

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

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

Mr. PRESIDENT. The motion to adjourn is carried.

FOURTEENTH DAY.

SATURDAY, *July 20th, 1889.*

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

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

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

Excused: Anderson, Beane and Stull.

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

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

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

articles in committee have been preserved by the clerk in the minutes. The first and natural order of business will be, when we get through with the regular business of the day, for the consideration of the report of the committee of the Whole, and in the consideration of that report any amendment which was offered in the committee of the Whole may be offered again in convention, and no other amendment can be made; and therefore it is necessary in order to pass intelligently in the convention upon these bills when they come up, I think that we should have the minutes read, so that we may have them in our mind. I for one would like to have them read.

Mr. BALLENTINE. I will withdraw my motion, Mr. President. (Secretary reads the minutes of yesterday's proceedings).

The CHAIR. If there are no objections to the minutes as read they will stand as approved.

RESOLUTION OF INVITATION.

Mr. AINSLIE. I ask unanimous consent to offer a resolution at this time.

The CHAIR. Is there any objection?

SECRETARY reads: *Resolved*, That a committee of three be appointed to receive the delegation of Members of Congress who will visit this city next week, of which committee the Governor be requested to act as chairman, and extend to the said delegation of Congressmen an invitation to visit the convention, and that the privilege of the floor be granted them. (Seconded and carried).

Mr. CAVANAH. Mr. President, I desire to offer a motion with reference to these minutes. I don't know whether this is the proper time or not.

The CHAIR. All motions are out of order unless by unanimous consent, until the reports of committees are received.

Mr. PEFLEY. I object.

The CHAIR. Objection being made, under the rules it will have to be deferred until——

Mr. REID. I rise to a point of order. The gentleman's motion is to correct or expunge a part of the minutes. Does not that follow immediately the reading of the minutes?

The CHAIR. No sir, I think not. The only question that would come up in connection with the reading of the journal is to correct the journal to make it correspond with the facts, and the motion to expunge is a separate and independent proposition that must come up for action as any other proposition does. I will read the rule so that the gentleman from Nez Perce will see: "As soon as the Journal is read and corrected as aforesaid, the President shall call for: Presentations of Petitions and Memorials, Reports of Standing Committees, Reports of Select Committees, Final Readings," etc. It will then be in order for the gentleman's motion to be made. Presentation of Petitions and Memorials: (None). Reports of Standing Committees:

Mr. MAYHEW. The committee of the Whole desires to report.

The CHAIR. The chair will have to rule the report out of order. We are now calling for reports of standing committees.

COMMITTEE REPORT—LIVE-STOCK.

Mr. HARKNESS. As chairman of the committee on Live-stock I desire to submit the following report: Mr. President, we your committee on Live-stock beg leave to submit the following article on the subject referred to us for our consideration.

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

WAYS AND MEANS.

Mr. HASBROUCK. As chairman of the committee on Ways and Means, I desire to report as follows:

Mr. President, your committee on Ways and Means respectfully submit the following report: We find the following named members, not heretofore reported, entitled to the mileage set opposite their respective names, to-wit:

	Miles
S. F. Taylor, Eagle Rock, Bingham County.....	660
Robt. Anderson, Eagle Rock, Bingham County....	642
Aaron F. Parker, Grangeville, Idaho County.....	1154

HASBROUCK, *Chairman.*

The CHAIR. Under the rules that report should be ordered printed, but I presume there is no desire to have it printed. If there is no objection the printing of this report will be dispensed with. Are there any other reports of standing committees? (None). Reports of select committees? (None).

Mr. MAYHEW. I suppose now the chairman of the committee of the Whole would be in order to make his report. I don't know what committee it goes under, but I always understood the chairman of the committee of the Whole could report at any time.

The CHAIR. If the gentleman will call the attention of the chair to any rule that allows the report to be made at any time, I would be glad to receive it.

Mr. SHOUP. As I understand the rules, the chairman of the committee of the Whole may report at any time that the convention desires he shall report.

Mr. MAYHEW. Mr. President, there is no doubt about that, when leave is once granted to any chairman to make report, his report may be made at any time to the incoming session. Of course the convention may demand the report forthwith.

The CHAIR. The chair does not understand it that way, and will be obliged to rule otherwise until some rule is referred to. Are there any further reports of select committees? (None). Final readings? (None). That finishes the regular order of business. What is the pleasure of the convention?

Mr. CAVANAH. Mr. Chairman——

Mr. MAYHEW. I would like to ask, Mr. President,

when the report of the committee of the Whole can be made? We have gone through the regular routine of business and are now ready to go into committee of the Whole. Is not the action of the committee of the Whole to be taken notice of by this convention? I have sent it up and ask leave that it be received with the proceedings this morning. It does not make any difference to me when it is made, so that I can get it out of my hands; I think it is my duty to do so.

The CHAIR. No question about that. The chair ruled the gentleman out of order at that time, as well as the gentleman from Elmore with his motion. After the regular order of business is finished, the gentleman from Elmore is first to rise, and therefore is recognized by the chair. The gentleman from Elmore has the floor.

Mr. CAVANAH. I sent my motion up to the secretary.

RESOLUTION TO EXPUNGE.

SECRETARY reads: Mr. President, I move that the amendment offered by the member from Ada, Mr. Pefley, relating to the Preamble of the Bill of Rights, be expunged from the minutes. (Secoded; cries of "Question.").

Mr. PEFLEY. I certainly shall not be convicted without a hearing. That preamble was drafted from other constitutions. I don't know that there is another constitution that has exactly the same words, but take two-thirds of the constitutions of nearly any of the states of this Union, and you will find those identical words in those constitutions, and there is one proposition that is almost exactly the same in all, and if there is any infidelity, such as the gentleman intimates, in a man's offering a substitute for a preamble that contains words similar to those in the Constitution of the United States and many of the states of this Union, then I stand convicted, I presume, as an infidel, before this august body. But, Mr. President, I supposed that we

were here for consultation, to prepare a constitution, not at the whim of any one man, but that we might put our heads together and draft something that would be suitable for the government of this state—not anti-republican, for of course we could not expect to be admitted if it was radically proposed in some respects. But those words as contained in it, are almost exactly the same words as contained in several of the constitutions of the Union; they have been passed upon by Congress, admitted as states. and a part of the same words exist in the Constitution of the United States, and the idea of expunging anything of that kind from the minutes appears to me ridiculous, and could only emanate from a man who was not in his right—

Mr. AINSLIE. I rise to a point of order. Under Rule 56, “Resolutions giving rise to debate shall lie over one day before being acted upon, if, upon their introduction any member shall give notice of a desire to discuss the proposition therein contained.” If the gentleman from Ada county, Mr. Pefley, desires to discuss this question it will have to lay over.

The CHAIR. The chair sustains the point of order. Does the chairman of the committee of the Whole desire to bring up his report now? If there is no objection it will be presented.

SECRETARY reads:

“The committee of the Whole have had under consideration the report of the committee on Preamble and Bill of Rights, report the same back to the convention, and recommend that Sections 1, 2, 3, 5, 6, 10, 11, 12, 16, and 18, be adopted.

“That Section 4 be amended by continuing after “worship” at the end of line 11, the following:

‘Bigamy and polygamy are forever prohibited in the state, and the Legislative Assembly shall provide by law for the punishment of such crimes.’

“Also by inserting after the word ‘denomination’ in line 9, the words ‘or pay tithes.’

“That Section 7 be amended by inserting in second line after the word ‘verdict’ the words, ‘and the Legislature may provide that in all cases of misdemeanor five-sixths of the jury may render a verdict.’ That in lieu of Section 8, the following substitute be adopted:

'Section 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on the presentment or indictment of a grand jury, or information of the public prosecutor, after a commitment by magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace; and in cases arising in the militia when in actual service in time of war or public danger.

"Provided, That a grand jury may be summoned upon order of the judge of the district court in the manner provided by law.

"That Section 9 be amended by striking out all after the word 'liberty' in the second line.

"That Section 13 be amended by striking out all after the word 'himself' in the sixth line, and inserting the following words, 'nor be deprived of life, liberty or property without due process of law.'

"That the title to Section 14 be amended by striking out the words 'private and' where the word 'private' occurs the second time in the title, and that the following be substituted for Section 14:

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

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

"That the following be substituted for Section 15:

'Section 15. There shall be no imprisonment for debt in this state except in cases of fraud.'

"That Section 17 be stricken out.

"That Section 19 be amended by striking out the word 'to' after the word 'afforded' in line 2, and insert in lieu thereof the word 'for.'

"That Section 20 be amended by striking out all down to the word 'no' in the first line, and inserting the words 'and lawful' after the word 'free' in the second line.

"That Section 21 be amended by inserting after the word

'office' in the second line the words 'except in school elections or elections creating indebtedness.'

"That the word 'popular' be stricken out of the title to Section 22.

"And that Section 18 be made Section 17: Section 19, Section 18: Section 20, Section 19: Section 21, Section 20, and Section 22, Section 21.

"And that the report be adopted as so amended.

"Also, the committee have had under consideration the report of the committee on Militia and Military Affairs and report the same back to the convention with the recommendation that it be adopted.

A. E. MAYHEW, *Chairman.*"

The CHAIR. It is moved and seconded that the report of the committee of the Whole be adopted.

Mr. HEYBURN. Is it not proper to receive this report instead of adopting it? I move to substitute the word "receive" instead of "adopt."

The CHAIR. The chair will have that word "receive." It is moved and seconded that the report of the committee of the Whole be now received. (Carried).

Mr. HEYBURN. I move now that the report of the committee lie on the table. (Seconded).

Mr. HAGAN. That necessarily follows, does it not from receiving the report, that it lies on the table until——

The CHAIR. It necessarily follows unless some motion is made to dispose of it. It requires no motion to lie on the table. It is now on the table subject to the action of the convention. If the convention desires to take any action, that business is now in order.

Mr. SHOUP. I move that the report be adopted. (Seconded).

The CHAIR. It is moved and seconded that the report of the committee of the Whole be now adopted. Are you ready for the question?

Mr. MAYHEW. That motion was just made, and the gentleman from Shoshone moved that it be changed to "receive." I hope members will not act too hastily in the convention. If we adopt that, the question may

hereafter arise whether the convention has not adopted everything that has been recommended by the committee of the Whole, and cut off any amendment that may be desired to be offered by the convention. For that reason, Mr. Chairman, it then lies upon the table to be taken up for consideration in connection with the article upon the Bill of Rights. I hope it will not be taken up now.

Mr. REID. I rise to a point of order. Under Rule 51 it lies on the table and is to be taken up in the order in which the reports are made and voted upon by sections, and then as a whole, and is to be printed.

The CHAIR. The chair called the attention of the convention to Rule 49 which is the one that covers this question. "In committee of the Whole propositions shall be read by the chairman or secretary and considered item by item, etc."

Mr. REID. Now the point I make is this: That is to be read section by section as taken up, and any member has a right to call for the ayes and nays, a right which was reserved by me in the committee of the Whole.

The CHAIR. There is no question with reference to that.

Mr. REID. But they propose now to adopt this article, and the vote would carry the whole thing with it.

The CHAIR. Under the rule this report must now be taken up; that is the proposition, that the amendments adopted by the committee of the Whole must now be taken up. I presume it may be taken up in almost any way, either by adopting it as a whole or taking it up by sections.

Mr. HEYBURN. I understand that is only after the convention authorizes the order. I made a motion to lay it upon the table to dispose of that.

The CHAIR. The motion was not seconded.

Mr. MAYHEW. It was seconded. I seconded it.

The CHAIR. As long as this previous motion was made, the chair will now put it, and rule that the gen-

tleman from Custer was out of order. It is moved and seconded that the report of the committee of the Whole be laid upon the table. Are you ready for the question?

Mr. SHOUP. I wish to know where in the constitution is this report then placed.

The CHAIR. It lies upon the table subject to be taken up at any time by order of the convention. The motion to lie upon the table operated as a suspension of the rule for its immediate consideration. The question is on laying the report of the committee of the Whole on the table. (Carried).

Mr. REID. I move that the convention resolve itself into committee of the Whole for the purpose of taking up the next regular order, the report of the committee on Executive Department. (Seconded).

LEAVES OF ABSENCE.

Mr. HAGAN. I want to ask leave of absence both on account of business and illness of my family.

The CHAIR. The gentleman from Kootenai requests leave of absence from the convention. Is there any objection? If not, leave is granted by the convention.

Mr. HOWE. I would also ask leave of absence indefinitely on account of business and illness of my family.

The CHAIR. Is there any objection? There is no objection and leave is granted.

Mr. REID. My motion is that the convention resolve itself into committee of the Whole for the purpose of proceeding with the first regular order of the day, the report of the Legislative Department. (Seconded).

The CHAIR. It is moved and seconded that the convention now resolve itself into committee of the Whole for the purpose of considering the report of the committee on Legislative Department. Are you ready for the question?

Mr. BEATTY. I move the motion be changed by inserting the word "executive" instead of "legislative."

Mr. REID. The reason I stated that was because it was first on the order of the day, and I thought we were to take it up in order.

Mr. MORGAN. As the chairman of the committee on Legislative Department I would be glad if the report of that committee could be postponed until Monday morning, in accordance with this motion, and that the committee report on the Executive Department be taken up.

Mr. REID. I will accept the gentleman's amendment then.

The CHAIR. It is moved and seconded that the convention go into committee of the Whole 'on the report of the committee on Executive Department. (Carried). Will the gentleman from Oneida county, Mr. Standrod, take the chair?

Mr. STANDROD. Mr. President, I would respectfully decline and ask that someone else be selected.

The CHAIR. I will call Mr. Reid to the chair.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. REID in the Chair.

SECTION 1—ARTICLE IV.—EXECUTIVE DEPARTMENT.

SECRETARY reads Section 1 of article on Executive Department, and it is moved and seconded that the same be adopted.

Mr. McCONNELL. I would like to have an opportunity to speak on this section, if it is not too late.

The CHAIR. Proceed.

Mr. McCONNELL. It is easy to adopt these provisions in the constitution, but they have got to be adopted by a higher tribunal than ours, that is, when they go to the people, and the question will occur to our constituents as to what benefits we will derive from state government, or what they will cost us. The benefits can be easily explained, but whether we can explain the additional expense of state government, is a question for us to consider, and consider carefully, before

we proceed to the hasty adoption of any of these sections.

It occurs to me that we have more offices described here than is necessary for a state of our size and prospective wealth. We have, namely, a governor, lieutenant governor, secretary of state, auditor, state treasurer, attorney general, and superintendent of public instruction. I think for a term of years at least we could easily dispense with either of these officers, namely, the lieutenant governor, state auditor or attorney general. I would like to hear further from gentlemen on this subject. I am sure that an explanation will be required of us when we go home. The state of Oregon has up to the present date got along without any lieutenant governor, without any auditor or attorney general, and there has certainly been as much business transacted in that state as will probably be transacted in this state, within the next twenty years at least.

Mr. AINSLIE. I don't know anything about the condition of the state of Oregon, or its resources for the support of a state government. These provisions are in the constitution of nearly every state of the Union. The office of lieutenant governor, while considered as a sort of figure-head, is necessary, unless we change the whole line of succession in regard to the office of governor when it become vacant by death, removal or impeachment. It would necessitate re-writing the entire system of state organization, if we made any inroads in cutting down the officers enumerated in this bill. The lieutenant governor derives no salary from the state treasury, except when he is in actual service as presiding officer of the senate; it is so provided, and then he only draws the same pay that the speaker of the house of representatives does, during the time it is in session. During the balance of the year he draws no pay at all, and he has no vote, except in case of a tie in the senate. I think the office is a necessary one, and the committee unanimously believed so, or they would not have so reported it.

A state auditor is one of the most necessary officers we can have. How are the accounts of the state to be kept unless we have an auditor, so as to have a system of checks and balances between him and the state treasurer, protective to both officers? They have found it necessary—or the Congress of the United States found it necessary, to authorize the legislatures of the territories to create such offices, which it did in the case of those three, I believe. We have found that the office of territorial controller, or auditor, as it used to be, is one of the wisest positions established in the territorial government. And as to getting along without an attorney general, I think that is impossible; nor can you devolve the business of the attorney general upon a district officer. That would be a fine thing to see, that the district attorney from some district should act as attorney general in some case coming here on appeal, or assume his duties in some matter requiring a construction of the constitution. Let us make this a proper organization, in carrying out the ends of state government. I don't see how you can get along without it, and I object to any amendment to it.

Mr. HASBROUCK. I have an amendemnt.

SECRETARY reads: To amend Section 1 by striking out in the second line the word "auditor" and inserting in lieu thereof the word "controller."

Mr. AINSLIE. I don't know that that would make any difference at all. I believe it is territorial controller now; I know the offices are identical.

The CHAIR. Is it supported? (Seconded).

Mr. HASBROUCK. So far as I am informed, under the present regime the controller of the territory does not audit any bills; if that is considered, it is a misnomer, and I presume the same line of action will be taken in the state government. For that reason I wish to change it.

Mr. SWEET. I would like to inquire who will audit the bills of the state if the auditor does not?

Mr. MAYHEW. I hope the gentleman will answer the question; I want to know.

Mr. HASBROUCK. I cannot tell, because I do not know what the other reports are yet on these questions.

Mr. AINSLIE. I think if the gentlemen here offering amendments to these bills would take the trouble to read this bill, they would find all their troubles provided for. I think the bills are usually read through for information. If they will read it for information, they will drop the proposition of making so many amendments here.

Mr. GRAY. I hardly see the force of the objection to the number of officers we have here. We considered that they are necessary. The lieutenant governor has been mentioned by the chairman of the committee. We have this benefit, that we would not have in the event we did not have that office: The likelihood is, if the governor holds his position, that all the duties he will have to perform is that of president of the senate; and that is the only pay he gets—is for that service, but in the event of the governor's death, or absence from his post, then there is some sort of positive person to take his position; and we think it is a very important clause in it, when it costs the state nothing in the event that does not happen, to have the succession of the office provided for. We can easily see of how much benefit it might be, supposing that we might suddenly lose the governor or for some reason he should be disqualified to perform his duties. As to the number of officers, it is no more than the territory has today—governor, secretary of state, controller, treasurer, attorney general and superintendent of schools. The attorney general I must say—you must agree with me, I think, who will attend to the legal duties of the state, is necessary. Upon whom will these devolve? Upon the district attorney, or must there be a man got for the occasion? If so, who? If one should be taken for the occasion, it would certainly cost more, should there be litigation to any extent, than it would to have a regular salaried officer upon whom

we could depend. I think our history will show,—that is, with a good appointment, that there is money saved to the territory in having an officer of that kind; I think this territory has received benefits from having an officer of that kind—a poor officer anyway, but a good officer of that kind is certainly one of the most important officers devised among the state officers, to attend to all the state business, to attend to all the prosecutions before the supreme court; and we certainly will have to increase our expense accounts for the prosecution of criminals arising from the counties, if the district attorney must follow them here and prosecute them in the event of appeal; it certainly must be an expense to some one, and on this account it would be much simpler for them one and all to have a prosecuting officer here to attend to it.

