are compelled to go into litigation, is to be jeopardized by wiping out of this constitution one of the most important elements, one of the most important principles of a state government, then I will say to you, gentlemen of the convention, that you are mistaken if you think that the people are going to support a constitution that will jeopardize their rights and their interests. What does the amendment mean, and more particularly what does the gentleman mean when he introduces the amendments?

Mr. POTTER. None of your business.

Mr. PRESTON. Perhaps it is none of my business, but I have the right to inquire what is meant by the introduction of the amendment. It means this, that instead of having three supreme judges in this state, that it is to be divided into four districts, making four judges in all, and all this constitution has asked for is six judges, just two more than is provided by the gentleman's amendment. One more judge that it will take the same salary to pay, the additional judge in this additional district, that it will take to pay one of the supreme judges. Now then there will be two more supreme judges in an independent supreme court, and they have got to be paid for by the people of the state of Wyoming, and that will amount to six thousand dollars. Now I ask you, gentlemen of the convention, that if out of one or two hundred cases there will be scarcely one case that will go to the supreme court, unless there is a sum equal to the salary of the supreme court, involved? And I want to ask you further, is there any man, who if compelled to litigate for his rights, if he goes into court to litigate, and while in that court his rights are jeopardized, a decision is procured that is detrimental to his interests, a decision that is wrong, a decision that an independent supreme court might reverse, I want to ask you if a single man in that position cares to go to a supreme court where he will find the government jack knives in him?

I say to you, Mr. President and gentlemen of the convention, that so far as the pitiful sum of six thousand dollars is concerned, it is absurd to ask the people of this territory, to this convention, to wipe out of the constitution, an independent supreme court, simply upon a protest that comes from you don't know where.

Mr. CAMPBELL. It will be remembered that when this matter was up last Monday I spoke upon the question, and have

kept quiet ever since. Now I am in favor of a supreme court from conviction, yet at the same time if we cannot get into the union as a state without abandoning an independent supreme court, I am in favor of abandoning a supreme court. But I don't think it will be necessary. I don't believe that the people of this territory are so bigoted, so stingy, that they will refuse to ratify this constitution and ask for admission to the union, simply because of this matter of six thousand dollars. I have much mistaken their temper and liberality if that is the fact, and I will be very sorry to learn that that is the fact. Now the judiciary committee last Monday brought in and asked as a special favor that the convention should decide then whether or not we should have an independent supreme court. After some discussion participated in by those in favor and against it, it was decided by this convention that we should have an independent supreme court. This committee was then ready to report a scheme for the courts of this territory. They formulated their report upon that basis, and very much to the surprise of this committee, last evening that question was opened up again, and decided again. Now I merely wish to say, Mr. President, that if this amendment of Mr. Potter's is to be considered in this convention, then I say that this whole matter should be referred back to the judiciary committee. As I say, this amendment conflicts with the whole scheme of this bill, and it will be necessary to refer it back to the judiciary committee so as to make the necessary alterations. We shall have to have county courts, because they will be some protection, to the people, and if you have county courts, you will have to have a judge in each county, and it will be much more expensive than an independent supreme court. I shall vote first, last and always for an independent supreme court.

Mr. BAXTER. I have taken occasion once or twice to express my opinion upon this question, and I have seen no reason as yet to change it. I believe that an independent supreme court is as essential to the proper administration of the affairs of this state as any provision we can insert in the constitution. I just want to make one remark touching upon the fear that some of the gentlemen here seem to have, that this proposition is going to be defeated. They seem to be afraid the people won't ratify it, and I am induced to give point to it, as Mr. Holden has, by a little story I once heard. I once heard of an old lady, who was asked by a friend of hers, what she thought of Mr. Ingersoll's views. She said she had never heard of Mr. Ingersoll. Well, said her friend, he lectured here recently, and he says the Bible is not true. What, says the old lady, he says the Bible is not true? He says there is no

God? What, says the old lady, he says there is no God? In addition to that her friend continued: He says there is no hell. With that the old lady sprang from her chair, "What," she exclaimed, "he says there is no hell, does he? Well, he'll see; he'll see." And I think we will see whether the people will endorse this proposition or not. I believe the people will have it, they understand the importance of a supreme court and are going to protect their interests properly.

Mr. CLARK. It makes no difference to me in my vote upon this proposition whether Maj. Baldwin holds to the opinion that we should have a supreme court or not, and I take it that his opinion alone would not decide what would be the proper course for this convention to pursue. Now I want to ask this convention whether they want to give up an independent supreme court simply because they think they can buy justice a little cheaper?

Mr. POTTER. Let me say first that I don't believe it is a very good argument against a measure to reflect upon the motives of the person who presented it, and it makes no difference to me whether every member upon this floor is surprised, is astonished at my action. I always do what I consider right; I may be mistaken in my notions of what is right, but they are honest so far as my motives are concerned. Now as to what I said the other day that if I was inconsistent, let any one call my attention to it, what I said was that if I voted upon this floor for anything that was not consistent with the equality of all men, then call my attention to that vote, and I will change it. That is what I said, and I still insist upon it. Now then I offered this amendment at the request of a member of this convention, who is perhaps too modest to get up here and make an amendment of this kind. I also offered it because it has been stated here that just as soon as this question was brought up here, the lawyers got up and occupied all the time, and that everyone seemed to be afraid to oppose this measure, and although they talked outside in opposition to it, when they came to the point, no one opposed it, and I want to say just now that they don't deserve any representative on this floor. The very persons who have talked with me about this matter have been as still as mice during the discussion and passage of this bill, and it almost makes me feel like voting against my own amendment. I would vote in a minute for a supreme court in preference to a county court, if you are going to have county courts, they will be much more expensive and not nearly so efficient. As I say, it has come to my recent knowledge, I may have been misinformed, but it has been stated to me very strongly by those who pretend to know, that the people of this territory had considered this matter, and were strongly opposed to an

independent supreme court. Now then I prefer statehood with a supreme court as mentioned in this amendment, rather than remain a territory, although some of the others would not. I don't consider an independent supreme court all we are after in becoming a state. I consider there are other material advantages we would get with statehood that would outweigh the difficulties we would have in a supreme court as suggested in my amendment. Treat me fairly in this matter and don't mistake my intentions, or motives, or my ideas of these things. In the first place I have never made a speech on this question except once, and that was one day when the judiciary committee asked leave to submit their proposition, and I don't think any eloquent speech that I made at that time can be quoted as against my amendment, for all I said then, and the judiciary committee will bear me out, in what I said in committee meeting, that while I was in favor of a separate supreme court that I was afraid that the people would not ratify it, and Mr. Harvey and I talked it over together, and we thought it a very important matter as he will agree with me, and we both went into the committee room with fear. While we both wanted an independent supreme court, we were afraid that the people would not ratify it. I stand now just where I did when this matter was first before this convention, I am in favor of an independent supreme court if we can have it, but if we can't why let us have the next best thing.