Mr. McCONNELL. I desire to ask for information of the chairman of this committee, whether it would be possible for the secretary of state to audit these accounts?

Mr. AINSLIE. No sir, I don't think he can. The secretary of state will have as much as he can attend to, to verify the laws passed by the legislature, to issue the certificates and papers signed by the governor, attend to his recording and other duties. You might as well say that the governor or some of the clerks could attend to the duties of the controller's office. We all know very well he has had to employ one or two additional clerks to attend to his own office. If you want to consolidate all these offices, have nothing but a governor and have nothing but clerks—but we propose to have a state government of some dignity, not for any one man. (Cries of "Question").

The CHAIR. The question is upon the amendment offered by the gentleman to strike out the word "auditor" and insert the word "controller." (Vote). The motion is lost. The question now recurs upon the adoption of the section as originally read. (Vote and carried).

SECTION 2.

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

Mr. CLARK. There are two blanks in this section, and I move that they be filled by inserting the word "one." (Seconded and carried).

Mr. AINSLIE. I would suggest that the secretary be authorized to fill them.

The CHAIR. Without objection, it will be so ordered. It is moved and seconded that the section be adopted. (Carried).

SECTION 3.

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

Mr. CLARK. I have an amendment.

SECRETARY reads: To amend Section 3, in the first line by inserting the word "or" after the word "governor." In the second line, strike out the words "or superintendent of public instruction." In line 4 insert after the word "auditor" the words "superintendent of public instruction."

The CHAIR. The secretary will read the section as it would be when amended. (Secretary reads the section with the amendment).

Mr. MORGAN. I think the word "or" is in the proper place. Where there are words occurring in two sentences of that kind, the conjunctive should be placed before the last term, as it is in this section. I do not recollect what the other proposed amendment was. (Secretary again reads the section with proposed amendment). Did I understand the gentleman's amendment was to strike out the words "superintendent of public instruction?"

The SECRETARY. In the second line, strike out the words "or superintendent of public instruction."

Mr. AINSLIE. As I understand it, it is only to place the superintendent of public instruction in the

category of the last series of state officers, requiring them to be 25 years of age, instead of leaving the superintendent of public instruction to be 30 years of age, the same as the governor and others.

Mr. CLAGGETT. Mr. Chairman, the gentleman from Boise has correctly stated it. The first set of officers are required to be 30 years of age, and the next succeeding set of officers, 25 years of age. We wish to take the superintendent of public instruction from the first class and transpose him to the second place. So far as the office has yet been held in this territory, I think the officer has sometimes been under the age of 30 years. I think my young friend from Alturas, Mr. Batten, has already held the same office, and has not yet reached the age of 30 years. Men thoroughly competent for this office have been found and will be found at the age of 25 years.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Ada. (Vote). The noes seem to have it. (Division called for. Upon rising vote, ayes 29, nays 20). The ayes have it, and the motion is adopted. The question now recurs upon the adoption of the section as amended. (Carried).

SECTION 4.

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

SECTION 5.

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

SECTION 6.

SECRETARY reads Section 6, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: After the word "of" in the

sixth line, add the word "office of justices of the supreme or district court."

Mr. HEYBURN. I would state, Mr. Chairman, that there has been no provision made for the filling of vacancies, that is, conferring the power directly upon the governor to appoint, in the Judiciary bill, and it is necessary to have it somewhere, and this is dealing with the subject of the vacancies the governor may fill by appointment, and it is proper to provide that he may fill these offices where a vacancy occurs by death or for any other reason.

Mr. MAYHEW. I would like to inquire of the gentleman from Shoshone, if his motion prevails before the convention takes up that article on the judiciary, it would not make a conflict in the matter. The committee on Judiciary have sent up two reports, as to the election of chief justices of the territory, one by election, the other by appointment.

Mr. HEYBURN. It will not make any conflict in either case, because this only provides in case of death a vacancy shall occur, while a vacancy might occur if he was appointed by the governor as well as if he was elected, but this only provides that he fill the vacancy in case of one arising. There should be some provision made, otherwise in case of death there would be no provision.

Mr. MAYHEW. If it does not conflict with that provision I have no objection.

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

SECRETARY reads Section 6 as proposed to be amended.

Mr. GRAY. It says in the fore part of the sixth line, "If during a recess of the senate a vacancy occur in any office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office." It occurs to me as if that might conflict with the Judiciary bill.

Mr. HEYBURN. I would suggest, Mr. Chairman,

that would be true, if we knew that the convention would adopt the second report of the Judiciary committee, but we do not know it. It will not conflict with it in any event; it may constitute an additional clause. I am not certain as to that sentence or provision, or as to what one.

Mr. MORGAN. It occurs to me that if any of these sections should be found to conflict with each other, when the committee on revision comes to examine them, they can recommend to the house a change. I want to suggest one matter to the mover of the amendment. It seems to me the language is not proper—putting the amendment in the language it is. I would suggest “office of a justice of the supreme or district court,” instead of “office of justices of the supreme or district court.”

Mr. HEYBURN. I accept the amendment.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone. (Vote and carried).

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

Mr. WHITTON. Should there not be some provision for the governor to appoint county commissioners in case of vacancy? The way the law is now, the county commissioners appoint their own members in case of vacancy, but it seems to me that should be taken out of the hands of the commissioners themselves, to be appointed by the governor, in each county where a vacancy should occur. I only speak of that and suggest it to the convention. It seems to me that would be better than to have the other two appoint one.

The CHAIR. The chair would suggest that under the provision of the fourth line, if no other provision is made by law, could not the governor appoint to fill any vacancy?

Mr. MAYHEW. I desire to offer an amendment.

SECRETARY reads: In the fourth line, after the

word "any," insert the words "state or district." (Seconded).

Mr. MAYHEW. You will observe, Mr. Chairman, that if this should be adopted as it is now, the governor might appoint to any offices that might become vacant in the state, such as constable, sheriff, etc., and I want to confine this strictly to the state and district officers, and it will then read, if this amendment is adopted, "If during a recess of the senate a vacancy occurs in any state or district office, the governor shall appoint," etc. That denies the governor the right to appoint sheriffs, justices of the peace, or anything of that kind.

Mr. AINSLIE. I desire to say in my behalf individually in this matter, that I was not present when this bill was completed by the committee on executive department, and it was handed to me by the secretary of the committee as speaking the views of the committee. I coincide with the views of Judge Mayhew on that matter. It would make it possible for the governor to nominate a constable, sheriff or justice of the peace, and I think "any state or district" should be inserted there. Those are the officers, and none others. The legislature provides for the manner of filling vacancies in county offices; that is a matter that the executive of the state government has nothing to do with. I am willing to accept the amendment.

The CHAIR. The question recurs on the adoption of the amendment by inserting the words "state or district" after the word "any" in line 4. (Carried, and the section is adopted as amended).

Mr. BEATTY. I would like to ask, in view of the last amendment, what kind of district officers can be included?

Mr. MAYHEW. District attorney, and such officers as that.

Mr. BEATTY. The question is whether that would include mining districts, and such as counties.

Mr. MAYHEW. I do not suppose precinct officers or justices of the peace.

SECTIONS 7, 8, 9, 10 AND 11.

SECRETARY reads Sections 7, 8, 9, 10 and 11, and the adoption of each is separately moved, seconded and carried, without debate or amendment.

SECTION 12.

SECRETARY reads Section 12, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I desire to offer an amendment.

SECRETARY reads: Amend Section 12 by inserting before the first word in line 2 the word "treason."

Mr. AINSLIE. We have no objections to that amendment.

Mr. MORGAN. It occurs to me that if the words "treason" and "felony" are introduced there, the word "other" should be inserted after the word "or," as both crimes named are infamous crimes. I move to amend by inserting the word "other" after the word "or" in the second line. (Seconded).

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Bingham, that the word "other" be inserted after the word "or" in the second line. (Carried). The question now recurs upon the adoption of the section as amended by the amendment of the gentleman from Bingham and the amendment accepted by the chairman of the committee. (Carried, and the section is adopted).

SECTION 13.

SECRETARY reads Section 13, and it is moved and seconded that the same be adopted. Carried.

SECTION 14.

SECRETARY reads Section 14, and it is moved and seconded that it be adopted.

Mr. CLAGGETT. I suggest that the same amend-

ment be made in this section as in the previous section.

Mr. HEYBURN. I have sent up an amendment of that kind.

SECRETARY reads: Amend Section 14 by inserting after the word "of" in the second line the word "treason," and after the word "or" first occurring in said line, the word "other." (Seconded).

Mr. AINSLIE. The committee accepts the amendment.

The CHAIR. The question now recurs on the adoption of the section with the amendment as accepted by the committee. (Carried).

SECTION 15.

SECRETARY reads Section 15, and it is moved and seconded that the same be adopted.

Mr. BEATTY. Might I be allowed to ask the chairman of this committee whether any provision is made in case either the governor, lieutenant governor or speakers of the houses are incompetent to fill these offices?

Mr. AINSLIE. So far as the committee is concerned, we never found anything, any provision of that kind in any constitution we examined. You can always elect a new president of the senate pro tempore, or a new speaker of the house, if either one of them dies or becomes disqualified. The legislature can provide for a successor to the office in either house, who would naturally succeed to the office made vacant.

The CHAIR. What will the committee do with the section? It is moved and seconded that the section as read be adopted. (Carried).

SECTION 16.

SECRETARY reads Section 16, and it is moved and seconded that the same be adopted. (Carried).

SECTION 17.

SECRETARY reads Section 17, and it is moved and seconded that the same be adopted. (Carried).

SECTION 18.

SECRETARY reads Section 18, and it is moved and seconded that it be adopted. (Carried).

SECTION 19.

SECRETARY reads Section 19.

Mr. AINSLIE. Mr. Chairman, it appears to me that in line 16 the word "tenure" should be always "during the term."

Mr. MORGAN. That depends upon what the committee means. "Tenure" means the holding of office, and the word "term" means the time for which he was elected or appointed.

Mr. POE. I would ask the further consideration of this section by postponing it until we take up the consideration of the report of the committee on Salaries of public officers; they necessarily go together. The report of that committee will have to be done away with and no part included as an article in the constitution, or else this section will have to be expunged from the report of the executive committee. And we can act upon it more intelligently when we take up the matter of salaries. Of course it would be possible to authorize the blanks to be filled, but they cannot be filled until after we consider the report of the committee on Salaries of public officers, and I therefore move that the further consideration of this section be postponed until the matter of the consideration of the report of the committee on Salaries is taken up.

Mr. BEATTY. I move an amendment to this motion.

The CHAIR. It has not been seconded.

Mr. AINSLIE. I second the motion.

Mr. BEATTY. Then I move the previous motion, and that the committee on Revision be instructed to fill up these blanks after this committee's report.

Mr. GRAY. I think that would be perfectly proper, that after the passage of the salary bill, that these blanks may be filled by the committee on Revision; it

would be a portion of their business, in accordance with the report of that committee; and therefore let's get through with this bill.

The CHAIR. Does the gentleman from Nez Perce accept the amendment?

Mr. POE. There has been no second to my motion, and therefore there is nothing to accept.

The CHAIR. I understood that the motion was seconded. The motion was made by the gentleman that the consideration of this section be postponed until the report of the committee on Salaries was taken up. That was seconded by the gentleman from Boise. The gentleman from Alturas moves as an amendment or substitute to this motion, that the consideration be proceeded with, except that the blanks be left to be filled after the convention, or committee of the Whole under the convention, has passed upon the report of the committee on Salaries. The question recurs first upon the amendment.

Mr. BEATTY. By the committee on Revision.

The CHAIR. By the committee on Revision, as shall have been determined by the convention when they shall have got the report of the committee on Salaries. The question is first, on the amendment that the blanks be left to be filled by the committee on Revision, after we shall have acted upon the report of the committee on Salaries. (Vote and carried).

The CHAIR. The question now recurs upon the adoption of the section, otherwise than the filling of these blanks; what will you do with the section?

Mr. McCONNELL. I would like to offer an amendment.

Mr. SHOUP. I would like to inquire if the report of the committee on Salaries does not provide that the lieutenant governor shall be a salaried office?

Mr. POE. No sir, it makes no provision of that kind, but that he shall only receive such pay as the speaker of the house shall receive.

Mr. CLAGGETT. There is one provision here

that should be stricken out altogether, or it should be changed, I think, To bring the matter before the committee, I move to strike out the word "tenure" in line 16, and insert the word "term" in Section 19. (Sec-
onded).

Mr. CLAGGETT. The way the matter reads then, "No person mentioned in this section shall be eligible to hold any other public office except regent of the state university during his term of office." That is, during the term for which he was elected. It is limited to the governor of the state, the state auditor, treasurer, attorney general and superintendent of public instruction. I make the motion for the purpose of preventing occupants of these high offices in the state government, from accepting one position by an election before the people, and then during their terms of office intriguing to secure other offices. It is one of the most fruitful causes of abuse that has been known on this Pacific coast. I approve the limiting of it myself to the governor, but I make the motion for the purpose of bringing it before the convention. (Secoded).

Mr. McCONNELL. I have an amendment.

SECRETARY reads: Amend line 16 of Section 19 by inserting after the word "university" the words "or member of the state board of land commissioners." (Secoded).

Mr. AINSLIE. I would ask the gentleman from Latah county, if there is not some provision in the bill on education that creates these offices, that provides a state board of land commissioners?

Mr. McCONNELL. That is the object of making that amendment. In our report of the committee on Schools and Public Lands, we provide for a state board of land commissioners, for the sale of public lands, school and university lands, and it would be necessary, I think, to have that in there.

Mr. AINSLIE. On behalf of the committee, we make no objection to the amendment.

The CHAIR. Do you accept the amendment pro-

posed by the gentleman from Shoshone also?

Mr. AINSLIE. No sir, I certainly do not want to accept that. That would leave a doubtful construction, as to whether the term of office would be for the time he was elected; better leave it as the committee has reported it, as tenure of office. It may be that some of these gentlemen may want to run for the United States senate, and that would shut them out, if you make the amendment proposed by the gentleman from Shoshone. I do not intend to intimate that any of them would be candidates for that office, although I don't think I have heard one of them refuse it. But there may be instances where the offices of state treasurer, auditor and superintendent of public instruction—some of these offices are filled frequently by lawyers; now there may be a vacancy in the office of district attorney, or in some district office, and sometimes the salaries of those offices are better than that of state superintendent of public instruction or state treasurer, and a man might want to resign his state office and become a candidate for the vacant county office, and if you change the word "tenure" to "term" it would deprive him from being a candidate for the minor office; that would be one objection to it.

Mr. MORGAN. There is one other reason; as the section reads, if you change the word, it would prevent any in those positions from accepting any federal office also.

Mr. LEWIS. Could not there be other officers provided by the legislature, I mean, ex-officio commissioner of public lands, in connection with the office of emigration commissioner?

Mr. CLAGGETT. By leave of my second, whoever it was, I would like to withdraw and re-present the amendment which I offered, so as to cover my own ideas about it.

The CHAIR. Is there any objection to his withdrawing it?

(No objection is made).

Mr. CLAGGETT. I move to amend the section, withdrawing the other amendment, by adding after the word "office" in line 16 the following: "nor the governor during the term for which he was elected." That then will prevent any one of these officers mentioned in the section from duplicating an office during the time that he holds his office, and will make the governor ineligible to any other office in the state during the term for which he is elected.

The CHAIR. Now read the sentence as amended.

SECRETARY reads: No officer mentioned in this section shall be eligible to or hold any other public office, except regent of the state university or member of the state board of land commissioners, during his tenure of office, nor the governor during the term for which he was elected.

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

The CHAIR. The chair would like to ask the gentleman from Shoshone if he withdraws "during the term" instead of "tenure."

Mr. CLAGGETT. I did state that; I got leave of the convention to withdraw that. The idea of presenting that amendment is this: The governor possesses a large amount—or will possess, in one form or another, a considerable degree of patronage. On the Pacific coast it has been in years past a fruitful source of trouble, that the governor has used the patronage—all the patronage of his office and the influence of his position, for the purpose of lifting himself into some other office, generally that of senator of the United States; and the governor's chair is frequently made a place from which political intrigue extends out into all portions of the territory, and improperly affects the freedom of legislative action in this regard. I think any man who receives from a vote of the people of the state electing him the office of governor, should be contented with it during the term for which he was elected,

and not during that term aspire to any other position of a higher nature.

Mr. MAYHEW. I would like to ask the gentleman a question: If the election of governor in this state would then not be interfered with very materially, as to getting a good and responsible man to run for governor; you have so many candidates for United States senator—there are so many in the state, you will never get a governor. (Laughter). But how can he accomplish his wish if the balance of the people don't think it is right? It makes no difference about patronage. I would just as soon see a governor go to the United States senate as anybody else; but I think if you are going to cut off the governor from aspiring to the senate of the United States, we shall never be able to get a good governor in this state.

Mr. McCONNELL. I would like to ask the gentleman from Shoshone a question. Is it not a fact that the United States senate judges as to the eligibility of their own members? Would any action we take here prevent them from giving a seat on the floor to any person who was properly elected from this state?

Mr. CLAGGETT. So far as that matter is concerned, the question of eligibility when you go to Washington is to be determined by the Constitution of the United States, I presume. But one thing is certain, in case this amendment were adopted, it would prevent the legislature from sending a governor there. The question of his eligibility never would arise in the senate, because he never would get to the senate. Now I want to state one thing more about this matter. In California at an early date, Mr. President, this matter was a great public abuse. The legislature elected the governor of the state of California simply, as was said and believed at the time, according to agreement, and the trouble about it was that his election to the position of United States senator was by reason of the patronage of his office. So far as the suggestion that has been made here by my friend from Shoshone, that you

would have no governors in case you shut out senatorial aspirants, I don't know how many senatorial aspirants there would be in the state—I presume the usual number in all new states—but so far as this is concerned I don't think there will be any trouble whatever in getting all the material you want for governor, who would not want to go to the United States senate, or who could not go if he wanted to.

Mr. BEATTY. I regret the gentleman from Shoshone withdraws the other amendment. I am heartily in accord with the amendment as now proposed, but go further. I think when the people elect a man to any office he should undertake to fill that office during the term for which he was elected, and not when he gets into office merely use it for something else, and hence I regret the proposition has been changed at all; let it apply to all the offices. We do not want to send a man up here as attorney general and as soon as he gets here see him go to work for some place else and compel us to look around for another attorney general; and so it applies to all offices. I think when a man asks to be elected to any office he should take it with the understanding that he will fill it until the end of the term. I am in favor of this motion, as I would be in favor of the other, if the gentleman from Shoshone had not withdrawn it.

Mr. STANDROD. I desire to ask the chairman of the committee on the Judiciary Department if this same provision is not had in their report, applicable to the justices of the supreme court?

Mr. HEYBURN. It is.

Mr. CLAGGETT. Yes, that is a fact.

The CHAIR. The question recurs upon the adoption of the amendment to the section. The amendment proposed by the gentleman from Latah has been accepted by the chairman of the committee, to insert the words "or member of the state board of land commissioners." The amendment proposed, to strike out the word "tenure" and insert "term" has been with-

drawn. The question is now upon the adoption of the amendment proposed by the gentleman from Shoshone, to insert the words "nor the governor during the term for which he was elected." As many as are in favor——

Mr. HEYBURN. Before that is put, in view of the question that was asked me, the object of inserting that in the Judiciary bill there was to remove from politics and political ambition the supreme bench. It does not apply to the district judges, only the members of the supreme court, and I hope that this amendment will not prevail, because it is making an exception of the governor, and his office is a more valuable one in a pecuniary sense than some other state offices, and if it is applied to one, it should be applied more generally.

Mr. McCONNELL. I hope this motion will not prevail, because I have heard this question discussed so thoroughly and seen its relief tried. The state of Oregon has a provision similar, but when several years ago Col. Tom Cornelius, whom you may know, was nominated by the republican caucus of his state for the office of United States senator, he felt as though under his oath of office he could not accept it. He refused positively, and they nominated another individual who was sent to the United States senate. In recent years, within the memory of all of you who are familiar with our political history in the Oregon legislature, the question was raised in the case of the Hon. Sol Hirsch, who was then a member of the state senate, and they balloted in their senate chamber for Mr. Hirsch, to assure that election. Now it was held by all the attorneys there, that while that provision was in the constitution, yet there was nothing to prevent the election of Mr. Hirsch and his getting his seat. I believe the same state of affairs may arise in this state if we adopt this provision, and it will only be simply a block in the way.

Mr. SWEET. That word "tenure" it seems to me is rather loose in construction, and I am sorry to see the word "term" withdrawn. According to this the secretary of state, state auditor, state treasurer or attorney

general, may accept these appointments, serve a couple of weeks, and then, if they see anything better, drop the offices. I would like to see that word "term" put in.

Mr. AINSLIE. As a legal proposition I think the position taken by the gentleman from Latah is correct. The qualifications of United States senators and members of Congress are prescribed by the constitution of the United States, and the state legislature cannot prescribe any additional qualifications whatever. I think it would be a nullity to put it in the constitution of a state, prescribing that the governor should not be elected to any office, as senator or member of Congress, or any other office he chooses to run for. As long as a man possesses all the legal qualifications for any office under the government of the United States as provided by the constitution of the United States, he is eligible to that office, notwithstanding any disabilities which may be placed upon him by the state constitution. We cannot amend the constitution of the United States, and I am willing any man should run for any office he wants to, whether governor or justice of the peace. Cleveland was elected president of the United States while governor of the state of New York, and while governor of the state of New York was nominated by a national convention of the United States, but under the proposed provision of the constitution of Idaho he would have been deprived of becoming a candidate for such office.

Mr. CLAGGETT. The gentleman from Boise is mistaken when he says the constitution prescribes the qualifications of a United States senator. It certainly does not. It contains the prohibition that none but a citizen of the United States and who shall be thirty years of age, shall be eligible, but leaves it to the state to prescribe as to who shall have the qualifications to go there; except it is a prohibition on the states against sending a man there who is not a citizen of the United States or who is under thirty years of age, and that is all there is of it. The suggestion made by my friend from Latah that in Oregon the attorneys of that state

held, notwithstanding their constitution, that the legislature could go on and send a man there, if that is correct, it is certainly a remarkable kind of attorneys out there in Oregon, when they held it was competent for the legislature of the state to set aside the constitution of the state or any constitutional provision of the state. But, as I said before, the eligibility of members is not determined by the constitution of the state, but there is a provision against sending anybody there except some one who will answer the requirements that he shall be a citizen and thirty years of age. I think that answers the question made. Now I have limited the matter here to the governor by this motion. The motion, as has been suggested, may be amended, so as to cover the idea I had originally, to prevent this matter of skirmishing around between officers. I am thoroughly in sympathy with the idea that an officer elected to office shall be content with that office during the term for which he was elected, and as suggested by the gentleman from Bingham, it is a grave abuse for a man to receive an office, hold on to it for a month or six weeks, and then go skirmishing around until he gets a better one and resigns. It will tend to perpetuate what may be called the official class of the state, and it is a class which should not be encouraged.

Mr. McCONNELL. In defense of the legal provision of the state of Oregon, I wish to say that the United States senate permitted their contention by seating the Hon. J. H. Mitchell, who when first elected was a member of the state senate.

Mr. CLAGGETT. That may be; the United States senate would not kick about it, if the state did not kick against the violation of its own constitution.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone, to insert after the word "office" "nor the governor during the term for which he was elected." (Vote.) The chair is in doubt. (A rising vote shows 21 ayes, 32 noes.) The motion is lost.

Mr. BEATTY. I now renew the motion made first by the member from Shoshone, that the word "term" be put in place of "tenure."

(Seconded. Cries of "Question.")

Mr. AINSLIE. That has been decided by the last vote, I think. I don't see any use of renewing those amendments. The sense of the house has already been taken a little while ago, unless it is simply to delay the proceedings of the convention.

Mr. BEATTY. I did not consider this last vote decided this question. Many members may not have voted for this, because it was applicable to only one officer, whereas many members will vote for it if it is made applicable to all, and that was the view I took, in the event that it was a proper motion.

Mr. MORGAN. I rise to a point of order. The precise question was decided in the last vote. You must exclude the governor from the amendment, or else the question has been decided. We will be taking the vote right over again. We have just decided that the governor may be elected to some other office.

The CHAIR. The chair has to rule, and he has no power to construe the meaning of words. The point of order is not well taken.

(Cries of "Question.")

The CHAIR. The question is upon the adoption of the amendment proposed by the gentleman from Alturas, to strike out the word "tenure" and insert the word "term." (Vote.) The chair is in doubt. (A rising vote shows 27 ayes and 24 nays.) The motion is adopted. The question now recurs upon the adoption of this section as amended. (The question is put and the section declared adopted.)

The CHAIR. It is now in order to move that the committee rise and report back to the house, or that the report be laid aside for the amendments to be inserted, and that we proceed with the order of the day. What is your pleasure?

Mr. BEATTY. I move that the committee proceed

to the consideration of the next order of business, which is probably this report of the committee on Seat of Government.

Mr. GRAY. Should not we now adopt this bill here?

The CHAIR. The chair would suggest to the gentleman from Alturas, covering the inquiry of the gentleman from Ada, that the report be laid aside for the present and that we proceed.

Mr. MAYHEW. The question the mover means is, should not the committee now adopt this article as a whole, as amended?

The CHAIR. That is the motion of the gentleman from Alturas, that the whole of this report, which has been adopted, be laid aside now for the present, and be reported back to the convention, with the recommendation that it be adopted in the convention. Do you mean adopted as a whole?

Mr. GRAY. As a whole, now by the committee.

The CHAIR. I think your motion takes precedence of the other. Have you a second? (Motion is seconded.)

The CHAIR. The motion is that the committee adopt the report as a whole, as it has been read and adopted by sections, as amended. (Carried.)

The CHAIR. The question is now upon the motion of the gentleman from Alturas, that the report as adopted be laid aside for the present and reported to the convention when the committee rises, and that the committee now proceed with the next order of business, the report of the committee on Seat of Government. (Carried.)

ARTICLE 10—PUBLIC INSTITUTIONS.

Consideration of Bill No. 6. (Being report of committee on Seat of Government, Public Institutions, Buildings and Grounds).

SECTION 1.

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

SECTION 2.

SECRETARY reads section two.

Mr. MAYHEW. I move to amend section 2, by striking out the word "twenty" in line two, and inserting the word "ten." (Seconded.) That limits the legislature from interfering with the seat of government for ten years. Ten years in the growth of this territory will be a great deal. We really cannot tell where the center of the population of the state will be at the end of ten years, and I think it would be better to limit the legislature for ten years from interfering with the seat of government. It is not necessary to say it shall not interfere with it for ten years, a dozen or fifty; it can remain there forever, so far as that is concerned, but this putting it at twenty is beyond the necessary limit, I think.

(Cries of "Question.")

Mr. GRAY. Why the committee put this in, it was deemed advisable that as considering the expense that had been incurred in public buildings, that it would probably be better for that term of years, that it would not be for the interest of the territory to incur further expense during that time, that the territory or the state might not be able so to do, and to keep the question from the legislature, and those who might, in spite or malice, not having the interest of the state at heart, keep this matter continually before the legislature, and thereby affect more or less the legislature of the state. They viewed at the same time that twenty years is not very long for incurring the expense we have in a new state, in the financial condition we are now in; and it was the unanimous view of the committee, as I understand it, that such should be the case,—to leave it where it is for twenty years, and that then it may be submitted by the legislature to the people.

Mr. MAYHEW. I cannot help what this territory has gone to work and done heretofore in relation to building a capitol buiding. I say that this is the only

territory perhaps among all the territories that has assumed to do anything of that kind, so far as my knowledge is concerned, and I did not believe that we should deprive the people of the state in the future for a greater length of time than ten years from saying as to where the capital should be. The territorial legislature, when they voted that we might expend \$100,000 for the erection of public buildings,¹ had no right so to do, in my opinion, and create that indebtedness against the territory and the people. Because they have done that, which in my opinion,—I am only speaking now of my own individual ideas of this matter,—if they assumed to do this upon their own responsibility, they had no legal right to do it, they had no political right to do it, yet they have done it and the people of the territory have acquiesced in it, and because they have incurred this indebtedness in the erection of a capitol for this territory, having no legal authority in my opinion to do it further than assuming to do it,—it should not deprive the people in the future, ten years from now, through their legislature from saying that the capital should be removed. Mr. Chairman, it has generally been the case in all these territories that the United States government and the Congress of the United States has always donated land and money for the purpose of erecting public buildings in the state. This territory has gone on and done it, and could not possibly in the future, when they become a state, ask the government to refund the money that the territory has expended in erecting a capitol building. Congress would say; you have done so; it is your own business; you have built up your own state capitol, and you must take the consequences. I don't think it is any argument, because we have spent this money in a territorial matter that the people of the state should be deprived ten years hence from saying where the capital should be.

Mr. CLARK. The changes of the next ten years,

¹—Referring to act of 1885, Terr. Sess. Laws p. 62.

or twenty years, it is impossible to perceive, and yet it is not wise that we should foster a spirit of change as regards the future of a great state. The city of Boise has no prior right upon the capital or upon any other privilege from the citizens of this state. Yet the citizens of this city have a right to a cessation from contention, so far as can possibly be provided for. If ten years are fixed, it will not be six years before the contention will begin, before plans will be made and entered upon, and the expense of money entered upon, to effect the result. It seems to me the limit of twenty years is sufficient. By that time the other public institutions of the state will be settled; the geographical distribution of these institutions, as may be required, will be settled upon, and the people can far more intelligently determine this question at the end of twenty years than they can at the end of ten.

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

SECRETARY reads: To amend section 2 by inserting after the word "be" in the first line the word "permanently," and strike out all after the word "city" in line 2. It will then read, "The seat of government of the state of Idaho shall be permanently located at Boise City." (Seconded.)

(Cries of "Question.")

The CHAIR. The question is upon the amendment offered by the gentleman from Washington. (Pefley, "Aye", balance of vote, "no.") The noes have it. The question now recurs upon the amendment of the gentleman from Alturas to strike out the word "twenty" and insert the word "ten."

Mr. MAYHEW. I do not happen to be from Alturas. (Laughter.)

The CHAIR. I beg the gentleman's pardon. I thought the amendment was offered by the gentleman from Alturas; it is Mr. Mayhew. (Vote.) The chair is in doubt. (Rising vote shows 28 ayes and 23 nays.) The ayes have it and the amendment is adopted. The question now recurs upon the adoption of the section

as amended. (Vote.) the chair is in doubt. (Rising vote shows 34 ayes, 14 noes.) The ayes have it and the section is adopted as amended.

SECTION 3.

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

SECTION 4.

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

Mr. CLAGGETT. What are we going to do with the capitol, that is provided for in this section? I would suggest that the capitol building, and all other public buildings, the property of the territory, shall become the property of the state.

Mr. MORGAN. I think the penitentiary belongs to the United States; I don't know how we can do it.

Mr. GRAY. Mr. Chairman, it will be turned over, we can do it; it was put there upon condition of being turned over.

Mr. MORGAN. There should certainly be some amendment to this. We have nothing to do with the penitentiary at Boise.

Mr. GRAY. I can't see how it would do any harm.

Mr. MORGAN. We cannot give away the property of the United States.

Mr. GRAY. If it is given to us, it will become the property of the state.

Mr. AINSLIE. I would suggest that the state can rent a piece of property and use it for such purposes and continue it as an institution of the state, and still not own the realty. There is nothing which would prevent in that language.

Mr. GRAY. It would be under the management of the state.

Mr. CLAGGETT. I offer this amendment: Strike out all down to the word "shall" in the second line, and

insert the words "all property and institutions of the territory." (Seconded and carried.)

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

Mr. AINSLIE. Let's have it read as amended.

SECRETARY reads: All property and institutions of the territory shall upon the adoption of this constitution become the institutions of the state of Ideho, under such laws and regulations as the legislative assembly shall provide.

Mr. CLAGGETT. I move an additional amendment, to insert after the word "become," in the third line the words "property and," so that it will read "All property and institutions of the territory shall upon the adoption of this constitution become the property and institutions of the state of Idaho, under such regulations as the legislative assembly shall provide." (Seconded and carried.)

The CHAIR. The question is now upon the first amendment proposed by the gentleman from Shoshone. (Vote). The amendment is adopted.

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

SECRETARY reads section as amended: All property and institutions of the territory shall upon the adoption of this constitution become the property and institutions of the state of Idaho, under such laws and regulations as the legislative assembly shall provide.

Mr. CLAGGETT. I further move to amend by striking out all after the word "Idaho" in the third line, making the transfer by the constitution complete, and not requiring the legislature to make the transfer from the territory to the state. (Seconded).

The CHAIR. The question is now upon the third amendment offered by the gentleman from Shoshone, to strike out all after the word "Idaho" in the third line, which embraces the words "under such laws and regulations as the legislative assembly shall provide." (The amendment is seconded and carried).

The CHAIR. The question now recurs upon the

adoption of the section as amended; the secretary will read it as amended.

SECRETARY reads: All property and institutions of the territory shall, upon the adoption of this constitution, become the property and institutions of the state of Idaho. (Carried.) The section is adopted as amended.

SECTION 5—(AFTERWARD STRICKEN OUT).

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

Mr. MORGAN. Mr. Chairman, if that amendment is adopted, it would not make any difference how much land Congress should give the territory of Idaho for university purposes; it would all belong to this university at Moscow, as I understand it; but I think it is making too sweeping an arrangement. I think the lands that should be given to the territory of Idaho for university purposes should be distributed according to the laws of this territory.

The CHAIR. Does the gentleman propose to amend?

Mr. GRAY. May I ask the gentleman, in the third line, in regard to the phrase "unto the said university?" I think it is "said university" in every case where it occurs.

Mr. MORGAN. Mr. Chairman, I move to strike out.

SECRETARY reads: I move to strike out all of Section 5 after the word "university" in line 3. (Sec-onded).

Mr. MORGAN. I do not wish to be understood as being against the university at Moscow. I hope there will be abundant donations given to that university, and I have no objections, of course, to any private donations being given to it. But it seems to me that to transfer in addition all of the university lands which will be given by the United States to this territory—which may include hundreds of thousands of acres—to one univer-

sity would be unjust to the balance of the state. We may desire to establish normal universities, or other universities in different parts of the state hereafter. Of course this donation to this university would make it immensely rich, and would prevent the state probably from building up any other institution in the country, unless they did so out of the funds of the state hereafter.

Mr. GRAY. It was not the intention of the committee, nor is it my desire—but I say it does not read so; it says to the said university, and it seems to me the object of this amendment is, that if any donation should by act of Congress be given to this university, the gentleman does not want it to go there. I don't know as it will prevent it, that is, its going there, and it says, to said university: "all donations are hereby perpetuated unto said university of lands granted hereafter by Congress, or other donations for said university purposes."

Mr. MORGAN. The language of the section, Mr. Chairman, is ambiguous as it is; I want to make it certain. As a matter of course, if this is stricken out, if Congress should grant lands to this particular university, they could do it notwithstanding this, so that the gentleman's ideas would be preserved after all. But it is certainly ambiguous—"for said university purposes." If lands should be granted for university purposes, there would be a question at least as to whether this university should not take the whole of it.

Mr. GRAY. Strike out the word "purposes."

Mr. CLAGGETT. That does not meet it; it reads: Shall vest in the institution referred to in this section; that is, it shall be vested in the institution of the university at Moscow.

Mr. HEYBURN. I propose an amendment.

SECRETARY reads: Amend by striking out the word "said" in the fourth line, and insert the word "state" after the word "the" in said line, and strike out all after the word "institutions" in said line, and insert instead "for university purposes."

The CHAIR. The clerk will make the amendment, and then read the section as proposed to be amended.

SECRETARY reads: "All the rights, immunities, franchises and endowments heretofore granted or conferred upon the university at Moscow are hereby perpetuated unto said university, and all the lands hereafter, etc., for the state for university purposes." (Seconded).