Mr. BURRITT. Mr. Potter seems to construe my remark as a reflection upon his motives, there was nothing further from my mind than that. I had no intention of casting any reflections upon Mr. Potter whatever.

Mr. COFFEEN. The rebuke that has been administered to those who voted against an independent supreme court is somewhat just, but there are however extenuating circumstances. I have seen one man after another get up here on this floor and instead of making arguments against the gentleman's amendment, have simply questioned his motives, and I have with great difficulty remained quiet, but it was difficult to get the floor without interrupting the eloquence of the gentlemen here, and I wish to express my appreciation of the courtesy of the gentleman from Laramie who understands the exigencies of the situation, and who has done his simple duty in offering an amendment here on behalf of those who are opposed to the present establishment of a supreme court, separate from the one to be derived out of the four district judges. Now I, whether fortunately or unfortunately, among those who do occasionally and when reason is presented to me, change my mind I am among those who can be convinced. I have heard of those who cannot be. There are some here who will not be con-



vinced and will do what they can to prevent others who can be convinced from seeing this matter in the proper light. I spoke on this question yesterday, and I regret exceedingly that we have not had more support in the way of addresses and speeches on behalf of the non-professional element. I have no charge to make against the legal fraternity in this convention, but we must bear in mind that there is another side, I do not deny the force of the argument in favor of a separate supreme court, but if it is going to deprive you of the very hope of statehood then I think you are going a little further than good judgment would require, or justify. Statesmanship, gentlemen, as I apprehend it, does not consist in pursuing one point which you believe is important, and which if you cannot carry out, brings destruction to all that is good. Statesmanship has a regard for the circumstances which surround the people for whom you are exerting your efforts in a representative body. I know the circumstances surrounding the people whom I represent here, and if the means were sufficient, if the state was higher, further along in her development, it might be best to have a separate supreme court. But I insist, taking the territory in its present condition, taking that as a standard, I believe it a greater and more weighty reason for supporting this amendment that there is in going against it. This amendment provides that in a certain time we hope to be able and in shape to have a separate supreme court, and as soon as we can afford to have a separate supreme court, we shall have it, and I tell you, gentlemen, that six thousand dollars a year is a pretty heavy expense to ask the people to endorse you in putting upon them.

Mr. MORGAN. The motives by which a man is governed in his actions in a given direction should be judged by that man's character, by what people know of him, honestly or dishonestly. To attempt in a convention like this to inapugn a member's motives is not the act of a prudent or a wise man. It was an attempt, a sorry attempt, to use the whip to drive members in a certain direction. Aside from the danger of endangering the ratification of this constitution, if such opposition exists, as has been stated upon this floor, I am afraid that we are not able as taxpayers to stand the extra expense of this independent supreme court. In this bill we have fixed the very economical sum of twenty-five hundred dollars as the compensation of a supreme court judge, and we do not dare to put it any higher. We knew to do it was to endanger the ratification of this constitution, and upon that very argument we refused to establish offices which we knew ourselves could not be compensated as we knew they ought to be compensated. As to the popularity or unpopularity of this measure, I have been informed that

some members who are in favor of this amendment and opposed to this idea of an independent supreme court have circulated that report. Mr. Chairman, there are measures which I would dearly love to see in this constitution, but I would not insert those measures even by the unanimous vote of this convention because I believe that the people of the territory are not ready for those measures. I believe it would be destructive to the ratification of this constitution. There are so many things which I would like to see in this constitution which would be wise and pertinent in the way of progress, but I would rather deprive myself of something I desire than jeopardize the ratification of this constitution. Again, the plea is always made that it is only six thousand dollars, only a trifle, but you must bear in mind that with every office created in this constitution it will require an expenditure of an additional amount, and when you come to take the aggregate of all these trifling amounts, you will find that it will amount to considerable. It seems to me that Mr. Potter's amendment will answer all purposes for the present, and when we are able to establish a separate supreme court we can do so.

Mr. HOLDEN. I want to make this statement. Since this convention has been in session I have had no opportunity of talking with the people of Uinta county, but my colleague, Mr. Clark, has but recently, within the last two or three days, returned from the county seat of Uinta county, where court has been in session since the morning upon which this convention convened. At that court the leading men of the county were doubtless present, as they always are. I would like to ask him whether any one of the citizens there raised a single objection to this measure? (Clark: They did not.)

Mr. HOLDEN. When I quoted to him my opinion, the remark which the daily newspapers here credit me with, namely: "That the people of Uinta county would prefer to remain in a territorial condition throughout the endless cycles of time than to surrender the right of the women of the territory to vote," he said I had voiced their opinion. And he added that they would ratify no constitution which this convention might make which in any way interfered with their rights.

Mr. HOYT. I am not sorry that we have spent an hour or more upon this matter, because I deem it very important. That man is consistent who stands by his own convictions. Those convictions should change when right demands. I was astonished at some of the remarks made here this afternoon. I wish to say now simply that if it can be proven that the courts of Wyoming are today damnable, then I am willing to join hands to get rid of them and establish a better form of court than we have now, if the condition of things be such as stated by

the gentlemen who have most to do with the courts. I have nothing to do with them. Justice is of the utmost importance to a free people, and no government can be respected in which justice is not supreme, and so I say that if our courts are such that justice cannot be meted out to these people then I am willing to go hand in hand with you and establish a separate supreme court, and take the responsibility of the extra five, or ten, or fifteen thousand dollars that may be necessary to secure justice, and I will support that measure and go before the people and support the action of the convention.

Mr. BROWN. I feel that this convention is perhaps upon the verge of a calamity or I should not open my mouth upon this question. Something has been said about people's changing their minds, I care nothing about that. I heard a man say once he didn't know which was the biggest fool, the man who changed too often or the man who didn't change at all. Now, my inclination is to the belief that the man who can never change is the biggest fool of the two. Now that is all I have to say on that question. Now as to this matter of a supreme court, I believe every man in this convention wants to do his whole duty, and to do what seems best and will be best for the young commonwealth. The only question with any of us is as to what is best, and in order to determine that question we are not to go out upon the highways and byways and consult politicians as to what they think about it, we are not to consult Tom, Dick and Harry, but we are to determine this question upon its real merits, each and everyone for ourselves, and on our best judgment. Now what is the argument that has been presented against an independent supreme court, or against the measure which has been reported here as it now stands before this convention. They say we must change it on the ground of economy. I can say to you, gentlemen of the convention, that on the ground of economy, the way the courts are now constituted under this proposition, that they are more cheaply constituted than ever before in the history of Wyoming territory. There is no question about this; what do we do? We wipe out at one stroke the expense of probate courts in every county in the territory, and for these courts, probate courts, that cost from five hundred to a thousand dollars each in every county in the territory, we substitute a district court, that takes all the business of the probate courts. Here is one step toward economy in the expenses of the courts of the new state. Now taking these ten probate courts and adding together the expenses of each one, as many as there are counties in the territory, and the expense of maintaining them largely exceeds the expense of an independent supreme court as proposed in the constitution of the new state. So then, if you object to this measure

on the ground of economy, you are in the wrong and not in the right. It is stated that this matter of an independent supreme court is unpopular with the people. I tell you, gentlemen of the convention, if by any accident you overcome this proposition for a supreme court, that any constitution that you present to the people, with its mongrel court, is in danger, and don't you forget that for a moment. I know of men, lawyers and laymen, who will go out among the people of this territory, and from the instant your constitution is completed until the people shall vote upon its adoption, who will work to defeat any constitution that deprives the people of this new state of this one element of justice, and when you take from them a supreme court you are denying justice to the people, and this is the proposition you have got to meet, and if there is any danger for the constitution you propose giving them, the danger lies in adopting a mongrel court, not from adopting an independent supreme court as a part of the constitution. Some gentlemen say we want a state government whether we have a supreme court or not, others say we never want a state government if a supreme court is denied to us. It does not matter how we may view this question, we wish the people to say, and I am willing to trust this matter to the people of Wyoming. Ever since the days of the Magna Charta and the time when the Anglo-Saxon people resisted the government, justice has been the ruling trait of the English speaking people from that day down to the present, and when you say that you will place your form of government above this question of justice, you are refuting the tradition of the race, and turning backward to the days of barbarism. Shall we do this then? I tell you, gentlemen of the convention, if you are going to seize justice by the throat, because it will cost the people of this territory the pitiful sum of six thousand dollars, then you had better wipe out any thought of a state government for them. The people of Wyoming are not willing to sacrifice justice for this trifling sum of six thousand dollars, and I tell you, if they are willing, I should think they were like Esau, of old, selling their birthright for a mess of pottage and I would not have much respect for a people that would take that course. Don't sell justice for the paltry sum of six thousand dollars a year, I beg of you.

Mr. SMITH. There has been so much said here that I did not think I would say anything, and yet I don't think there is a gentlemen on this floor but realizes that this is the most important question that can come before this convention, or that can come before the people of Wyoming territory, or of the state of Wyoming. The prime argument, the fundamental reason, why the people of Wyoming territory want a state is because, under the present administration, or present form of gov-

ernment, they are deprived of what we call their right of appeal. That is the principal thing. It is true there are several arguments why we should be a state. One is a matter of sentiment. I would like to vote for president. I should like to have something to say about who shall govern this national government. That is one reason, but that is a mere matter of sentiment. Then again, we would like to have something to say about the persons who are going to rule over us, and to be sure that they are people who are residents of this territory. That is another argument. But the main reason that we ask for statehood is because we want a government in which the laws can be administered in a way so that we can get justice, and I say now, and I say it without any doubt about what I am saying at all, if you go before the people with this mongrel form of court, they will vote down the constitution, and you cannot blame them. The idea that the people will support any kind of a constitution I believe is a mistake; I believe they are honest and will act upon their convictions. I have no fault to find with a man's changing his mind, if he does it honestly. I tell you, gentlemen, what you know and I know, that the men this territory is made of are men who act from principle. They will support a measure if they believe it is right, and for the best good of the government, but when it comes to ringing in courts of incompetency, I tell you the people will not support it, but if you give them an independent court, a court that will administer the laws without interference, without logrolling, they will vote for it, nineteen out of twenty, but if you take that away from your constitution they will not adopt it, and you cannot wonder at it.

Mr. HAY. I have not said anything upon this subject and don't intend to say much now. It seems to me there is a good deal of talk here that is altogether unnecessary and does not apply to the question. This is only a question of five or six years. It certainly is a conservative measure. We are not surrendering the idea of a supreme court for all time to come, and it strikes me that our conservative action in that direction will please the people, and it seems reasonable to me that this amendment offered by Mr. Potter should go through, and should be adopted by this convention.

Mr. RINER. It would be like a confession to congress that we are not ready to assume the burdens of statehood.

Mr. HAY. It does not strike me that way at all, it is no confession at all, but simply an indication to congress that we are a conservative people, that we are not trying to rush into all the machinery of a full fledged state at once, that we are not trying to take on things that we cannot afford to pay for, and those of us who are here now and paying taxes know that

the burden is as much as we can stand, and if we are going to increase it by statehood we had better remain as we are.

Mr. CHAIRMAN. Are there any further remarks to be made upon this question?

Mr. COFFEEN. I believe I would like to have my vote on this subject recorded and hence would call for the ayes and nays.