Mr. BEATTY. As I look upon it, all the rights, immunities, franchises, etc., to which that institution is now entitled by the laws of this territory, will be perpetuated by the schedule which is to be adopted to this constitution, and then it would be left to future legislatures to control these matters. Moreover, these rights and immunities cannot be taken away by any act of ours here or any future legislature. I take it that all the conditions of this section, as well as the following Section 6, are purely matters for legislative enactment hereafter, and I move you therefore to strike Section 5 entirely out.

The CHAIR. Sent up as a substitute.

Mr. HEYBURN. Mr. Chairman, the section does seem to be obnoxious to the criticism made upon it. The words "said university" in the last line, refer to the university named at Moscow, so that with the amendment of striking out the word "said" all of these lands and grants of Congress would belong to that university by name, because it is named in the section. Now as proposed by the amendment, it will confer upon them all the rights they have, and will confer upon them or vest in them all of the grants that are made directly to them, and grants that are made in general terms, for university purposes, will be grants that shall vest in the state for university purposes; that is the object of the amendment, so that the university fund of the state, outside of these matters that are specifically donated to this institution, shall go into the general university fund, to be subject to the direction and control of the state through its legislature. As has been

remarked, the people of this state might at some time see fit to institute some other institution of learning; they might think that one university was not sufficient for all purposes, and desire to establish one somewhere else. Then there would be a general university fund, the result of the donations of land, or whatever the donations may be in character, for the purpose of establishing that; and in the absence of any such other institution, then that of course would be applied to this institution. As a matter of necessity there must be some university in the state which will derive and receive the benefits of all these donations, but we don't want to mortgage ourselves by making it impossible to apply any donation to the university funds to the establishment and maintenance of any other university.

Mr. SWEET. I hope the amendment offered by the gentleman from Alturas will prevail. There can be but one state university, although there may be branches of that university all over the state. For instance, it is proposed that a board of regents, consisting of so many members, shall be appointed. That board of regents has charge of the state university. A school of mines, attached to the state university, may be established at Coeur d'Alene; it is nevertheless a portion of the state university. An agricultural college may be established in Boise City, it is nevertheless a part of the state university and entitled to a part of any donations given to the state university. I apprehend that Congress will not be appropriating lands to any one institution except a state institution, and if it is desired that it be left uncertain as to where that institution shall be located, I hope it may be done openly and plainly, so that the people may understand just exactly what is meant. I therefore hope that the amendment proposed by the gentleman from Alturas, which strikes out the whole business and makes it plain and clear, may be adopted.

Mr. GRAY. Mr. Chairman, the duties of this committee are described on page 8: (reading) "This committee to consider and report all matters pertaining to

the location of the seat of government, the character and location of public buildings and grounds, and the control and government of the same." Those would seem to be the duties that are prescribed by this convention for that committee. Perhaps it might seem that it should come under the Education Bill, but those are the duties that are prescribed there to the committee. I am not the chairman of the committee—the chairman does not seem to be present, but that was what was done, and it would seem from the directions there given that it was required to do what it did do.

Mr. MAYHEW. I am in favor of striking out all the section, as proposed by Mr. Beatty. That leaves these donations and grants of land by the Congress of the United States to be controlled and regulated by the state legislature for other institutions of learning. Now if this university is to have branches or institutions connected with it, to be located in other places in the state, then I am in favor of the prevailing of the motion that this section be stricken out, but if it is not to apply in that way, I would be in favor of the amendment offered by the gentleman from Shoshone (HEYBURN) because I think donations of every character and grants of land by the government of the United States to institutions of learning should be distributed to the different institutions of learning throughout the state, and not to one single university.

Mr. PINKHAM. I rise in support of the motion made by my colleague from Alturas county for this reason: That it appears that the committee who have made this report have gone beyond their jurisdiction in this matter, as their duties are confined to the seat of government and public buildings. We have another committee of this convention, known as the committee on Education, Schools and School and University Lands, where this proposition, in my way of thinking, properly belongs. In our report we have provided almost in the same language—a few discrepancies only, as to the rights, immunities and franchises made already by the

legislature of this territory to this university. We have also provided for the election or appointment of a board of regents. When this subject comes up and we are discussing the section in the educational report, I think we can discuss it more fully and understandingly in that place than we can in the report of the committee submitted here.

Mr. ALLEN. As I understood the amendment of the gentleman from Alturas, it was to include the striking out of Sections 5 and 6.

The CHAIR. Section 5.

Mr. BEATTY. Section 5. Section 6 is not now under consideration. I shall make the same motion, if this motion prevails.

Mr. GRAY. As the gentleman from Alturas says——

Mr. HOWE. I rise to a point of order. This is the third time, I believe, the gentleman has risen on this question. I object.

The CHAIR. The gentleman cannot proceed, then.

Mr. GRAY. I only want to explain one word.

The CHAIR. The gentleman cannot proceed without the convention's consent.

Mr. MORGAN. I hope he may be allowed to proceed.

The CHAIR. When gentlemen have objected, he cannot proceed without the order of the convention.

Mr. GRAY. What we may be sure——

The CHAIR. The gentleman is out of order.

Mr. MORGAN. I move that he be allowed to proceed. (Seconded).

The CHAIR. The question is, that the gentleman be allowed to proceed. (Carried).

Mr. GRAY. I want to ask the gentleman from Alturas what other committee had directions the same as this has? For they have had it under consideration and given it to this committee, and therefore this committee had nothing to say, when we were ordered to do so by the convention. I think there are things for the

committee on Revision to agree upon—that they may agree upon some of these things and make them harmonize; but it was our duty to report, and the idea that because it has been submitted by another committee, that that committee must have it, I can't see. We had nothing to do with the university lands in our report; that was given to the educational committee. We have only fulfilled the duties that were given us.

Mr. PINKHAM. I would like to ask the chairman of the committee who made this report how he can regulate public buildings when no public buildings exist? Go out here and cut up a few bunches of sagebrush to exercise your authority over that, but until there are public buildings to regulate, I don't see how this committee can prescribe rules and regulations for the government of something that does not actually exist.

The CHAIR. The chairman of the committee is not present.

Mr. GRAY. We have an insane asylum; we have university grounds; there is a prison we have something to do with. I don't know——

(Cries of "Question").

The CHAIR. The question is first upon the substitute of the gentleman from Alturas to strike out the entire section. (Vote). The chair is in doubt. (Rising vote shows 39 in the affirmative, 6 in the negative). The substitute is adopted. The adoption of the substitute carries with it the question of the other two amendments.

PROPOSED SECTION SIX STRICKEN OUT.

SECRETARY reads Section 6.

Mr. McCONNELL. I move to strike out Section 6. (Seconded and Carried.)

SECTION 5.

SECRETARY reads Section 7. (5).

Mr. HEYBURN. I have sent up an amendment.

Mr. GRAY. In this section of the bill this morning, it was made, instead of "state treasurer," "attorney general." If there is no amendment——

Mr. HEYBURN. I have sent up an amendment to put that in there. I would like to ask the educational committee if that is in their report? (Laughter).

SECRETARY reads: Amend Section 7 (5) by striking out in the first line after the word "state" the word "treasurer," and insert the words "attorney general." (Seconded).

Mr. CLAGGETT. I move that the word "prisons" in the third line of the section be stricken out and the word "penitentiaries" be inserted. As it now stands it covers the case, and makes the governor, secretary of state and attorney general a board to have charge of all prisons, that is, of all the county jails and calaboses throughout the state.

Mr. GRAY. I think the amendment should be accepted. I will speak for the committee, as the chairman is not here.

The CHAIR. The question then recurs upon the amendment offered by the gentleman from Shoshone, Mr. Heyburn, to amend Section 7 (5) by striking out in the first line after the word "state" the words "state treasurer" and inserting the words "attorney general."

Mr. GRAY. On the part of the committee I will accept that amendment.

The CHAIR. The question recurs upon the adoption of the section as amended.

SECRETARY reads: "The governor, secretary of state and attorney general,"—the word "and" was not in the original bill.

The CHAIR. The secretary will insert the word before "attorney general."

Mr. ALLEN. I think in line 3, this language should be changed to read: "the management of state prisons." There is no state penitentiary, and there may be more than one, if other institutions are established. I offer that as an amendment.

The CHAIR. The clause, as it will read after the committee has accepted the amendment of the gentleman from Shoshone, is "direction and management of the penitentiaries of the state." The gentleman from Logan moves to strike out penitentiaries and insert "management of state prisons." The chair hears no second to the amendment.

(Cries of "Question").

The CHAIR. The question then recurs upon the adoption of the section as amended. The clerk will read it.

SECRETARY reads: Section 7 (5). The governor, secretary of state and attorney general shall constitute a board to be known as the state prison commissioners, and shall have the control, direction and management of the penitentiaries of the state. The governor shall be chairman, and the board shall appoint a warden, who may be removed at pleasure. The warden shall have the power to appoint his subordinates, subject to the approval of the said board.

The CHAIR. The question is, shall the section be adopted as——

Mr. HEYBURN. I notice the word "and" instead of "who." It is not "and shall have," but "who shall have."

The SECRETARY. I think that was my mistake in reading.

Mr. MORGAN. I move to strike out the word "who" and insert the word "and" in the third line.

Mr. GRAY. I will accept the amendment.

The CHAIR. Then it will read "and shall have the control, direction and management of the state prisons." As many as favor its adoption as amended, say aye. (Vote and carried). The section is adopted.

SECTION 6.

SECRETARY reads Section 8 (6), and it is moved and seconded that the section be adopted.

Mr. HARRIS. I see it reads: "There shall be ap-

pointed by the governor three directors of the asylum, who shall be confirmed by the senate. They shall have the control, direction and management of the same"—which, of the senate or the asylum? is the question.

Mr. HAGAN. I would like to ask what asylum that refers to. The asylum mentioned heretofore has been stricken out. What asylum does this refer to?

The CHAIR. The only members of the committee present are Mr. Gray, Mr. McConnell and Mr. Mayhew. Perhaps——

Mr. McCONNELL. I move to amend Section 8 (6) by adding after the words "of said asylum" in line 3——

Mr. CLAGGETT. What is the object of that?

Mr. McCONNELL. The gentleman from Shoshone seemed to be in doubt whether it was mentioned.

SECRETARY reads Mr. Heyburn's amendment: Amend Section 8 (6) by inserting after the word "same" in the third line, the words: "under such regulations as the legislature shall provide," so that it will read: "They shall have the control, direction and management of the same, under such regulations as the legislature shall provide, and hold their offices for a period of two years."

The CHAIR. Now the amendment of the gentleman from Latah.

Mr. McCONNELL. I am not sending it up.

The CHAIR. Is there any support to the gentleman from Shoshone's amendment?

Mr. MORGAN. I suggest that the words should be inserted, after the word "management," "of the said asylum," instead of the word "same."

Mr. GRAY. We will accept the amendment. There is no asylum named there; it might be asylums. There is only one at the present time.

The CHAIR. Does the committee accept the amendment?

Mr. GRAY. We will; I don't know that it makes

any difference, because there is none named. Perhaps it would be well to put that in the plural.

Mr. HEYBURN. I will accept the suggestion of the committee, and put it in the plural.

Mr. CLAGGETT. I have an amendment.

SECRETARY reads: After the word "asylum" in the first line, add the words "for the insane." (Seconded).

The CHAIR. The question is now upon adding the words "for the insane" after the word "asylum."

Mr. GRAY. We will accept the amendment.

The CHAIR. How does the balance read, with the other two amendments accepted?

SECRETARY reads: There shall be appointed by the governor three directors of the asylums for the insane, who shall be confirmed by the senate. They shall have the control, direction and management of the said asylums under such regulations as the legislature shall provide, and hold their offices for a period of two years.

Mr. ALLEN. I understood that the word "asylum" was changed from the singular to the plural.

The SECRETARY. It is so.

Mr. ALLEN. Now it seems to me this whole matter is mystified to a certain extent. It seems to me this matter should be left to some other legislature. The proposition requires an amendment to the constitution.

(Cries of "Question").

The CHAIR. Does the gentleman offer an amendment?

Mr. ALLEN. No sir.

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

Mr. AINSLIE. Before that is put, I was going to suggest that the legislature may provide for another asylum in some other part of the territory. I think it should be put in the plural instead of the singular.

The SECRETARY. It is in the plural.

The CHAIR. So that it will read "asylums." The question is now upon the adoption of the section, with

the amendments as accepted by the committee. (Carried).

SECTION 7.

SECRETARY reads Section 9 (7), and it is moved and seconded that the same be adopted. Carried.

The CHAIR. If there be no objection, the clerk will insert the proper numbers. Two sections have been stricken out.

ARTICLE TEN ADOPTED.

Mr. HOWE. I move the adoption of this article. (Seconded and carried).

The CHAIR. The article is adopted.

Mr. CHANEY. I move that the committee now rise.

SECTIONS 18 AND 19, ARTICLE 4.

Mr. McCONNELL. Just a moment, please. I move that the vote by which Section 19 of the report of the committee on Executive Department was adopted be reconsidered.

Mr. SHOUP. I second the motion.

Mr. MAYHEW. I call the gentleman to order.

Mr. McCONNELL. I would like to explain my reasons.

The CHAIR. The gentleman cannot do it now; he may by proper motion in the convention.

Mr. McCONNELL. Very well; I would like to state my reasons, so that if I am not here it will not be overlooked. We have only provided certain offices, which may be filled by the governor, secretary of state, and so on, and in this bill I notice there is a prison commission to be appointed, consisting of certain persons as a board, and under the provision which we adopted in Section 19 it cannot be constituted.

Mr. AINSLIE. I will call the attention of the gentleman to Section 18.

Mr. MAYHEW. I move the committee now rise and report the two articles back to the convention. Do

I understand that we are not yet through with these two articles that have been considered this morning?

The CHAIR. The chair does not understand the gentleman. Numbers five and six have been completed. The first one was laid aside to be reported and this one has just been adopted. Now the question is, what will you do with it, lay it aside, or report it to the convention, with the recommendation that it be adopted?

Mr. MAYHEW. I move that the committee now rise and report the articles back to the convention, with the recommendation that they be adopted.

The CHAIR. Does the gentleman from Latah accept the amendment of the gentleman from Shoshone?

Mr. CHANEY. Yes sir.

The CHAIR. The question is now that the committee rise, and report the two articles, one on the Seat of Government and the other on the Executive Department, with the recommendation that they be adopted. (Carried). The committee will now rise.

CONVENTION IN SESSION.

Mr. PRESIDENT in the Chair.

Mr. REID. Mr. President, the committee of the Whole have had under consideration the report of the committee on Executive Department, and report the same back to the convention and recommend as follows:¹

That sections 1, 2, 4, 5, 7, 8, 9, 10, 11, 13, 15, 16, 17, and 18 be adopted.

Amend section 3 by inserting the word "or" after the word "governor." In second line strike out the words "or superintendent of public instruction."

Amend section 6, by inserting after the word "of" in the sixth line, the words; "office of a justice of the supreme or district court," and by inserting in line 4, after the word "any," the words "state or district."

Amend section 12 by inserting before the first word in line 2 the word "treason," and the word "other" after the word "or" in line 2.

¹—This report is taken from the Journal, p. 148, not being in the reporter's notes.

Amend section 14 by inserting after the word "of" in line 2 the word "treason," and after the word "or" first occurring in said line, the word "other."

That the committee on Revision be authorized to fill the blanks in section 19 in conformity with the action of the convention when it shall have acted upon the report of the committee on Salaries of Public Officers.

Amend line 16, section 19, by adding after the word "university" the words; "or member of the state board of land commissioners." Also amend by striking out the word "tenure" and insert "term" in lieu thereof, in line 16.

And that the report be adopted as amended.

Also the committee has had under consideration the report of the committee on Seat of Government, Public Institutions, Buildings and Grounds, and report the same back, and recommend as follows:

That sections 1, 3 and 9 be adopted.

Amend section 2 by striking out the word "twenty" in the second line, and insert instead the word "ten."

Amend section 4 by striking out all down to the word "shall" in line 2, and insert "all property and institutions of the territory", and after the word "become" add "the property and", and strike out all after the word "Idaho."

Strike out all of section 5.

Strike out section 6.

Amend section 7 by striking out the word "prison" and insert the word "penitentiary" in the third line; and by striking out in the first line, the words "state treasurer," and insert the words "and attorney general."

Amend section 8 by inserting after the word "same" in the third line, "said asylums under such regulations as the legislature shall provide," and after the word "asylum" in the first line add the words "for the insane."

And that the report of the committee be adopted as amended.

JAMES W. REID, *Chairman*.

Mr. REID. This report I now make, with the motion that the report lie upon the table, to be taken up at the pleasure of the convention. (Seconded).

The CHAIR. You have heard the motion made by the chairman of the committee. (Vote and carried).

Mr. MAYHEW. I now move that this convention take a recess until 2:30 p. m. (Seconded).

Mr. TAYLOR. I move to amend by making it two o'clock. (Seconded).

The CHAIR. It is moved and seconded that the convention take a recess until two o'clock.

Mr. TAYLOR. I will withdraw the amendment and leave it 2:30.

The CHAIR. The question is to adjourn until half past two o'clock. (Vote and carried).

AFTERNOON SESSION.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

Mr. MORGAN. I move that the convention go into committee of the Whole upon the report of the committee on Legislative Department.

Mr. HEYBURN. I second the motion. (Vote and carried).

Mr. PRESIDENT. The gentleman from Latah, Mr. McConnell, will take the chair.

COMMITTEE OF THE WHOLE IN SESSION.

Mr. McCONNELL in the Chair.

The CHAIR. The business before the committee is the report of the committee on Legislative Department.

SECTION 1.

SECRETARY reads Section 1.

Mr. KING. Mr. Chairman, I wish to introduce an amendment to Section 1. I move to amend Section 1 by striking out the words "senate and," in the first line.

Mr. HARRIS. I second the amendment.

Mr. MAXEY. I have an amendment.

Mr. KING. The section I want to amend will then read: "The legislative power of the state shall be vested in a house of representatives," doing away entirely with the senate. The reason which prompts me to make this amendment will require some explanation, as it makes a change in our form of government different from anything we have in the Union of the 38 states. It makes it different from any legislative body

in the civilized world that I am aware of. In all civilized nations that have adopted a constitutional form of government, they are composed of three branches, among which are the legislative, consisting of a lower house and a senate, under various names, and the executive.