Mr. CHAIRMAN. The ayes and nays are called for. Is there any objection? The chair hears none. The clerk will call the roll. Gentlemen, the question is upon the adoption of the amendment offered by the gentleman from Laramie, Mr. Potter. So many as are of the opinion that the substitute be adopted will say aye as their names are called; those of the opposing opinion will say no.

(Roll call.)

Mr. ELLIOTT. I desire to explain my vote. I was about to make a few remarks, but the gentleman seemed to be in such a rush I did not, but desire to claim the privilege of stating my position. I believe a great mistake is being made here in considering the future altogether and paying no attention to the present. We have as much to do to deal with the present condition of this territory as we have in dealing with its future, and I say, sir, while I would be glad, too glad indeed, to see an independent supreme court, we must have consideration for the present condition of this territory, in discussing this question, and in view of our present condition I must vote aye, for this amendment.

Mr. FOX. I don't exactly approve of this amendment. I would have preferred the proposition submitted by Mr. Hoyt, therefore I vote no.

Mr. CHAIRMAN. Gentlemen, your vote on the amendment offered by Mr. Potter is as follows: Ayes, 17; noes, 21. By your vote you have refused to amend according to his proposition.

Mr. RINER. I move the bill be placed upon its final reading.

Mr. CHAIRMAN. The bill is now on its final reading. Final reading of substitute for File No. 50. The question is on the adoption of the substitute for File No. 50. All who are of the opinion that the file be adopted as a part of the constitution will say aye as their names are called; those of the opposing opinion will say no. The secretary will call the roll.

(Roll call.)

Mr. CHAIRMAN. Gentlemen, your vote on the substitute for File No. 50 is as follows: Ayes, 37; nays, 11; absent, 11. Gentlemen, by your vote you have adopted substitute for File

No. 50 as a part of the constitution of Wyoming. What is your further pleasure, gentlemen?

Mr. TESCHEMACER. Committee No. 19 would like to make a report.

Mr. CHAIRMAN. Is there objection to Committee No. 19 making a report at this time? The chair hears none. The committee may report.

Mr. TESCHEMACHER. Your committee No. 19 beg leave to report that the substitute for Files 35 and 57 is properly engrossed.

Mr. CHAIRMAN. You have heard the report of your committee. What is your pleasure?

Mr. BURRITT. I move the file be read a third time and placed upon its final passage.

Mr. CHAIRMAN. It is moved and seconded that the substitute for Files 35 and 57, the irrigation file, be placed upon its final reading and final passage. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it. The motion prevails. The secretary will read. If any one desires any particular section read they may call for it.

Mr. COFFEEN. I desire the reading of Sec. 3, the one I believe on which so much discussion has been had.

(Reading of Sec. 3.)

Mr. COFFEEN. Since the chair has been kind enough to allow us to reconsider this matter, I move to strike out Sec. 3 from the present file.

Mr. FOX. Second the motion.

Mr. IRVINE. It seems to me that it is hardly fair to put that to a vote when Mr. Johnston is away. He is a member who is most anxious to vote upon that.

Mr. ELLIOTT. I move as a substitute that after the words "better right" there shall be added "but shall not be conclusive in determining the better right." That is, that if there is anything else to determine it, it shall have consideration.

Mr. CHAIRMAN. Gentlemen, you have heard the motion. Are you ready for the question? All in favor of the substitute as offered by the gentleman from Johnson will say aye; contrary no. The chair is in doubt. All in favor of the motion will rise and stand until counted—13. Those opposing will rise—19. The motion is lost.

Mr. FOX. I will now move to strike out Sec. 3.

Mr. COFFEEN. Second the motion.

Mr. PRESIDENT. Gentlemen, you have heard the motion. Are you ready for the question?

Mr. COFFEEN. I do not wish to say more than to try and speak out a word of caution. If this section is adopted it seems perfectly clear to me that no oth-

er consideration can matter or can be employed to aid in determination of rights, and it is a dangerous doctrine for us to settle upon, I wish the proposition to amend might have been more fully discussed, but I caution you now as surely as priority of appropriation for beneficial uses shall be the final determination of all questions, you have planted an injustice, as I believe, in the constitution which will be far reaching in the future, and do great injustice to many. I believe it should properly be the greater consideration, but to allow nothing else to determine, I think that is an extraordinary decision, and I shall therefore move to strike it out unless it can be amended. It has been hinted and suggested, perhaps unwarrantably, that there are corporate interests involved in this question that are very serious and close to the surface. I say this has been suggested, but I will not present that as an argument against it, that however that may be, this is a serious question which we have on hand, and one that will do great injustice to many that want to have justice done in the matter of the use of water.

Mr. BURRITT. I have said so much in reference to this irrigation bill that I do not wish to bore the convention with any more remarks, but the remarks of Mr. Coffeen and the insinuations thrown out by him in reference to this matter are such that so far as I am concerned I do not propose to allow to go unanswered. I think that anyone who knows my connection with irrigation companies and with parties owning irrigation ditches in Johnson county, and there are many on this floor who do, although there are some who do not, they will not doubt my honesty of purpose in supporting and advocating the measures of this bill. I certainly have heard of no corporate interests that are to be effected by it, and I have been exceedingly cautious and careful in considering this matter and in framing it, and if the authorities of over five thousand years you might say are of such a nature that they are favorable to the corporate interests of some institution in the territory, or the coming state of Wyoming, that exists only in the very fertile imagination of the gentleman from Sheridan, for whom I have the greatest respect, then, sir, I am guilty upon this floor of being the tool of such a corporation. This, Mr. Coffeen, is the water law of the oldest irrigation countries in the world, and I have advocated it because it seemed to be so fair and so just. This is the system known as the Australian system, it is the system adopted in the provinces of Australia and New South Wales, for which the British crown sent out a commission to examine and investigate. The United States has done very little in the matter of irrigation. England has done more than any country on the face of the earth to investigate this matter of irrigation. They have spent dollars where we have not spent cents to get at the root of this. Appropriation is the



touch note in every country where irrigation is known, and, sir, I prophecy that the time is coming and coming soon when the state will take the course pursued by every country where irrigation is known, and will own and control the water. To strike that out in this bill and provide that priority of appropriation shall not give the better right, but that other matters shall come in is simply, sir, to throw this matter into the courts. Look, sir, at the history of irrigation in this territory, look at the infamous measures adopted, honestly, I have no doubt, and the injustice done to the owners of irrigation ditches. It is an outrage. It has cost the poor farmers of this territory thousands of dollars. I believe that this measure is right, just, honorable and honest toward all men, and will come nearer to reaching this difficult, in fact the most difficult question that the state of Wyoming has to settle, than any other provision that can be framed and brought forward. I would be glad to hear the gentleman who made this motion to strike out give his reasons for it. So far I have heard no reason why it should be stricken out and I believe it should stand.

Mr. COFFEEN. I endorse most heartily all the words that have been said, and I am most glad to hear the gentleman speak as he has, and I believe he is right and I am wrong. I was afraid this might lead to greater litigation, but my judgment may be wrong. I only repeated what I heard on the outside as to this bill, and I did not say I believed it, and I do not doubt but that the gentleman himself and the other members of the committee acted from the highest and purest motives in bringing this measure forward. I am convinced that this is all right, and unless the gentleman who made the motion can make an answer sufficient to overthrow the argument that the gentleman has just made, I shall vote against the motion to strike out.

Mr. HAY. It seems to me that the word "better" is unnecessary. If priority of appropriation gives the absolute right, there is no need of using the word better.

Mr. BURRITT. I will answer that but want to say one word in regard to another matter first. This convention would seem to have lost track of the fact that there are other beneficial uses besides irrigation. It is plain that water for domestic purposes is a beneficial use, that water for mining is a beneficial use, and they should all be placed upon the same equal footing. When this bill says that priority of appropriation for beneficial uses shall give the better right it means regardless of what that other right may be. I desire right here to say that it has been objected to, that here you take away from cities their water supply and leave them destitute, and in consequence of this they would not have the right to use enough water for their domestic purposes. They will have the right to

just so much water as they have actually appropriated for their domestic purposes and have been in the habit of using at the time their ditches were constructed, and when any city in the territory so grows in size that it will require more water supply than it has the priority of appropriation for beneficial uses, then this preserves to the state the power in the legislature to pass a law allowing that city to extend its ditches, but they will have to pay for it, and they should. Now the city of Cheyenne draws its water from Crow creek, and they have a very ingenious system for increasing the supply at present, but if the city should increase three or four times in size, some of its ditches have got to be extended, and its supply increased, but they have got to pay for that, and it is to prevent this conflict of interests that this word better is used.

Mr. FOX. They want me to give my reasons for having this struck out. I want it struck out because I think it is useless. I think the other covers the whole thing. I think the proposition I suggested the other day should have been in this chapter, but the committee saw fit to strike it out, but I think this ought to be left out, and for that reason I moved to strike it out. I think it ought to be left to the legislature.

Mr. PRESIDENT. The question is on the motion to strike out. All in favor of the motion will say aye; contrary no. The noes have it; the motion to strike out is lost.

The question is now on the final reading and passage of the file. All who are of the opinion that the file as read should be adopted as a part of the constitution will say aye as their names are called; those of the opposite opinion will say no. The secretary will call the roll.

Mr. PRESIDENT. I desire to explain my vote. In the first section of this file we make the declaration that the state shall be the owner of the water. We follow that up by saying that priority of appropriation shall give the better right, which is to deny the ownership in the state. There is contradiction in the bill. I believe further that this provision in the bill gives an opportunity for cheating and robbing the state by corporations. I therefore vote no.

The result of the vote on File 57 is as follows: Ayes, 35; noes, 2; absent, 12. Gentlemen, by your vote you have adopted File 57 as a part of the constitution of Wyoming. The file will be referred to the committee on revision.

Mr. TESCHEMACHER. I move that the two reports of the legislative committee and of the apportionment committee be made special order for this evening, and I hope it will be allowed for this evening, because I understand a great many are going away.

Mr. PRESIDENT. It is moved and seconded that the two reports of Committee No. 2 and the two reports of Committee

No. 6 be made special order for this evening. Are you ready for the question?

Mr. COFFEEN. I am not ready for this question. It seems to be very foolish to have this question come up tonight, when we have not even determined whether we are going to have a night session. The general expectation was that there would be no night session tonight. I am very willing that the gentlemen who are to be absent should be accommodated to a reasonable degree, but I apprehend that there are many of those who would like to see this go over until Monday. I move that this be made special order for Monday afternoon.

Mr. PALMER. I would say on behalf of some of the proposed absentees whom Mr. Coffeen seems to be so anxious about that it comes with very bad grace from him to refuse us, when he has occupied most all the time in the convention himself so we couldn't get ahead more. We have to go away and insist on this coming up today.

Mr. CAMPBELL. Speaking of having an evening session, I don't think we will gain enough to pay us for coming up here this evening. I have felt the effects of last night all day. Sitting here from 9 o'clock in the morning until 11 o'clock at night is more than I can stand. I think the resolution agreed that we should have evening sessions through the week except Saturday night.

Mr. POTTER. It seems to me there is no necessity for postponing this matter until Monday.

Mr. COFFEEN. In reply to the gentleman from Laramie I will simply say that in consideration for the people who go west, that they might have time to get back, I move it be put off until Monday afternoon, and also that all might know that this question was coming up. So far as I am concerned myself I am ready now to contest this matter if it should come up. I should have preferred Monday afternoon.

Mr. PRESIDENT. Gentleman, at this moment I desire to say that in the past whenever any member has used language that seemed to reflect upon another, I have called no one to order, but I insist that it shall not go on any further. This is no place to indulge in personalities or personal reflections upon any matter whatever, and the chair will insist upon its rights, and it shall not be done hereafter. The question is on the motion as amended, that the two reports of Committee No. 6 and the two reports of Committee No. 2 be made special order for Monday afternoon. Are you ready for the question? All in favor of the motion will say aye; contrary no. The noes have it; the motion is lost.

The question is now on the original motion that these reports be made the special order for this evening. All in favor

of the motion will say aye; those opposed no. The noes have it; the motion is lost.