In ancient times there were but three forms of government known, with slight modifications; the one established a monarchy, the second an aristocracy, and the third a democracy. In a democracy the whole power of the government was centered in the people; they made the laws and they executed the laws. In the aristocratic form of government the law-making power was in the aristocracy, and as a consequence they framed and executed all its laws; they were the government, in fact—the law-making power, the executive power. In a monarchy, then as now—in an absolute monarchy the law-making power was centered in the king; he made the laws and executed them. It was not until the adoption of the English constitution—or rather, it was not regularly adopted; it is a thing that has grown up, say in the last four hundred years. It was an attempt to combine in one government the three distinct forms of government that had hitherto been in existence. It was to create one branch of the legislature composed of the people, or a portion of them, another branch to be composed of the aristocracy, and a third to be composed of the king. Each one of these branches had a complete veto upon the powers of the other. No law could be enacted by the house of representatives, or the lower house, by whatever name it might be called. In England, from which we have adopted our system, it was called the House of Commons. The House of Commons could not pass a law, neither could the House of Lords pass a law, nor could the king pass a law; it required the concurrent jurisdiction of these three supreme powers, each having a check upon the other. We have adopted the same system. The people in their representative capacity are unable to pass a law without the

consent of the senate in any state in the Union, or in the United States. This thing has grown up by a slow growth in England in the courts of justice. England at the close of what might be called the dark ages, was like all the nations of Europe, governed by kings who had absolute power in their hands. They had the law-making power, with some slight restrictions. The aristocracy rose up against their kings, and wrested from their kings a part of their power. They wrested from King John a large part of what we call the prerogatives of the crown, among which was the right to a voice in making the laws. And there was also conferred upon the people a similar right in the House of Commons, but no power like what now exists. The lords, to secure themselves from the attacks of the people on the one hand, and from the attacks of the king on the other, who might interfere with their rights, procured a provision that there should never be a law passed without their consent. They had an absolute veto upon every law that might be proposed, that might affect their interests or the interests of the country. They were to be the judges, and there was no power provided by which their decision could be overruled. It was essentially an aristocratic government. They, by the laws of their government had almost the absolute control of the House of Commons, for no man could be a member of the House of Commons unless he was a land-holder. There was no man could vote for a member of the House of Commons unless he was possessed of the qualifications of a land-holder, or a renter of land to a certain amount. That excluded from the right of suffrage the great mass of the people of the country. For ages England was ruled exclusively by a king and an aristocracy—the whole power was in their hands. By the exercise of their rights as the great land-holders of the country, holding all the great mass of the people as their tenants, dictating to them how they should vote, with the privileges that had been conferred upon the landed aristocracy, and having the right of representation in what

has been termed in these latter days, rotten boroughs, where a single land-holder had sometimes the appointing of pretty near a score of the members of the House of Commons—for instance there was one borough with a single solitary voter, and he a tenant simply of one of the great land-holders—the land-holder then under that system could say to these men: Vote thus and so, or I will turn you off the land. The Duke of Sutherland, I believe, had seven of these rotten boroughs; there was not a member of the royal family but what had a large number of these rotten boroughs under his control, and by this means they could control the lower house of parliament. They practically had a negative upon all the laws that could be passed; nothing could become a law without their consent. It was an institution got up for the protection of the privileged classes; it never was pretended that it was for the interests of the great mass of the people. Yet our forefathers participated in this belief of the right of the aristocracy to have a voice, in adopting the same system, and we have adopted the same system in this country, only under a different name. The senate of the United States stands there, a body where 39 men have the absolute power in their hands to defeat all the legislation that Congress can enact. We have in every state of the Union a senate consisting of a few men where a majority of from ten to fifteen or twenty men have an absolute power to prevent the passage of any law, the amendment of any law, or the repeal of any law. What is this done for? Why invest a body of men so few in number with this vast power of controlling the laws of the country? Is it done in the interest of the great mass of the people? I think no man will claim that it is for the interest of the great mass. It is done in the interest of a class of men who have by law secured rights and powers and privileges inconsistent, in my opinion, with the privileges that should be conferred by a nation that professes to regard all men as equal. Now we are proposing a constitution here in which ten men are to be invested

with the absolute power to defeat the legislation of the legislature of this state by the house. Now a majority of the house of representatives who represent the people, knowing their wishes and their wants, can go and frame a law, and by this constitution ten men will have the absolute power to prevent it. If the representatives of the people think that there are laws upon the statute book that are against the great interests of the great mass of the people, ten men by this constitution can stop any law proposing to repeal them. If there is a proposition made and sanctioned by a great majority of the people of this state to amend a law in the interest of the people, there are ten men who by this constitution have the power conferred upon them to prevent the enactment of that law, and there is no appeal, no remedy. Should the governor refuse to sanction it, the law provides a remedy, that three-fourths of the houses may override the decision, but you are putting in this constitution precisely the same power that is conferred by the common law of England upon the House of Lords—the absolute veto of anything that does not suit their wishes. If we put that in, we cannot change it for years to come. If you elect a class of men that will not obey the wishes of the people you have got to wait four years to turn them out. In the meantime there is no doubt but a class of men possessed of vast wealth, who have secured rights, powers and privileges that enable them to amass wealth, they are interested in that—they are the men who would take a deep interest in securing the election of ten of their men when the time comes around. The people are scattered over a vast extent of country, having no special interest in the existence of this law, whatever it may be, either a new law or the repeal of an old law or the amendment of a law, and cannot combine against the great wealth of the country to secure the defeat of men who are in favor of keeping up this system. As it is in the senate of the United States, here are men—do they represent the people? It is a well known fact

and accepted by almost every man, that the great bulk of men in there have amassed enormous wealth. Compared with the nobility of England sitting in the House of Lords they have amassed in a few years more wealth than has been amassed by the aristocracy of England in hundreds of years, aided as they have been by the laws of primogeniture and entail; yet these men by the operation of laws that have been enacted in their interests, have acquired wealth that threw them entirely in the shade, and we have men in our midst who by the operation of these laws have secured fortunes such as the richest aristocrats of Europe cannot equal. Those laws can never be repealed so long as you put it into the hands of a few men who have been benefitted by those laws, who have the wealth to control legislation and say: All we want is that 39 men shall be in our interest seated in the United States senate, and we defy you people to repeal that law.

Another question comes up in regard to us in this state, and that is the apportionment of senators. If we do away with the senate you will do away with a very vexatious question that is about to trouble this convention, that is, how to carry out the district problem in this state. This proposition provides for the election of one senator from every county. You propose as republicans, as democrats, do you, to give to a county like Cassia with a population of 1,400 inhabitants——

Mr. BEATTY. Mr. President.

Mr. KING. —the same power in making laws as is given to the largest county in the state with a population, of ten or twelve——

Mr. BEATTY. I want to know whether the ten-minute rule shall be enforced this afternoon or not,

The CHAIR. I will call the attention of Mr. King to the fact that the gentleman's time has expired.

Mr. STANDROD. I move the gentleman have an extension of ten minutes. He is an old gentleman and labors under some disability. (Motion seconded).

Mr. MAXEY. I suggest that the gentleman con-

fine himself to the section under consideration.

The CHAIR. Is it the pleasure of the convention that the gentleman have further time? There is no objection; go on, Mr. King.

Mr. KING. I say, Mr. Chairman, that we will meet a great difficulty here. We are proposing to do a thing, I think, that is utterly unjust to the people of this state. We are proposing in the making of our laws to give to the smallest county in this state, with a population not one-fifth of some other county, equal power with us in the making of the laws of the state.

The CHAIR. That section is not under discussion, Mr. King.

Mr. KING. I know that, but I am just alluding to the principle involved. No matter what you do, you are going to give to a senate consisting of a few men, where ten men is a majority—you are giving them absolute power to defeat the passage of any law that may be proposed by the people of this state, whether it shall be passed by an absolute majority or a unanimous vote of the lower house of the legislature, ten men can defeat it. For instance, suppose that all the representatives there should vote in favor of a law, or the repeal of a law, or the amendment of a law; by this constitution, if you adopt it as proposed, you give to ten men the absolute power to put their veto upon it, to say that you shall not have that law as you want it. And you have no power under heaven by which you can change that until another election comes around. I say that is not a republican form of government if you do that. I do not look upon the government of the United States as a republican form of government. Why, you go into the senate of the United States, and the state of Delaware, with a population of less than 200,000, has got the same power in the senate as the state of New York with over five millions. You give the little state of Rhode Island, with only a population of 250,000, just as much power in the making of laws as you give to the state of Pennsylvania. You give to the state of New

Hampshire just as much power in the making of laws as you give to the big state of Ohio. You give to Vermont just as much power in the making of laws as you give to the great state of Illinois. You may say that one has got more representatives than the other, but what do your representatives amount to when you have an equal voice in the senate, where each state stands upon an equality—each state with two votes; and no man will say that if a big state, with all its members of congress, were to pass a law here, that the senators in there must pass upon, in every instance, taking a vote separate from them, that the big state and the little state would not be of equal force. I say it amounts to this. If you adopt a senate by the provision as it is in there provided, that they shall have an absolute veto, then ten men will have it in their power to prohibit, you may say, any change in our laws whatever. I do not consider that a republican form of government; it is the establishment of an aristocracy. The adoption of this clause in this provision, that is, the putting into this chapter of our having a senate—by that very act you confer upon these men this power. Just as it was in the republic of Venice, where the Council of Ten were chosen by another body, and when once chosen they were the most despotic government on the face of the earth, a body of men ten in number that had absolute power, the same as proposed here. Nothing could become a law without their consent; no man, you might say, could be one of the officers of the law without their consent. You give to the senate the right to say who the governor shall appoint to the offices that we incorporate in our constitution. They have that power and there is no way to take it from them; it is a power granted to them by this constitution; it is a power that has been granted by the constitution of every state in the Union, giving a few men the absolute power to put a check upon anything which they may consider against their interests, and they are the men that generally get there. Why, they are those men that have an ax to

grind; there will be a good many axes to grind in this state by and by, in all human probability. If congress should grant to this state large tracts of land, which is not improbable, as has generally been the case, there will be a necessity to frame laws for the disposal of those lands. Why invest ten men with absolute power to prevent the passage of any law unless it suits their own interests? Look at the chances there always are for men to make money, as we know from experience with this class of men, by doing this thing. We read the charges made in the democratic and republican papers in every state of the Union, almost, to the effect that a seat in the senate has been sought by different men to enable them to make money. These senators have been ready to stand in the interests of that class of men. Men seek for that office in preference to being a representative; why? Because they have double and triple the power. It is an encouragement, as I consider, to that class of politicians and men who make politics a trade, who strive in all ways possible to get a position in the senate of a state or the senate of the United States, that they may have a chance to make money. I do not look upon this system of the senate as founded upon anything but a desire to increase the wealth of the privileged class, to increase their power and their patronage. It was used for that purpose inevitably. There was no pretext that it was for any other class of citizens than to guard and protect the rights of the aristocrats, and we have followed in that path. It has been a very good thing for a good many men. Honest men in this country have been unable to secure the enactment of laws or to prevent their repeal when it suited their circumstances. That has enabled us in the short period of 25 years to establish an aristocracy of wealth such as this world never saw before, and there will be no chance in my opinion to repeal it as long as we give a few men in each state the absolute power to decree its legislation.

(Cries of "Question").

Mr. PARKER, Mr. President, the chief hostility

to a second chamber arises from a general belief that it is too exclusive and aristocratic a body to have any part in a republican or democratic form of government, and that the second chamber is ever opposed to the best interests of the people. This belief, this hostility against a second chamber, originated in English history, in the history of the House of Lords of Great Britain, which was a house of hereditary legislators, and as such it was always found in opposition to the best interests and wishes of the people. So too in our own United States we find the United States senate composed today largely of aristocrats and millionaires, and that too has added its influence in creating hostility against a second chamber. But in a state legislature, Mr. President, we go directly to the people to elect our state representatives and senators also, and I therefore claim that a state senator is as much a direct representative of the people as a state representative himself, and I think if you will turn back to national history you will find that the framers of our national republic were wise when they provided for two councils, because they were afraid to trust any one man or any one constituted authority with exclusive power. But, Mr. President, the majority of a single chamber such as is contemplated by this amendment, easily becomes despotic and arbitrary, because there is no authority over it to check that despotism.

Mr. MORGAN. I call for the question.

The CHAIR. The question before the committee is: Shall the amendment proposed by the gentleman from Shoshone (Mr. KING,) be adopted? (Mr. King says "aye"). Those opposed "no." (Vote). A majority vote in the negative; the motion is lost. The question is now upon the amendment offered by the gentleman from Ada, (Mr. MAXEY).

SECRETARY reads: Amend Section 1 by adding after the word "representatives" in the second line the following: "The secretary of state shall call the house of representatives to order at the opening of each new assembly and preside over it until a temporary presid-

ing officer thereof shall have been elected from that body and seated. Said presiding officer must be one of the representatives elect."

Mr. MAXEY. Mr. President, you will observe that my change of the wording of the original text is simply to add this provision in the middle of the section. The report of the executive committee provides for a senate and president of the senate, but nothing is said about a presiding officer or any officer to organize the house of representatives. It seems to me it is necessary that some one should be designated to call the house of representatives to order and get them started.

Mr. PIERCE. In Section 10 of this article the gentleman will find it says each house when it assembles shall choose its own officers, etc.

Mr. MAXEY. The gentleman will observe that this is only to set the house in motion; it does not prohibit them from electing their own officers.

The CHAIR. The question before the committee is on the adoption of the amendment offered by Mr. Maxey of Ada. (Vote). The motion is lost. The question now recurs upon the adoption of the original section.

SECRETARY reads Section 1.

The CHAIR. The question before the committee is upon the adoption of the section as read. (The motion is carried and the section declared adopted.)

SECTION 2.

SECRETARY reads Section 2.¹

¹—Sec. 2. The senate shall consist of one senator from each county, and the house of representatives of double the number of the senate: *Provided*, the legislature may increase the number of representatives from time to time, but the number of representatives shall at no time be more than three times the number of senators: *Provided*, also, that the number of senators shall never be greater nor less than the number of counties. The senators shall be chosen by the electors of the respective counties, and the representatives shall be chosen by the electors of the respective districts into which the state may from time to time be divided by law.—(As given in the *Idaho Daily Statesman* of July 16th.)

Mr. MORGAN. I offer the following substitute for Section 2.

Mr. HARRIS. I move the adoption of the section as read. (Motion seconded).

The CHAIR. It is moved and seconded that the section as read be adopted. The gentleman from Bingham offers the following substitute.

SECRETARY reads substitute for Sec. 2. The senate shall consist of twelve members, and the house of representatives of twenty-four members. The legislature may increase the number of senators and representatives: *Provided*, That the number of senators shall never exceed twenty-four, and the house of representatives shall never exceed sixty members.

The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Mr. MORGAN. I move the adoption of this substitute.

Mr. HEYBURN. I second the motion.

The CHAIR. Are you ready for the question.

Mr. AINSLIE. I would like to know how the senators and representatives will be elected to the first state legislature under that provision. There is no apportionment or any provision made for it. There should be an apportionment immediately made re-districting all the territory for the district judges and prescribing what counties shall constitute the First, Second, Third and Fourth districts, etc.

The CHAIR. The Apportionment committee has provided for that I suppose; they have not reported yet.

Mr. AINSLIE. I think I should prefer the original draft as it stands.

Mr. MORGAN. I would say, Mr. Chairman, that the committee on Legislative Department did not think it was in their province to make any report with reference to the apportionment of the territory. That is en-

tirely in the hands of another committee; they, of course, will make that arrangement.

Mr. REID. Before the vote is put on the substitute I would like to call the attention of the convention to one fact, that under the substitute some counties may be left both without a senator and a representative. You may search all the constitutions and you will always find a provision that a county shall have a senator or representative. I prefer the original section as it is embodied in the report of the committee on Legislative Department, and I believe it will hold them in check better than the substitute.

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

Mr. AINSLIE. I move as an amendment to that substitute to strike out the whole section.

Mr. MAYHEW. I am rather inclined to think it would be better not to do that. As one of the members of this body I do not know what the committee on Apportionment is going to do. We have had no report or any intimation what the provisions will be in the article on apportionment. It may be necessary even after we hear the report of the committee on Apportionment to enact or pass just such a section as we have in here. I am opposed entirely to the substitute as offered by the gentleman. I do not know who did offer it. And I am opposed to striking out this section as it stands. I am of the opinion of Mr. Reid on the subject, that it will leave the matter so that some of these counties will be without representation in the senate.

Mr. REID. The way we have got it now every county is bound to have a representative.

Mr. MAYHEW. Certainly; it may be changed of course, but this section 2 provides absolutely by this article in the constitution that each county shall be represented with one senator and one representative, and may be increased according to the number of inhabitants. We are going out of this colonial form of government into state government, and my own opinion

always has been, Mr. Chairman, so far as the legislature is concerned, that it has not been sufficiently represented in the legislative halls. I think our representative apportionment by the organic act of Congress has been too small, and my experience has been that the larger the representation, so long as it is not a burden to the people, the better laws we have enacted and better men get into the legislature. You have a few persons in the legislature every session that had better stay at home and if you have a larger number the state will be better represented.

The CHAIR. Is there any second to the motion of the gentleman from Boise?

Mr. SHOUP. Mr. Chairman, as regards the duties of the committee of Legislative Apportionment, I take it the rules direct this committee to consider and report the apportionment of members of the legislative body of the state to the several counties, and to district the state. I do not understand that this committee is authorized to fix the number of members in either house. That belongs to another committee, and if it had been decided how many members we shall have in each branch of the legislature, then the apportionment committee could make an apportionment; consequently there will be nothing for that committee to do until that question is decided.

Mr. MAYHEW. I do not understand that this is the view of it. I think this section does provide,—it does not say it shall not be increased, but it says, as I consider the point, Mr. Chairman, that they shall be represented in such manner that each county shall have a senator, and that the representation shall be increased according and in the manner prescribed by law,—by the legislative body shall be increased. Now I think as a foundation for the legislative body that some law, some act, should be incorporated in the constitution, and I cannot conceive any arrangement that meets my approbation any better than the section in this article. I can't say that I should be in favor of

each county having a senator, because that would put the counties that have a very large number of inhabitants and the counties that have a small number of inhabitants on an equal footing, but as a foundation I think it is necessary that this article should remain in the constitution subject to any amendment. That substitute the gentleman offers, I cannot conceive what the reason for it is, and I have heard no reason on this floor for its support, and I think we should be careful in adopting any such measure as that substitute.