Mr. POTTER. I move these files be made the special order and immediately considered by the committee of the whole.

Mr. BARROW. I move no one be allowed to speak more than two minutes in committee of the whole.

Mr. COFFEEN. I rise to a point of order. I do not think that motion can be entertained at this time, in connection with this motion.

Mr. PRESIDENT. The chair is of the opinion that as we have no rule upon that subject, no such motion can be entertained at this time, it being an amendment to the rules, it must lay over. The question is on the motion to go into committee of the whole for consideration of the special order.

Mr. COFFEEN. I know there are certain parties that seem to be very anxious to rush this question at this time, but it appears to me, having worked as late as we have, there must be some anxiety that I feel is hardly justifiable, in rushing us at once into this, and that too when efforts are made in this convention to shut off debate. I beg your pardon most heartily and sincerely and with due humility for occupying too much of your time but at the same time I have always stuck to the question and tried to secure justice upon every question. I have never attempted to cut off debate of any one. I think we cannot, in justice to ourselves or the question that is to be handled, go into this question tonight, and therefore I shall oppose going into it at once.

Mr. PRESIDENT. All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails. We are now in committee of the whole.

Mr. CHAIRMAN. Gentlemen of the convention, you have before you the majority and minority reports of Committee No. 6 and the minority reports of Committee No. 2. The legislative reports are before us, I believe. The clerk will read the majority report.

Mr. BARROW. I believe the matter of apportionment was mentioned first, and I believe that it should come up first.

Reading of the reports of the two committees.

Mr. BARROW. I move when this committee arise they report back the majority report of Committee No. 6 with the recommendation that it be adopted as a part of the constitution.

Mr. RINER. Second the motion.

Mr. CHAIRMAN. The question before the house is when this committee arise they report back the majority report of Committee No. 6 with the recommendation that it be adopted. Are you ready for the question?

Mr. BAXTER. I was not here the other day when this matter was discussed, and I regret that I was not as I was anx-

ious to hear some valid argument in support of the proposition of one representative from each county. I was here a day or two since when this was referred to the committee, and I fully agree with Judge Brown of Albany, who pointed out the injustice that would be worked upon the population of several of the counties, if the report was adopted as suggested at that time. I believe now that these reports are just about as they ought to be. It seems to me that if we should lay the territory out into senatorial districts, in that way every county would have some representation. That is, that Sheridan county or Johnson county or some other county should be a senatorial district. They are thus entitled to one representative, whether or not they have sufficient population to entitle them to it, because it would be manifestly unjust to say that they shall have no representative at all. They are entitled to one man because they are entitled to representation. Now, after we have determined that, that they shall have one representative, then we shall determine the unit upon which this representation shall be based. The majority report allows five representatives from both Carbon and Albany county, each with a population of twenty-six hundred. As I understand it the unit is six hundred. Now it seems to me it would be a little more fair to give them four each, and let these two counties together form a float district entitled to one member. Now the same with Johnson county and Sheridan county, they are entitled to one member, and by joining them they would be entitled to one extra member in the house. I don't think as a rule float representatives are very effective, as they are very apt to represent the county they come from and forget all about the other, but I think perhaps it might be arranged in some way.

Mr. BARROW. We have had some experience with float representatives. I remember distinctly in 1884, that Johnson and Carbon counties were joined, and the candidate, Mr. Mc., was defeated in his own county, and elected in Carbon county, where he was not known, and Mr. France was defeated in his own county, and elected in the county where he was not known. I believe that every gentleman who has taken the trouble to figure on this apportionment offered by the majority of the committee, they have made an apportionment which is just, or as near so as can be arrived at. The apportionment is made on the same basis as made by Mr. Hay, taking six hundred for the house and twelve hundred for the senate, only that two members, one each, have been added to Albany and Carbon counties. There is reason for this, inasmuch as Carbon county has an overplus of two hundred and thirty-three in the house, and a like number in the senate, making a total of four hundred and sixty-six, and Albany county has an overplus of two hundred and eight in the house and two hundred and eight in the

senate, amounting to four hundred and sixteen in both, when figured in this way. I believe I have figured on this thing for four weeks, and I have heard of other members who have done the same thing, and I challenge any other member to arrive at any other satisfactory or more just arrangement of apportionment.

Mr. COFFEEN. I wish I could say the few things I have to say within the two minute limit, but fear I cannot. The house has already, before these matters were referred back, settled upon two general principles by their vote, not that you need reference to it, but I call your attention to it that you may know where you are. You have settled and adopted the principle that the house shall have not less than two times as much as the senate, and not more than three times. If you will examine the minority report, you will find that it will conform to that principle. The house has settled upon that question, that there shall not be less than twice as many in one house as in the other. The house has also settled upon the principle that every county shall have at least one senator and one representative. That is settled, I believe, until there is no opposition. The relation of the number in one house to the other, and the fact that every county shall have one member in each house, that much is accomplished toward county representation. Now I want to appeal to you in the sense of fair play, as you shall concede it, when you take the facts of the majority and minority reports. The minority report has fifteen in the upper house, and thirty in the lower, and the majority report has sixteen in the upper house and thirty in the lower house. We have conformed then to the principle we have settled on, that there shall be twice the number in the lower house as in the upper house, and that every county shall have one representative and one senator. So far then we have conformed. We are opposed to the increase of the senate from fifteen to sixteen for many reasons. You must not expect me to take the time to give you all my reasons, but I will state one or two. In the first place, it increases the expense, and increases the number in the upper house in order to conform to this principle. On the basis of fifteen to twenty-eight, which seemed to be the ratio agreed upon at one time, raising that to fifteen and thirty, the question arises where shall the two extra representatives go. That is the question. That is where the main difference comes, I apprehend, between the minority and majority reports. Shall these two representatives to raise this from twenty-eight to thirty, go to Albany and Carbon counties that already have four, or go to Johnson and Sheridan counties that only have one in the lower house? Justice demands that it should be given to Johnson and Sheridan counties, which only have one. But let me show you the figures. Taking it from Mr. Hay's figures as we have it, the vote stands

thus: In Albany county twenty-six hundred and eight votes, giving them four on the general apportionment we propose for the house of six hundred, makes twenty-four hundred, subtracted from twenty-six hundred and eight, gives you two hundred and eight. Six being the unit, then take Johnson county for instance, and subtract her one representative from her nine hundred and sixteen votes, you have three hundred and sixteen. A larger surplus, as you will see, and she should have the extra member, having but one already, yet you would give the extra member to the county having four already, and the smaller surplus. Ah, I knew I could touch your sense of fair play there. Take Sheridan county and subtract her six hundred votes, this gives her one, and you have two hundred and seventy surplus. This also is larger than the counties you would give the extra one. It is larger than Albany county, with only two hundred and eight, or Carbon county with two hundred and thirty-three. Not that I have yet heard an Albany county man say that he wanted to take five and give Sheridan and Johnson counties but one, for I believe that at all times they have endeavored to be liberal and just and fair towards Sheridan and Johnson counties. Then I will take Converse county. Surplus of Converse county in the lower house is one hundred and seven which is less than in both of our northern counties, yet you will give on a smaller surplus an extra representative to Converse county and deny it to the smaller counties, having also a larger surplus. Will you thus defeat justice, and be deaf to the dictates of your own conscience? Now how about the surplus in the senate. I will start by saying that it is a radical departure from anything ever heard or written of to take the apportionment of the senate and its figures, and thereby try to effect an apportionment concerning the lower house, and this convention is not ready to act upon that and take such a stand as that. It has been decided here by your vote that every county shall have one senator, and you cannot therefore question that. Now I have shown you that the two extra members by increasing this from twenty-eight to thirty, should go to the smaller counties as compared with the larger, and I have shown you by the very figures themselves that the smaller counties have a larger surplus, and I hardly think there are many in this convention but who will endorse the idea and stand by us in making this increase to thirty and agree that the two extra members should go to Johnson and Sheridan counties having as I have already shown you the larger surplus. One word more and I am done. I do not wish that you should lose sight of this data that I have given you. Our people will demand a representation that will look a little better than the one that gives five to these two counties, to our one. There is injustice in the very figures, and, sir, it will go hard with my people. I ask jus-

tice for my constituents. Another reason for favoring the minority report is the consistency with which our numbers conform to the principles already agreed upon, that there shall be twice the number in the lower house as in the upper. This in itself is a very good reason for giving it consideration. We have all conceded that the lower house must be at least twice the size of the upper. Then there is another reason, one however that I don't want to press upon you, but you know that our people have been a little prejudiced, and they have been convinced in their own minds, whether by wrong or right arguments I will not say, that it was not to their interests to have statehood, and I believe that prejudice will be overcome to a large degree when they see that you have treated them fairly, that justice has been done to them in the matter of their representation in the legislature of the new state, and I believe that the ratification of this constitution would be further advanced by giving to Sheridan and Johnson counties the two extra representatives instead of giving them to the counties which already have a much larger representation, and with a much smaller surplus, and who don't demand them.

Mr. BARROW. The gentleman from Sheridan wants us to give him equal representation with Converse county in the lower house. I stand here on behalf of Converse county to protest. The county of Sheridan has four hundred and thirty-seven votes less than the county of Converse. The county of Sheridan has two hundred and eighty votes less than the county of Crook. The county of Johnson has three hundred and ninety votes less than the county of Converse. I cannot see any justice, any shadow of justice, in giving either of those counties equal representation with the counties of Converse and Crook. He was speaking of the overplus in the house, and making that the basis of his apportionment. I would like to ask him what was his overplus in the senate. We take the basis of twelve hundred votes for one senator. He lacks three hundred and twenty-four, almost half as much as the total vote necessary to entitle them to one representative, and if the unit is fourteen hundred it would be even larger. The county of Johnson lacks two hundred and eighty-four votes to entitle it to a senator. I think when you consider the minus amounts which are lacking to entitle them to one senator, they are certainly getting all they deserve when they get one member in the house. At any rate Converse and Crook counties certainly protest against allowing Sheridan and Johnson counties equal representation with them, when we have, as I have shown you, four hundred and thirty-seven votes more than either one of those counties, and Crook has two hundred and eighty more.

Mr. POTTER. I don't rise to make any argument at all, but simply just a suggestion. I see that the majority report



makes it sixteen and thirty; this does not make the lower house twice the size of the senate. The minority report is fifteen and thirty. The only difference being between the majority and minority reports in giving Albany and Carbon counties one member of the house less and Sweetwater county one member of the senate less. Now with sixteen members of the senate, we should have at least thirty-two members of the house, and the only thing to decide is to where those two members should go.

Mr. CLARK. I have been looking over this vote somewhat and I find that Converse county has two members of the house and one hundred and seven votes over according to the last vote, and Uinta has three representatives, and two hundred and seventy-five votes if I have the right figures. I don't know but we might arrange it by increasing the house by one respectively in Converse and Uinta counties, making the two extra necessary to double the size of the senate, leaving the extra senator in Sweetwater county.

Mr. MORGAN. It seems to me that the legislative report should be read first. The majority of the legislative committee reported in favor of thirteen senators and twenty-eight members of the house. The minority committee, myself, reported in favor of fifteen senators and thirty representatives. I was governed in my idea of that number, fifteen and thirty, by two considerations. First that the house should be double the number in the upper house, as we have decided in the convention, and the other consideration was that there might be two extra members to go to whatever counties they might belong to.

Mr. IRVINE. I really thought it unnecessary to speak in our behalf. I simply want to call attention to the vote of the three counties of Converse, Johnson and Sheridan, and I feel sure that this convention is too fair a body of men to give the two counties of Johnson and Sheridan the combined vote of the two being 1,786 votes, just 479 more than the vote of Converse county, to give those two counties twice the representation of our county of Converse, as proposed by the gentleman from Sheridan, when they have but 479 more votes in both of them combined than we have.