Mr. AINSLIE. The reason I made that motion was that it had been decided by the committee of the Whole on several occasions prior to this time, that where matters have been referred to other committees organized under the direction of this body, that the particular committee should report those measures and not the other committee. This morning in passing upon this report of the committee on Seat of Government, Public Buildings and Grounds, there were two provisions, five and six, in regard to franchises and endowments of the university at Moscow, and those provisions were stricken out for the reason that the committee on Education claims they covered those sections in their report, and it properly belonged to them; they were stricken out almost unanimously. Now this question of apportionment under these rules is left to the committee on Apportionment, on page 7 of our rules; which is constituted the largest committee of this convention, as I think. Now the committee on Legislative Department, it would seem, usurped the functions of the committee on Apportionment in placing in the second section of their report the apportionment of state senators of the legislature. Now, we have heretofore sustained the immunities and privileges of every committee in the committee of the Whole that has legitimately considered the subject for which that committee was organized by the house. Now I insist this belongs to the committee on Apportionment, and we have the largest committee

of the convention to consider that subject. I say strike out Sec. 2 and let them report that matter.

Mr. REID. I hope that will not prevail. I do not see any lack of harmony between this section and the duties of the committee on Apportionment. This provides a number of officers, how they shall be elected, and where from and how the representatives shall be apportioned, would be all that was left to the committee on Apportionment. They can apportion the representatives, but this section should fix the senators. Now when they come to fix the number of representatives, they may make it two or three in large and populous counties, and they may take a small county and attach it to a large one, but this assures to large and small counties one member in these bodies, and I am opposed to the substitute as stated by the gentleman. We have been living under the organic act; we have been used to twelve men in the senate and twenty-four in the house. If we have sufficient resources and sufficient importance to become a state, I think our senate should be larger than twelve, so as to have representation for the entire territory and its diversified interests; we should have as large a body as we can support without burdening the taxpayers, and I think the original section is a good one. If we try it and it does not work well, the people are going to revise it.

Mr. CLARK. I have an amendment to the substitute which I have sent up.

SECRETARY reads: I move to amend and substitute by increasing the number of senators to eighteen and representatives to thirty-six, and adding; "provided, each county shall have at least one representative."

Mr. PARKER. I second the amendment.

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

Mr. HARRIS. I shall heartily oppose both the substitute and the amendment, because I don't think there can be a more equitable distribution of the sena-

tors than that proposed by the original text. It gives to each county a voice in the confirmation of the governor's appointments,—not that the senate is a higher body than the house. That gives to each of the counties an equal voice. In this territory, of eighteen counties, there are fourteen of them of very nearly equal voting strength; there is not a great deal of difference judging by their representation in this body. There are, of the other four, three which are very nearly equal. Now that matter can be adjusted, so as to make them equal in the whole legislature, by apportioning to them a larger number of representatives. I contend, as a member from one of the smaller counties, for the original bill as reported.

Mr. CLAGGETT. Mr. Chairman, I certainly do hope this section 2 will not be adopted, and that the substitute offered by the gentleman from Bingham will be. We are now laying the foundation of the political power of the state; I am not talking about power in the abstract, but the political power,—that power which each subdivision of the state is to represent and exercise in the councils of the state. And if it be true that all power is of right derived from the people, and if it be further true that the majority of the people should govern and express the will of the whole, then it is perfectly plain,—at least to my mind, that equality of representation should be the controlling factor in the solution of this problem of apportionment, or rather of representation. The proposition which is here embraced in this report of the committee on Legislative Department, is a proposition to this effect, that each subdivision by counties in this state shall have an equal representation in the smallest and most select body of the two houses of the legislature. When we get down to the merits of the proposition, it is nothing more or less than a proposition to give one county that votes 500 votes the same political strength as another one that votes ten thousand. Whatever may be the difficulty of representation now,—and it is now very

greatly unequal, we are making a constitution here for all time, so far as this convention is concerned, and these inequalities will become more and more glaring in the different counties as we proceed. If this convention shall be of the opinion that each county shall be represented in one house or the other, then by all means the most equitable proposition would be to give each county a representative in the lower house, which will consist of from two to three times as many members as the senate. When you get right down to the proposition and analyze it, you will find that the proposition embraced in this section 2 reported by the committee on Legislative Department, amounts to this; that about one-third or two-fifths of the voters of this state are to have control of one of the co-ordinate branches of the legislature, and I say it is in direct violation of every rule and principle upon which representative government is based in the United States. I think I am not exposing any secrets when I say that both political parties on this floor have substantially agreed upon one proposition, although as yet it has not come before the convention freely for discussion, and that is, that a large portion of our population,—or certainly a respectable portion in numbers,—the Mormon population, is to be disfranchised. I will take one of the counties which does not poll one hundred legal votes, with that proposition here, and it has the same political power in that small and select body as would be had by the largest county if it had ten thousand votes. If my friend from Washington should advocate it upon the true ground he has in his mind,—not upon the ground that it is fair and just, but upon the ground that it gives his county an advantage it is not entitled to, then at least his advocacy of this proposition would be intelligible.

Mr. POE. Mr. Chairman, I favor the measure as originally presented. I am of the opinion that it is a fair and equitable division of the political power of this territory. I take it that each county of this terri-

tory is a sovereign within a sovereign, and that the people within that sovereign have rights in legislative bodies, and they are entitled, before any of those rights can be taken away from them, to a representation in that body. Now let us see as to the equality of representation. We take as a basis that each county, irrespective of the amount of population it may have, shall have in the legislature at least one representative,—absolutely one representative. Now the idea is fair that the representative shall be a senator. That county which sends a senator may have enough population to entitle it to a representative also. If it has not enough population to entitle it to a representative, then of course all the representation it has in the legislature is confined to a senator alone. The gentleman from Shoshone, (Mr. CLAGGETT) thinks it would not be fair for a little, insignificant county, that had but a few hundred population, to have the same representation in power in the senate that the larger county would have. Now I say that it would be equally unfair for that large county, the county with vast population and diversified interests, to have absolute control and power over the legislature and over the people of that little county, so that they might pass any laws they saw proper, without this other county having proper representation in that body. As it is, we, in every state of the Union, have prospered under this theory of two senators from every state in the Union. The least state in population, according to the size of its representation in the senate of the United States is the greatest; and it was recognized as being according to the justice of the thing, because they are entitled absolutely to a voice there, Now when we come to the larger states, the constitution has wisely provided,—and so does the provision in this wisely provide, that these larger counties shall have a representation in proportion to their population in the lower branch of the legislature. I therefore can-

not conceive where there is anything unfair in allowing the smaller county an absolute representation in the form of a senator, and the larger county the same representation. To the larger county having more population, give two, three, four or five representatives, in proportion to its population, in the house of representatives. When it comes to a joint ballot, as it would upon the election of a senator, that larger county has got its advantage in its vote over the smaller county, yet that county has got a representation there, and as was wisely suggested, whenever the question arose of an appointment by the executive that requires the confirmation of the senate,—when we say the confirmation of the senate, we mean the confirmation of the people through their representatives,—I say that that county is entitled to a voice in that council to say whether that appointment shall be confirmed or not.

Mr. HEYBURN. Mr. Chairman, it seems to me the gentleman entirely misapprehends the principle upon which states are represented in the United States senate. There is a certain sovereignty about a state; it may frame its own constitution, within certain limits it has its own separate government, and it is in its essential being a state. No such character can be attached to the existence of a county. We have heard of state sovereignty, but I never heard of county sovereignty. I suppose next we will have township and village sovereignty, so that they will have to be represented, each as an integral thing of itself, in our legislative bodies. But the principle that applies to the one does not apply to the other at all. These counties are not unrepresented, as one might be led to infer from the arguments of the gentleman,—they are not unrepresented. They are to be attached together until a sufficient number of them comprise a sufficient number of voters to entitle them to a representative, and the person who represents the other counties represents each one of those counties, just as though he was the

sole representative from that county. It seems to me it is so manifestly unjust upon the face of the statement, that a county that only casts a hundred or two legal votes, should have the same power in the councils of the state as a county that casts several hundred. It is un-American, it is a violation of the principles that underlie our government of equal representation to all the people, based upon the number of people themselves.

(Cries of "Question.")

The CHAIR. The question is before the committee on the adoption of the amendment offered by Mr. Clark of Ada to the substitute offered by Mr. Morgan of Bingham. (Vote.) The motion is lost. The question recurs upon the original motion, the adoption of the substitute. (Vote.) The chair is in doubt. (Rising vote shows 31 in the affirmative, 20 in the negative.) The motion to adopt the substitute is carried, and the substitute is adopted in the place of section 2.

SECTION 3.¹

¹—Section 3. The senators shall be elected for the term of four years and the representatives for the term of two years from and after the first day of December next following the general election: *Provided*, however, that when the senators elected at the first election after the adoption of this constitution shall assemble at the seat of government, they shall, on the first day of the convening of the legislature next thereafter, draw numbers for long and short terms.

Numbers corresponding with the number of senators elected shall be placed on separate pieces of paper, which shall thereafter be carefully folded so as to hide the number and placed in a box.

The senators shall then, in the presence of the governor, secretary of state and state auditor, or any two of them, draw the numbers from said box. Those drawing the odd numbers shall serve for the term of two years; those drawing the even numbers shall serve for the term of four years, so that thereafter one-half of the senators shall be elected every two years, and in case of an increase of the number of Senators, the same proceedings shall be had to determine the long and short terms of the senators first elected from the new districts.—(Convention Journal, p. 202.)

SECRETARY reads section 3.

Mr. REID. Mr. President, I have an amendment.

SECRETARY reads: Strike out the figure "4" in section 3, line 1, and insert the figure "2". (Seconded.)

Mr. REID. After the adoption of this substitute for section 2, I don't think the senator's terms should be extended to four years; it should be two, the same as the terms of the members of the house of representatives. After the adoption of this substitute a moment ago, the giving of four years to the senators will practically put the political power of this new state in the hands of two counties, unless they are divided. We have in this body to-day about one-third of the representatives of the territory coming from Shoshone and Ada counties, to-wit sixteen members. Now, under the principle announced by the gentleman from Shoshone, that representation should be based upon the population and voting strength, at least four of those twelve senators,—and you limit it to that number as I understand the substitute, it limits the senators to twelve, and therefore you will have one-third of the senators from two counties, and in for four years. Now if you apportion the representation according to population they will take one-third of the representatives, and you will have in here for two consecutive terms two large counties, and all the smaller counties, as joined for voting, must take their chance that any representation will be left, and of being controlled by these two larger counties. For instance, Kootenai, Custer, and Idaho, and those other counties where the Mormons have been disfranchised and you can only count the Gentile vote, they will be practically disfranchised, if these two counties choose to do it, after the first meeting of the legislature. Why? Because the power is given to the legislature after the first apportionment. We make the apportionment now, but when the legislature meets they may change it, and think you the majority won't change it to suit themselves in order to keep the power? There is no doubt that you will find representatives

willing to keep power. And coming in under this apportionment, that is, the basis upon which the gentleman announced it should be done,—if you carry that out, then these larger counties will come in with a larger representation, and the smaller counties, some possibly represented here, can be practically without representation. In other words, all the governor's appointments will be subject to the say-so of these larger counties, and it may be,—I didn't hear the gentleman put in any proviso, that every county would have a representative, but it would not if we increase in counties. We have eighteen now, and he only proposes twenty-four members. Suppose we grow as we hope to grow, gain as much as Washington Territory, and have 24, 34 and 50 counties; we will have one house composed of twenty-four members, and one of twelve, and some will go altogether unrepresented. And now they have stricken out "2" in section second, and put in the same old system we have under the organic act of the territory. I say we should have them all elected at the same time, every two years. If the people want to change their representatives or change any law they have upon the statute book, or adopt new measures, let them have a chance to do so every two years.

Mr. MORGAN. I believe this is a very common provision in the constitutions of nearly all the states in the Union, that one-half of the senators should be elected every four years, and I believe it is almost universally the case in the older states; they are elected in nearly all cases for four years. One-half of the number go out every two years, so that a portion of the body all the time may be men of experience. That is the only object probably in this provision, so far as I know. So far as the number of senators and representatives being limited to twelve and twenty-four, it is not done. The substitute which has been adopted makes it within the power of the legislature to change it the very next session, if it sees fit to do so, and to increase the number of senators and representatives;

as the population of the counties increases in the territory they may increase the senators and representatives both, and the section provides for that; it does away with the objection the gentleman urges: I do not think any county or two counties can control the politics or appointments of the state under this section. It does not seem to me it is possible for them to do so. The main object in making one-half of the senators elective every two years is, as I stated, to have experienced men in this body all the time.

Mr. MAYHEW. I don't know what the gentleman means by experienced men. I have had a little experience in that way in two legislatures of this territory. I have known portions of this territory in the legislature, where they had an equal vote to their counties, absolutely deprived of more than one-half the representation they were entitled to. Now I say, Mr. Chairman, that any legislature in the world that has the power they have themselves, acts the king,—any men that have the power,—they will if possible prevent a change in that representation. I don't think because we are forming a state government, that you are going to change the character of the men that come into the legislature. I don't believe you will change their political ambition to work for the different sections they represent and to hold political power in the way of representation. I observed three years ago in the legislature of this territory that it was within the power of two counties of this territory to prevent a correct representation in the legislature, and it was done. Bingham County, which had a very limited representation in the legislature, joined with Alturas county and prevented the other counties from having a just representation, and members of this body now can bear testimony that the statements I make are correct. And even in the last legislature it was very hard to give every county in this territory a representation in the representative body. They wrangled, fought and abused one another to that extent that men became so

disturbed in their political sentiments that they had no communication with one another as members of the legislature, trying to keep the political power in a certain section, and for that reason I support the amendment that the senators shall be elected every two years, as the others are. Experienced men in the legislature! The experience of these past members who are to remain over as senators,—their experience only goes to the extent by which they can maintain political power in their hands, and not that the people shall be well represented. I think the amendment offered is a good one. It is a strange thing to me, Mr. Chairman, that that bill was reported to this body, and reported in the manner it was, and the first thing that happened the chairman of that committee should desire its alteration. It seems to me you can see politics sticking out of this question so plainly and strongly that it must arouse the condemnation of every man in this convention.

Mr. BEATTY. The member from Nez Perce stated that two strong counties would be enabled under this proposition to practically control the legislature. Now my observation has been that where one strong county or two strong counties undertake to control a body, unless they have an absolute majority, they invariably fail. Any two strong counties not having a majority, because this bill would not give them a majority, cannot control the legislature, unless all the members, or unless the members of the smaller counties concede that right to them. The members of the smaller counties have the control in the aggregate, and it is utterly impossible that two of the larger counties can make such a combination as to control the legislature, unless by the consent of the smaller counties.

Now the member from Shoshone has been pleased to make a reference to what he claims transpired three years since, when the counties of Bingham and Alturas undertook to control this legislature and prevent a new apportionment. I happen to know something of that myself, Mr. Chairman, for I had the honor to be asso-

ciated with my friend from Shoshone in that legislature. I undertake to say that the reason the apportionment was not made at that legislature was not on account of any combination between Bingham and Alturas counties, but because the gentlemen from the north could not themselves agree upon what apportionment should be made. I remember very distinctly about two different bills being introduced, but I undertake to say here that it was not the fault of Bingham county nor of Alturas; I undertake to say those counties did not join together; I have no recollection of it, but I do remember where the difficulty occurred, and it was largely in the northern part of the territory. But whether that be so or not, if the counties of Alturas and Bingham attempted to join, or if in the future the counties of Shoshone and Ada, to which the member from Nez Perce referred, should attempt to join, how easy it is for the other counties of the territory to prevent injustice being done. Now I think there is nothing in that argument, but there is much in the proposition that the gentleman here are now advocating, in not having a senator allotted from each of the counties. That is to give the small counties with small population a power they are not entitled to, and I can see no special justice in it; in fact the proposition is so plain upon its face that they are left without argument for it.

As to politics appearing in this as suggested, simply because the chairman of the committee has reported an amendment, there is nothing strange in that. A great many members upon this floor have objected to that bill, and the chairman of the committee understands that; he understands that the bill as he reported it could not pass, or will not meet the approbation of a large majority of the members of this convention, and that is why the chairman of that committee has reported this amendment. It has been suggested to him to my certain knowledge that amendments similar to this would be offered, but we allowed the chairman to pre-

sent those amendments himself instead of taking it out of his hands. That is the only politics I know of in the matter, for I know as one member of this convention that I made myself the suggestion to the chairman that unless he made or offered some amendment in his report as here presented to us, that objections would be made, and the suggestion was made to him to allow him as chairman of that committee to offer this amendment. If there is any politics in that, it is so fine that I for one am unable to see it; but certainly; Mr. Chairman, whether there be politics in it or not, there at least is justice in the amendment proposed by the chairman of that committee, and there is injustice in the bill as first reported.

Mr. REID. In order to make my amendment harmonious, I will ask permission to add to it,—strike out the word “four” in line 1, as stated, and then strike out all after the word “provided,” because if that is adopted all this proviso will fall to the ground and be useless; strike out all after the word “election.” The balance of the section is simply a provision put in to allot the senators to their terms if they are elected for four years.

Now in the politics alluded to by my friend from Shoshone,—I did not suppose he meant partisan politics, but I can see some politics in it. You take the legislature constituted that way, and we want to elect two United States senators,—I don't care whether it be democratic or republican. These two counties, with a little support from one or two neighboring counties having the same interest, can do doubt come in and practically control the election of United States senators, no matter whether they be democratic or republican. But if you have a representative to every county, they will not only have a voice in that, but a voice in the confirmation, as the gentleman said, of all the appointments. I do not believe in centralizing power in these counties,—give every county a chance. We

haven't so much need for partisan politics as we had in the development of the territory, and if every county, —I don't care how small it is, has a voice here, and you can't apportion it so they will all be apportioned alike, but they provide for that in the house of representatives. I don't expect when you come to the house of representatives that a little county with 700 voters will get the same representation as Ada or Shoshone with 2500 or 3000 voters; but I will feel secure if we have a voice in the senate. I will feel that whenever the governor sends in his appointments the representative we have there will see that they are proper men. I will feel that whenever we vote for United States senator they will take a man that will look out for the development of our agricultural interests as well as the opening up of our river up there. I won't feel that these two counties who represent two distinct interests of this territory will be the only ones represented, but throughout the territory every county will have a voice, and that you are going to do the fair thing, what is right and proper, for equal representation gives them all a voice in the senate. Eighteen members is large enough; twelve is too small; but they have given the larger counties the control they are entitled to on account of population in the lower house, just as Congress is constituted. Suppose that you apply it to the senate; Delaware has as much representation as New York, Nevada as much as California, but when you come to the House it is not that way. The people's House,—they are representing us there; we like them are both elected by the people, but we are sure that these little counties frequently suffer from mere lack of fit representation, whereas they have large wants, they need to be developed, they need some one here to stand up for them and tell the legislature their wants and interests and call attention to it. The larger counties are sure to be heard, but, as I said, give representation to the smaller and weaker counties, and you will find our new state will develop far more rapidly than if you

centralize the senatorial power in these larger counties.

Mr. BEATTY. It seems to me that the gentleman, as well as myself and some of the rest who have preceded him, have got off the question. The question we have before us is whether the word "four" shall be stricken out instead of "two." I was following my distinguished friend from Nez Perce, and also from Shoshone, in what I said.

Mr. CLAGGETT. Mr. Chairman, I am perfectly willing to concede that legitimate reasons can be given; whether they should be of controlling character I do not think appears,—but there are good and cogent reasons for the motion made by the amendment offered by the gentleman from Nez Perce. And when that amendment was first suggested, it struck me that I would support it. I came to the contrary conclusion, largely upon the reasons given by the gentleman himself in support of his motion. Now I want to correct the statement of the figures involved, in which he states that two counties in this territory can control the senate. He bases it upon the representation each has here upon this floor, Ada and Shoshone, which amounts to sixteen. A majority of this convention is thirty-seven in number. If you were to take the delegation from Ada and Shoshone together, you will still lack twenty-one of having a majority. In other words it will take five of the counties to control the senate, instead of taking two, as stated by my friend from Nez Perce; he was incorrect——

Mr. REID. How many gentlemen did we admit to this floor on credentials; was there not 69?

Mr. CLAGGETT. 69; I am taking your number.

Mr. REID. Isn't 16 nearly about one-third of 69?

Mr. CLAGGETT. O, no sir, no sir; it is one-third of 48; between 48 and 69 there is a difference of 21 votes. My friend had better go to school and learn addition and subtraction. But, Mr. Chairman, going back to what is the question before the house; this provision here is one that exists in almost every legisla-

tive body I know anything about, in fact, all of them, that the senators shall be elected for double the length of time the members of the house are. There must be some reason for the uniformity with which this practice is kept up in every state in the Union, and foreign countries as well as here. I think the reason lies upon the surface of things. It is not designed to bar any door, one way or the other, but it is designed to maintain in the legislature the retention of a certain number of the members of the legislature who had participated in the debates of the preceding session of the legislature, in order that information arising or growing out of the proceedings of the preceding legislature may be left in the hands of representatives upon the floor of the succeeding one, and by that means aid in the legislation of the two new houses of the legislature. That I have always understood is the reason for the senators holding over for one term. You go to Washington, you may change your administration, and there may be a general overhauling and turning out of the clerks in the departments and bureau offices, and yet there are men, and plenty of them, in every department in Washington City, who have been there under all administrations, until they have grown old and gray and incapable of labor. No administration dares turn them out. Within their knowledge lie reposed the secrets, information and knowledge of twenty to fifty years,—information absolutely necessary to enable the incoming administration to get at their hands the threads of all political transactions, in such shape that the incoming administration can go off smoothly and without trouble, and that is one reason why the senators hold over. There is reposed in them, as historians, as it were, things relating to the immediate past, and essential to be understood by the new house or the new legislature when it comes into existence.

Mr. CLARK. I support the motion of my friend from Nez Perce, but I want to express at the same time my astonishment that he should make the argument he

has. After the iron hand of the caucus is in action, why make motions, and why make speeches? This gentleman from Alturas, who says he sees no politics in this, is as innocent as that Chinese who secreted the possessions of Mr. William Nye. The committee on Legislative Department, eminent republicans, unanimously agreed to report the change we had under consideration, and upon a vote, a unanimous vote, the members voted to change this clause. There is some power behind this throne, or no doubt this change would not have been agreed to by such a vote as this. Thus in a non-partisan convention has raged the zeal of republican enthusiasm for statehood, and the side of my democratic friends will go down as rapidly as the snows of winter go under the summer's thermometer.

Mr. HARRIS. Mr. Chairman, I rise to the support of the amendment offered by the gentleman from Nez Perce, and I assign as one reason for supporting it the fact that two small counties may be combined. In drawing lots one may get the four years' term. That gives one of the small counties four year's representation through two sessions of the legislature, and the other one perhaps none. By electing a senator every two years, they can change about from county to county, and that gives each one of them alternate representation in the senate. The other way one is wholly out for four years.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Nez Perce.

Mr. MAXEY. We would like to hear the amendment read.

SECRETARY reads: Strike out the figure "four" in section 3, line 1, and insert "two."

Mr. REID. And also strike out all after the word "election" in the third line, the balance of the section in addition to that. The balance relates to the arrangement if elected for four years.

Mr. SECRETARY. And then the section reads: The senators shall be elected for the term of two

years and representatives for the term of two years, from and after the first day of December next following the general election. Cries of "Question." (Rising vote shows 29 in the affirmative, 17 in the negative.)

The CHAIR. The amendment is adopted.

Mr. BEATTY. I desire now to amend it so as to avoid repeating. As it now reads it is; "Senators shall be elected for the term of two years and representatives for the term of two years. I desire to put it in one clause, and say that the members of the legislature shall be elected for the term of two years, or that senators and representatives shall be elected for the term of two years each.

Mr. MORGAN. I have no objection to that, Mr. Chairman.

The CHAIR. The amendment is accepted.

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

The CHAIR. The section is adopted.

SECTION 4—(STRICKEN OUT.)

SECRETARY reads section 4: The legislative assembly shall in the year 1895 and every ten years thereafter cause an enumeration to be made of the population of the state.

Mr. HARRIS. I move that the section be stricken out. (Seconded.)

Mr. MORGAN. The object of this section is simply this. Every ten years the government of the United States has a census taken of the whole country, all of the states. If we take a census every ten years also, it will give us the number of the population every five years; that is the object of it.

Mr. REID. Let me ask the question, did the committee estimate what that would cost the state; have you any information?

Mr. MORGAN. No sir. It is done in almost all the states, I think every state in the Union.

Mr. REID. I will state to the gentleman that we

found it was going to cost from ten to twenty thousand dollars a year, and so reported to your committee.

Mr. MORGAN. I have no idea what it will cost. The census of the United States will be taken in the year 1890 and every ten years thereafter; and this being provided for in 1895 would give us a census every five years.

Mr. HARRIS. I move to have it stricken out, for one reason, the excessive cost of taking the census. We can get at the average population of each of the counties every two years by the election returns. From that we can approximate the population of the county. This legislative apportionment is generally made on voting strength, and should be at least, and not on the number of inhabitants generally of the county; so it is unnecessary. We get it every ten years without cost when the census is taken by the general government, and I think it is a needless expense, and that the section should be stricken out.

The motion to strike out section 4 is put and carried.

SECTION 4.

SECRETARY reads section five.¹ (4).

¹—Section 5. The number of representatives shall, at the next session following the enumeration of the inhabitants by the United States or this state, be fixed by law and apportioned among the several counties according to the population, exclusive of persons not eligible to become citizens of the United States. And the ratio of the representatives shall be determined by dividing the whole number of the population by the number of representatives; and the number of representatives to which any county or district shall be entitled shall be determined by dividing the whole number of the population of such county or district by such representative ratio; and when a fraction shall result from such division greater than one-half of said ratio, such county or district shall be entitled to a member for such fraction; and in case any county shall not have the requisite amount of population to entitle such county to a member, then such county shall be attached to some adjoining county or counties for representative purposes.—(As given in the *Idaho Daily Statesman* of July 16th.)

Mr. MORGAN. I offer the following substitute for section 5, (4) in order to make the article harmonious as a whole, as the convention has already adopted the substitute for section 2.

SECRETARY reads: Substitute for section 5, (4). The members of the first legislature shall be apportioned to the several legislative districts of the state in proportion to the number of votes polled at the last general election for delegate to Congress, and thereafter to be apportioned as may be provided by law.

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

Mr. REID. I would like to ask the chairman of the committee one question. Why did the committee change the phraseology from "population" to "number of votes"?

Mr. MORGAN. Because it was thought it would not be proper to give the Mormon counties which cannot vote so large an amount of representation as it would give them if the representation was given in accordance with population.

Mr. REID. Then it was not on the theory of my friend from Shoshone that——

Mr. MORGAN. There is an additional reason now for changing it. You have stricken out section 4, which authorized the taking of a census to ascertain the number of the population, and there is no means now of making any basis for representation whatever.

Mr. REID. I desire to offer an amendment.

Mr. WILSON. I would suggest that the gentleman change the word "delegate" to "representative in Congress."

Mr. MORGAN. The gentleman will notice that it is the last census that determines the apportionment for the first session of the legislature; after that it is to be regulated by law.

Mr. REID. I make it as an amendment to the substitute, by adding, if the substitute which was read is

adopted, and if it is not adopted I propose to add it to the original section.

SECRETARY reads: Amend section 5 (4) by adding; "Provided that each county shall be entitled to one representative."

The CHAIR. The question will be on the substitute first.

Mr. REID. I propose to amend the substitute before it is voted upon.

The CHAIR. It is moved and seconded that the amendment to the substitute be adopted.

Mr. REID. Now, Mr. Chairman, they started out as if they wanted to be sure to give each county a representative, yet now they want to leave it uncertain,—leave it to the legislature. Now I want gentlemen to understand how this matter is coming on. I don't know whether there is any politics in it or not; I don't make any insinuations, and I don't know; but a member, a gentleman of the committee, stated here that for some purpose there has been a decided change. My idea in supporting it originally was, for the reason I expressed, that each county should have representation. Now it is changed here, and each county is to be represented according to voting strength. It does not make any difference how large it is, or anything of that kind,—not a particle. The old principle, no taxation without representation, is not regarded here. It will change the very foundation principle of the whole thing, and then in addition to that my amendment says that each county shall be sure to have a representative. Now you will find that, gentlemen, in nearly every constitution,— I won't say every one, because I have not examined them all,—but you will find that in nearly every constitution in this whole land, that they are represented in the popular branch of the legislature. We have 24 provided for, in only 18 counties, and he says that the legislature may increase it according as the population increases. Now it can be arranged for the larger counties, for the apportionment is to be made so the

larger counties will, as they must if you apportion it according to population and voting strength,—so as to give them the senate. I say, gentlemen, give these smaller counties at least one representative in this other house.

Mr. MAYHEW. I would like to inquire, Mr. Chairman, if in these matters this amendment offered by the chairman of the committee on Legislative Powers was discussed since the sending in of the report.

Mr. MORGAN. I will say in answer to the question, that a great many of the members of this convention have come to me privately in reference to this matter, and have insisted that the representation should be according to the voting strength and not according to population. It was very much against my own views, for the reason that we have a population of 2000 in our county that could not vote, and there is also a population in Bear Lake county of 2500 to almost 3000 that cannot vote, and only 150 who can vote, and it was because I could not get sufficient support in the convention to carry the measure through in the form in which it was first presented that I wanted to offer this substitute. That is the only reason. I was in favor, personally, of the **other way**.

Some remarks have been made in reference to the number of senators and representatives. The number was fixed at 12 and 24. I wish to explain to them that we have passed this section because it was thought it would not do to increase the number at the present time, or the people would object to the increased expense that the legislature would be. It was thought that the people of the territory would think that 12 members of the senate and 24 members of the house was a sufficient number. If any larger number had been proposed by any gentleman upon this floor I should not have opposed it, because my own idea was individually that the numbers of the senate and house should be greater than 12 and 24 respectively. And personally I do not now

rise to oppose the amendment offered by the gentleman from Nez Perce.

Mr. REID. Well, does the gentleman offer this amendment as coming from the committee or on his individual motion?

Mr. MORGAN. On my own individual motion, sir.

Mr. PEFLEY. It is most surprising to me to see the change that has occurred on the part of the gentleman who proposed this. And how he knows that the convention would not adopt it with this clause in there giving each county an equal representation, I have no means of knowing; perhaps he has. But I can only say this, so far as I am concerned, I have never been consulted since the committee got their report ready; and of course it was not necessary. For he knew that there was a majority that could carry this through, for some reason or other which I am not in the secret of, and of course he had the power to do so.

Mr. MORGAN. I want to explain to the gentleman as a member of the committee, that I just stated I did not offer it as coming from the committee. I had become satisfied that the measure could not be carried through, as I said, in the form in which it had been introduced or passed in the committee, and that is the reason I offered this substitute, personally, in view of that fact. And further I would say that some very strong opposition to the section as reported came from the gentleman's own county, Ada.

Mr. POE. I would ask the gentleman whether he had been consulted by any of the democratic members of this convention, requesting or stating to him that such a measure could not pass, whether any democratic members——

Mr. MORGAN. I do not know that any democratic members said to me that the measure could not pass. I said it was my own conclusion, from talking with members on both sides of the house.

Mr. POE. Both sides of the house; that was just the question I asked him, whether any democratic mem-

ber of the convention had stated to him that could not pass, for the reason it was stated that the population——

The CHAIR. I think this is out of order.

Mr. POE. ——whether the population should govern or the number of votes. He would not say that any democratic or republican member stated to him that the measure could not pass.

The CHAIR. The gentlemen are called to order, and will confine themselves to the matter under discussion.

Mr. HEYBURN. Mr. Chairman, I desire to call the attention of members to the result of this proposed amendment. We have already passed upon the number of members of the house of representatives,—24. Now you take from that number 18, in order to supply each county with one, and you will have six members to be distributed among counties that outnumber, three, four or five times, some of the counties in this state. Will that be equitable and fair? If you do this thing, in fairness you will have to increase the number of representatives, because that would be so manifestly unfair that I doubt if any gentleman would support it. You take for instance, without referring specially to any particular county, but I will take the county of Bear Lake; give it a representative. Now you have exhausted the other six members by giving them to the six largest counties, and you have a county like Bear Lake represented in the lower branch of the legislature with just one-half the representation that a county like Shoshone or Bingham or Ada or any other of the larger counties has. In other words, you have a few hundred men represented by a representative, and you have a few thousand represented by two representatives.

Mr. SWEET. Mr. Chairman, I think the difficulty here arises very largely upon the point suggested by the gentleman from Shoshone, Mr. Mayhew. The absolute fact is that 24 members of the house and 12 members

of the senate does not fairly represent the various industries and interests of this territory, and consequently I shall move to reconsider the motion by which it was adopted, and substitute 36 members for the House and 18 for the Senate, and then the Territory can be represented on that basis; but it cannot on the basis of 12 and 24.

Mr. SHOUP. If I understand this substitute in regard to the basis on which apportionment is made, it only applies to the first legislature; then the legislature may change it in any way reasonable, either by population, or leave it the way it is. Now I cannot conceive of any other means by which we can arrive at an apportionment for the first legislature except by voters. We have no census and will have none.

Mr. MAYHEW. That would cut no figure, Mr. Chairman. We know what the vote was last session,—if this constitution should be adopted at all. We know what the vote was last fall in each individual county, and we can regulate that now by the vote and the return of the vote in the Secretary's office, and increased representation in the legislature can be reckoned on that basis, as has been pointed out, without a census being taken.

Mr. CLAGGETT. I call for the reading of the substitute.

SECRETARY reads: Section 5. (4) The members of the first legislature shall be apportioned to the several legislative districts of the state in proportion to the number of votes polled at the last general election for delegate to Congress, and thereafter to be apportioned as may be provided by law.

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

SECRETARY reads: Provided, each county shall be entitled to one representative.

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

Mr. SWEET. It is perfectly evident from the remarks made by the gentleman from Shoshone, (Mr.

HEYBURN) that giving to each county one representative would not be a fair representation here for the larger counties. It is also equally clear, from the statement made by Mr. Reid of Nez Perce, that it would deprive the smaller counties of any representation, or anything like a fair representation if we only have 24 members of the House. I therefore hope the amendment will be voted down and that we may yet reconsider the other and have a larger representation in the House.

Mr. REID. I shall join my friend from Latah heartily when that question comes up in the house, to return to the old basis, in order that we can have a representation in the counties as he states; but for the present,—we can move to reconsider now, but when we get into the house we can move it just as well. If the gentleman moves a reconsideration now we will proceed to go back to that section and vote more, but I think while we have 18 now there will be six,—if you give each one of these counties one apiece,—there will be six left over for these larger counties; but you will be sure to have some representation. I hope you will vote for the amendment.

The chair puts the question on the adoption of the amendment. (Vote.)

The CHAIR. The chair is in doubt. (Rising vote shows 32 ayes; nays not given.) The amendment is adopted. The question now recurs on the substitute as amended. (Vote.) It is carried; the substitute is adopted.

Mr. CLAGGETT. If it is in order, and that we may proceed in an orderly manner,—the committee has expressed its sense to the effect that each county shall have in the lower house one representative, and that evidently was no doubt done upon the proposition of reconsidering the fixing of the number of senators at 12 and——

Mr. MAYHEW. What is the question?

Mr. CLAGGETT. I propose to make a motion, but I am now explaining,—and a house of 24. I now move

to reconsider that vote at this time,—it is section 2,—so that we can now increase it, after this committee rises and goes to the——

The CHAIR. The chair, following the precedent of this morning, will have to rule it out of order. We cannot reconsider in the committee of the whole.

Mr. CLAGGETT. I don't know as I am out of order.

The CHAIR. The motion was made this morning and was ruled out of order.

Mr. CLAGGETT. By simply acting upon an adverse decision this morning from another chairman, I will have to appeal from the decision. Our rules provide that a motion to reconsider,—that the same rules shall govern in committee of the Whole as in the convention, and there is no reason,—and the place, I believe, to reconsider, is in the committee of the Whole and not in the convention.

The CHAIR. I shall follow the precedent adopted by the learned parliamentarian this morning.

Mr. CLAGGETT. Well, I have——

The CHAIR. But the gentleman appeals from the decision of the chair. The question before the committee is: Shall the judgment of the chair be sustained as the judgment of this committee?

Mr. MAYHEW. One moment; we have some authorities for this, and I call on my friend Mr. Shoup to read the authorities, Cushing himself, on that point.