Mr. TESCHEMACHER. I wish to ask permission to speak on the question of what rights and duties belong to the apportionment committee. Looking over a great many state constitutions I find hardly one legislative report that fixes the number at all. This is left entire to a separate article of the constitution, on congressional and legislative apportionment. I find here in the constitution of our next door neighbor, Colorado, a provision pretty near identical with this. It reads as follows: "The senate shall consist of twenty-six and the house of representatives of forty-nine members, which number shall not be increased until the year of our Lord one thousand eight

hundred and ninety, etc." Sec. 48 of the same article reads as follows: "Until the state shall be divided into senatorial districts in accordance with the provisions of this article, said districts shall be constituted and numbered as follows," then it goes on and names the counties and their apportionment. Now I wish to explain why it seems that these two reports have become mixed. Mr. Hay introduced a proposition which was ordered printed, and before that proposition, as I remember it, had been referred to the committee at all, it was taken up and moved as a substitute to the majority or minority report, I have forgotten which, of the legislative committee which we were then considering. And in that way the proposition which should have been referred to the apportionment committee, came to be considered in the legislative file. I merely say this to explain my reasons for speaking as I did the other night, which may have been considered hasty.

Mr. ELLIOTT. I would state to Mr. Teschemacher that the reason that the legislative committee undertook to fix the number was by a direct agreement with the chairman of the apportionment committee before we undertook to do it. The agreement was that the legislative committee was to fix the number and the apportionment committee should come in and apportion the counties as they saw fit. I would suggest that in considering this matter it would be only fair, as the proposition contained in the report of the legislative committee is on the same subject and goes over a good deal of the same ground as this, that the legislative report should be considered at the same time, and that that report should not be killed by the report of the apportionment committee being adopted without having had a chance to be heard.

Mr. CHAIRMAN. The question is on the motion of Mr. Palmer to adopt the majority report of the apportionment committee.

Mr. ELLIOTT. I move to amend that we go into the consideration of the report of the legislative committee.

Mr. CHAIRMAN. It is moved by the gentleman from Johnson that we consider the report of Committee No. 2. Are you ready for the question? All in favor of the motion will say aye; contrary no. The noes have it. A division is called for. All in favor of the motion will rise and stand until counted—14. Those opposed will rise—16. The motion is lost. The question is now on the original motion of Mr. Palmer from Sweetwater. Any further remarks?

Mr. COFFEEN. I have just a word to say. In the first place that report puts you in conflict with what has already been adopted, that the senate is to be half the size of the lower house. You also violate the figures which I have shown you. Converse county has already had, as a matter of fact,

their two, with only a surplus of one hundred and seven, yet we have nearly three hundred surplus and that three hundred entitles us to an extra member on our side. I wish to have you note these figures. If you expect the ratification of this constitution you will need to have these figures in a little different position. I think that you want to consider that. Laramie county stands just the same in this report as it did before, and almost all the counties excepting one. And I would like to say a word to my friends from Sweetwater, because maybe they may think I have endeavored to be unjust, let us look into the figures and see whether the slightest injustice has been done by this. Follow me, friends, a moment. On the basis of twelve hundred for one senator their vote is seventeen hundred and forty-seven, nobody denies the correctness of the figures, this leaves her five hundred and forty-seven, and you have decided that she shall have three in the house, and you would give her two in the senate. Now I would like to ask where the justice comes in there. The very figures themselves show it to be unjust.

Mr. CONAWAY. The gentleman is making a good deal of a kick, as we say, about a non-representation in the house of three hundred and sixteen in Johnson county, and two hundred and seventy in Sheridan county, yet he don't want Sweetwater county to say a word when we are left out of a representation of five hundred and forty-seven votes, and Sweetwater is a small county too.

Mr. COFFEEN. Just a word on that, that is in the senate where the apportionment is on the basis of twelve hundred while our surplus is in the house, where the basis is six hundred, and of course it makes a difference.

Mr. CLARK. I believe, in view of the figures before this convention, that if one extra member is to be added to one county, it should be first to the county of Johnson, and second to the county of Uinta. This is if we are going to add one member. It should go to Johnson county with a surplus of three hundred and sixteen votes, but if we add two members one should go to Uinta county, and the other to Johnson county.

Mr. CHAPLIN. The argument has been advanced that Converse county would be injured by giving one representative to Sheridan and one to Johnson. I don't see how Converse county would be injured in the slightest. I believe if these extra members are added, they should be given to Sheridan and Johnson counties. Albany and Carbon counties will gladly give way to these smaller counties.

Mr. HAY. Upon what basis of representation do they mean to add these two, to thirty-two or thirty.

Mr. CHAPLIN. I believe twenty-eight was the number recommended.

Mr. MORGAN. Its getting very late, and I move this committee now rise and report.

Mr. CHAIRMAN. Gentlemen, it is moved and seconded that this committee now rise and report and ask leave to sit again. All in favor of the motion will say aye; contrary no. The ayes have it; the motion prevails. The committee will now rise and report.

“Your committee, to whom was referred the majority and minority reports of Committee No. 6 and Committee No. 2, beg leave to report that the same have been duly considered, and your committee would recommend that the majority report of Committee No. 6 be adopted, and your committee reports progress and asks leave to sit again.”

Mr. POTTER. I move the report be adopted.

Mr. PRESIDENT. It is moved and seconded that the report of the committee of the whole be adopted. Are you ready for the question? All in favor of the motion will say aye; contrary no. The ayes have it; the report stands adopted.

Mr. BARROW. I move this report be considered the engrossed file, read the third time and put upon its final passage.

Mr. PRESIDENT. The committee asked leave to sit again. You have adopted so much of the report as fixes the legislative apportionment. Is that the matter which the gentleman wishes put upon its final passage?

Mr. BARROW. It is, Mr. President.

Mr. PRESIDENT. The committee asked leave to sit again to consider this file. I hardly think it is in the proper shape to be read the third time and put upon its final passage.

Mr. CAMPBELL. I move we now adjourn until 9 o'clock on Monday morning.

Mr. PRESIDENT. It is moved and seconded that the convention do now adjourn until Monday morning. All in favor of the motion will say aye; contrary no. The ayes have it; the convention will now adjourn until 9 o'clock on Monday morning.

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## NINETEENTH DAY.

### MORNING SESSION.

Monday morning, Sept. 23, 1889.

Mr. PRESIDENT. Convention come to order. The secretary will call the roll.

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