Mr. REID. I think my ruling this morning was wrong, and I ask unanimous consent that the gentleman be allowed to move to reconsider the motion that was made. I hope no gentleman will object. We want to dispose of this matter. It will not save time if we go into convention. I ask unanimous consent that the gentleman from Shoshone be allowed to move to reconsider section 2.

Mr. SHOUP. I object.

Mr. CLAGGETT. I insist on my appeal then.

The CHAIR. Is the gentleman's authority produced?

Mr. SHOUP. I will read one our own rules first, No. 60. (reading) Cushing's Manual and Law of Legislative Assemblies shall be received as authority in all cases not provided for in the foregoing rules. The rule at 276 of Cushing's Law of Legislative Assemblies, reads: "It is a general principle also in regard to this matter that there can be no reconsideration of an order the execution of which is already commenced, Nor can reconsideration take place in committee or committee of the whole."

The CHAIR. The opinion of the chair is that the same rule would prevail as provided by our rules, in the committee of the whole as in the convention.

Mr. MORGAN. I call the attention of the chair to Rule 50, that rules for proceeding in committee of the Whole shall be the same as in the convention.

The CHAIR. I ruled that way contrary to my own judgment. At the same time, when it was ruled against this morning, I think it was done at the instance of some gentlemen who did not desire to reconsider the matters. I am glad to give this committee an opportunity to vote to reconsider any matter that was wrongly decided. The chair will entertain the motion; the motion is in order. Did the motion have a second?

(The motion is seconded.)

The CHAIR. Will you please state the motion again?

SECTION 2.

Mr. CLAGGETT. That we now reconsider the vote by which the second section,—that portion of the second section was adopted fixing the number of senators at 12 and representatives at 24. The motion is that the committee reconsider the vote by which they adopted that portion of section 2 which fixed the number of senators at 12 and representatives in the house at 24. (Vote.)

The CHAIR. The chair is in doubt. (Rising vote, ayes 41, nays 6.) The motion is carried. The question now recurs on the original motion.

Mr. REID. Now, Mr. Chairman, the matter being re-

considered, I move that section 2 as originally reported by the committee be adopted in place of the substitute that was adopted.

Mr. CLAGGETT. I rise to a point of order. The vote of reconsideration was to reconsider that portion of that section.

Mr. REID. Then I offer Section 2 as originally constituted, as a substitute for that portion of the section. (Seconded). I will give my reasons. The chairman of the committee states that he reported the report upon his own individual notion of the matter.

Mr. MORGAN. No, the substitute.

Mr. REID. I mean the substitute. Now the report came in here supported unanimously by a committee representing both sides of the house—if there are two sides, that is, by the republicans and the democrats, and that committee after carefully considering it brought in a report that it should be this way; and then it lay over until today, and now the proposition is to change it. There has been no meeting of the committee. It was carefully discussed, carefully considered, the report made, printed, etc. There were some articles in one of the papers about it; whether they emanated from members or outsiders I do not know.

The CHAIR. Will you state your motion again?

Mr. REID. I move to substitute Section 2 for that portion that has been reconsidered by the house.

The CHAIR. Section 2? There was no part of Section 2 adopted; the substitute for Section 2 was adopted.

Mr. REID. That was my motion. The gentleman from Shoshone moved to reconsider so much of Section 2 that was adopted—it was Section 2 after it was adopted as a substitute—as referred to the number of members of the house and of the senate. That is being reconsidered. Now as a substitute for that portion I move that the original Section 2 of the bill as reported be adopted in place of that, which brings the whole matter back before the committee.

The CHAIR. The gentleman moves that the original Section 2, as originally printed, be adopted in place of the substitute which was adopted for Section 2.

Mr. MORGAN. I rise to a point of order. The section has already been deliberated upon, a vote taken in this house and the substitute adopted in place of it, which disposes of it, without voting right over again.

Mr. REID. Then I make the point of order that the convention has reconsidered that vote, which leaves the matter as it stood before; his substitute is gone and the original section is before the convention. That cannot be the case, but the gentleman says he limits it as to the number—the vote limited it to the number. I moved to substitute the section in place of the number. If he had moved to reconsider the whole section his substitute would have been lost entirely and it would have stood upon the adoption of the original section, but the gentleman avoided that, so as to only move the reconsideration of the numbers 12 and 24. Now after he gets that vote for reconsideration, I move as a substitute for that part of it, that Section 2 of the original bill be substituted for it.

Mr. CLAGGETT. I rise to a point of order. It is out of order to make a motion under the rule in regard to a section or substitute that is not germane before the house. The proposition before the house is to fix the number; that is all the question there is before the house. On that proposition the gentleman offers a substitute, which will be a complete substitute for the substitute that was adopted, which stands unreconsidered by the convention.

Mr. REID. I ask that the substitute be read as adopted.

Mr. MAYHEW. I think the position assumed by Mr. Reid is right. I never heard at all of this until this reconsideration was offered. I understood the whole thing was to be reconsidered, and reconsidered in committee. Now if the reconsideration is made and the vote is taken, then I call the attention——

The CHAIR. Mr. Reid calls for the reading of the substitute.

SECRETARY reads substitute for Section 2: The senate shall consist of 12 members and the house of 24 members. The legislature may increase the number of senators and representatives; *Provided*: The number of senators shall never exceed 24, and the house of representatives shall never exceed 60 members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Mr. REID. Now, Mr. Chairman, I take it that it would take a very metaphysical mind of a very high and delicate order to say that there was anything more in this section than fixing the numbers of the house and senate; that is all it does. Take Section 2 as originally reported, and if he moves to reconsider the number there, that is everything that is in it. Section 2 proposed to do that, and he moves the reconsideration here of so much of it as fixes the number, when in fact there is nothing but the number in it, and when I move to substitute a section that does the same thing and only increases it, it is not germane. Both fixing the number and not germane! I reiterate that it is not only germane but identical with the part reconsidered, and if you take the number out there is nothing left in it.

The CHAIR. Will the clerk read the original section?

SECRETARY reads. Sec. 2. The senate shall consist of one senator from each county, and the house of representatives of double the number of the senate: *Provided*, the legislature may increase the number of representatives from time to time, but the number of representatives shall at no time be more than three times the number of senators: *Provided*, also, that the number of senators shall never be greater nor less than the number of counties. The senators shall be chosen by the electors of the respective counties, and the representatives shall be chosen by the electors of the respective districts into which the state may from time to time be divided by law

The CHAIR. I shall decide the point of order not well taken.

Mr. MORGAN. The duty of the presiding officer of an assembly like this is simply to execute the will of the majority; that is his whole duty. He has got to do that by parliamentary rules. This convention voted simply to reconsider the vote by which the first——

Mr. REID. I rise to a point of order. The chair has decided the point, and there can be but one question, whether the appeal is from the decision of the chair to the convention.

Mr. MORGAN. I want to state, Mr. Chairman, my position. My proposition is this; that the only matter reconsidered by this convention was that part of this section by which it was fixed that the first session of the legislature should consist of 12 senators and 24 representatives. That was the only thing this convention proposed to change. There can be no question about that whatever. The section goes on to provide that hereafter the number may be increased by the legislature, and also the number shall never exceed 24 senators and 60 representatives. Now it is not proper for this committee to take up anything in the order of business except what was voted to be taken up by the convention itself.

Mr. REID. In reply to his point of order, the only thing this section does is to fix the number. The substitute did that, that the gentleman offered; the original article did it, and having recorded it and the chair having ruled on it, we are all out of order.

Mr. CLAGGETT. Mr. Chairman, the chair has made its ruling upon the question, and therefore I shall not refer to it. As my friend from Nez Perce says, there is nothing in this original section or substitute or in this matter here which is now offered except what is in the substitute, as to the matter of number; I wish to read from the amendment that is proposed: "The senate shall consist of one member from each county, and the house of representatives of double that number." When this question was up, it was objected to giving equality of representation, but one member in the senate, on account of its being the smaller body, and

the proposition was adopted, that is, to substitute the motion that was made, the section offered by the gentleman from Bingham for the section reported by the committee on Legislative Department. On the theory that the proper place to put it—it was evidently the question of equality—was in the house having the largest number. Now the gentleman, having secured that by the vote of men on the floor of this convention who want to do what is right and give every county a representative in the legislature, turns around and under the guise of parliamentary rule offers a proposition to give every county also a representative in the senate. In other words, you are proposing not only to turn over one branch but both branches of the legislature to a minority of the people, and you can figure it from now until the day of doomsday, and that is precisely what this motion amounts to—just simply that. If you adopt the amendment offered by the gentleman from Nez Perce, that is the effect of the section. I would like to know what opportunity or what chance this constitution is going to have of being ratified by the people of this territory, when it comes in here and the whole rule of majorities is stricken down in that way.

Mr. REID. I will meet the gentleman on that question. He tries to make it appear that we are trying to take advantage in some way. The members of this convention are intelligent enough to read that section and see if it regards all this original matter, and if this convention had not understood that the whole matter was to be brought up and reconsidered again, on the suggestion of the gentleman from Latah, they never would have voted to reconsider it, but would have let it stand where it was, and taken their rights in the convention when the matter was up there, and they want to fix it—the number. I want the convention to vote on this subject again, and one or two members have said since the vote was taken that they did not understand they were depriving their counties of representation by a senator. They are in favor of the proposition. If we

are voted down—all well and good, we stand in the minority. But the gentleman has set up his part of the plan that we want to reconsider. There is no gentleman will acquiesce any more cheerfully than I will do, but it is understood, and the gentleman expresses it, that he wants the number reconsidered, and if he does not want that every county shall have a senator, he can amend it. I am not asking for a hasty vote on this; all I can hope is to have my motion considered. The gentlemen are trying to strike that out by raising a point of order on it, to keep that part of the question from being considered. I want it all considered, and if gentlemen want to vote down that amendment or strike out that part that gives each county a senator, let them do it; we will take a vote on it. If it is voted out, also well and good; then we will take the next best thing we can get—we will take 18 members of the senate and 36 members of the house, instead of 12 and 24, but as I understood it, they want to go back to the original proposition and vote to reconsider again, instead of taking up the time of the convention in which to obtain that. I know two gentlemen have expressed their opinion since they voted, that they did not understand the original proposition, or they would have voted to have the counties each have a senator.

Mr. GRAY. If this motion prevails now it would stand thus: We have passed one section which gives to each county a representative. Then we pass now, if this motion prevails—then we give to each county besides, a senator.

Mr. REID. The gentleman will pardon me; if this motion prevails, I shall move then that the amendment I offered be stricken out.

Mr. GRAY. I am saying, as it stands upon the record.

Mr. REID. I say that if that is adopted I will—

Mr. GRAY. I say I am stating the facts as they appear upon the record—that this is the fact and as it will appear, if this motion prevails.

Mr. MAYHEW. Will you let me ask you a question?

Mr. GRAY. Yes sir.

Mr. MAYHEW. Would not we have the same right, and is it not policy, to reconsider the subsequent section, if this is reconsidered?

Mr. GRAY. I am stating what appears upon the record; that is the way it stands. It can all be amended when we go into convention too, but I say that would be the condition of the record if this motion prevailed—one county is to get positively a senator and positively a representative.

Mr. BEATTY. I confess I am surprised at the turn that the gentleman from Nez Perce makes of this matter. I voted, for one, to incorporate his provision, and I voted then for the reconsideration, but I voted for the reconsideration with the understanding—and I am sure I did not misunderstand the member from Shoshone, Judge Claggett, who made this motion, that we reconsider so much of that substitute for Section 2 as referred to the number of members—as referred to the number of senators and the number of representatives, and the whole question did not come into reconsideration at all. And I venture to say that if we would take the record from the reporter's notes, you will find Judge Claggett's motion was in those words. Now if that motion had been to reconsider the whole of that section which we have gone over I should not have voted as I did, but I voted with just that understanding.

Mr. REID. May I ask you a question? Did not the gentleman from Latah state especially that he moved to reconsider that part?

Mr. BEATTY. My conclusion was not taken, Mr. Chairman, from any motion of the gentleman from Latah, but upon that of the member from Shoshone, Judge Claggett, and I do not think I made a mistake in the way I understood that he stated the motion. For I am pretty sure he stated it conditionally, that he moved to reconsider so much of that substitute for Section 2

as provided for the number of senators and the number of representatives. My friend from Shoshone here asks me if that can be done. I have no doubt it can be done; it is a divisible question. We can take up and consider a part of this substitute and not consider it all; but as to what the member from Latah referred to—that was not the motion. Now if there is any more dispute about this question, I ask that we appeal to the reporter's notes upon that question and see what it was—what Judge Claggett's motion was; and if his motion was as I stated, then I claim this committee has no right now to entertain the motion of the gentleman from Nez Perce. It is taking advantage of what many members understood, and we have acted in good faith in trying to grant to each one of these counties a member of the legislature. I for one, have been in favor of that from the start; I have advocated it wherever I have been, and I do not propose, for one, to be cheated out of my motion or my vote. I voted in good faith for the reconsideration of so much of his substitute as refers to the number. Now if the gentleman proposes to drag in something else, go into a reconsideration of the whole matter which was decided understandingly by this committee, I am opposed to the whole thing.

Mr. REID. I do not propose to be put in a false——

Mr. GRAY. I object.

Mr. REID. I have a right to speak again.

Mr. GRAY. He has spoken four times.

Mr. REID. Not on this proposition; and the gentleman here says he does not propose to be cheated, that I am trying to take advantage of this convention.

Mr. GRAY. I insist upon my objection.

The CHAIR. The objection of the gentleman from Ada is sustained.

Mr. SWEET. I do not think the equitable disposition of the convention to do what is fair will be shaken by any hocus pocus in parliamentary rules. The fact is that when this question first came up, I think I stated I was in favor of a reconsideration of that portion of

this section which gave but 36 members to the legislature in all. And then Judge Claggett moved that, inasmuch as the motion to give each county in the territory a representative was evidently voted upon the theory that we could reconsider the other question and make the total number of representatives 36 and of senators 24, he therefore moves to reconsider that portion of this other section which should increase the number of representatives, but say nothing as to where they should come from. Now that was evidently the question raised on the motion made by Judge Claggett. I apprehend, Mr. Chairman, that the members of this convention intend not to say where these senators shall come from, but that they do intend to say that the representation of the legislature shall consist of 36 representatives and 18 senators, and leave the committee appointed for the purpose of apportioning these members to do their work and report it to this convention. Now I do not think it is exactly fair to raise this question in this way, but inasmuch as the chair has ruled it in order, we have nothing to do but to take this vote, and then vote on Mr. Reid's substitute and vote it down—as we ought to do, and then vote that the legislature shall consist of 36 representatives and 18 senators.

(Cries of "Question.").

The CHAIR. The question is whether the substitute proposed by Mr. Reid be adopted. (Vote. Division asked for. Rising vote shows ayes 20, nays 27). The motion to adopt the substitute is lost.

Mr. CLAGGETT. Mr. Chairman, I will yield to the gentleman from Latah to make that motion, if he desires to bring it up, or I will make it myself.

Mr. SWEET. Go on, Judge Claggett.

Mr. CLAGGETT. I move that the number of senators shall consist of 18 and the number of representatives shall consist of 36, for the first session.

Mr. MAYHEW. Won't it be necessary to have it inserted in the substitute, or amended substitute?

Mr. CLAGGETT. I move to amend that portion of

the substitute which has been reconsidered, by striking out the word "twelve" and inserting the word "eighteen" for senators, and striking out the word "twenty-four" and inserting the word "thirty-six," for representatives.

Mr. SWEET. I desire to second that motion.

Mr. REID. I would like to hear it read as amended.

SECRETARY reads: The senate shall consist of 18 members and the house of representatives of 36 members. The legislature may increase the number of senators and representatives: *Provided*,. The number of senators shall never exceed 24 and the house of representatives shall never exceed 60 members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Mr. REID. I desire to offer this amendment:

SECRETARY reads: *Provided*, Each county shall have at least one representative.

Mr. MORGAN. That is already adopted in the other section.

Mr. REID. Well, if it is adopted—I just wanted it in—I will withdraw the amendment.

The CHAIR. Gentlemen, you have heard the question. (Vote, not given). The motion is adopted. The question will now be on the adoption of this substitute as amended.

Mr. SWEET. I move the adoption of the substitute for Section 2 as amended. (Seconded and carried).

The CHAIR. The committee now returns to the consideration of Section 6. (Sec. 5).

SECTION 5.

Mr. MORGAN. I move the adoption of the section. (Seconded).

Mr. POE. I have an amendment. In the first line, after the word "representative," I desire to substitute "or senatorial districts." The district may be plural. And strike out the word "a" also; so as to read: "Rep-

representative or senatorial districts when more than one county shall constitute the same.”

Mr. MORGAN. I have no objection to the amendment.

The CHAIR. It is moved and seconded that Section 6 (5) be amended by inserting before the word “representative” the words “senatorial or.” (Vote). The motion is carried.

Mr. BEATTY. I now move that the section as amended be adopted.

Mr. MYER. I would ask if there will ever be a representative district composed of more than one county. We have already more than one representative for each county.

The CHAIR. It is quite likely there will be.

The CHAIR. As many as are in favor of the motion say aye. (Carried.)

SECTION 6.

SECRETARY reads Section 7 (6), and it is moved and seconded that it be adopted.

Mr. MAYHEW. I move to strike out in the last section in the fifth line of said section, the word “five,” and insert the word “one,” so as to make it twenty-one instead of twenty-five years old. (Motion seconded; division called for. Rising vote, ayes 23, nays 23).

The CHAIR. The chair votes no; the motion is lost.

Mr. HEYBURN. Mr. Chairman, I move to amend.

SECRETARY reads: Amend Section 7 (6), by striking out the word “inhabitant” in the third line and insert the word “elector.” (Seconded).

Mr. HEYBURN. The object of that is, that a man might not live in the county at all, he only needs to be an elector of the state and inhabitant of the county; inhabitant is not the term we should use, but a man who is going to be a candidate for the legislature should be an elector in the county and district he seeks to represent. (Vote and carried).

The CHAIR. The amendment is adopted.

Mr. MAYHEW. I move the adoption of the section as amended. (Seconded and carried).

SECTION 7.

SECRETARY reads Section 8 (7), and it is moved and seconded that the same be adopted.

Mr. REID. I move to strike out in the fifth line all after the word "thereof," being the words: "nor shall a member for words uttered in debate in either house be questioned in any other place." I think this would give members of the legislature too broad a field. It carries with it liberty to say anything they please and not be questioned in any other place for it. A man may handle reputation and character as he chooses in debate and cannot be questioned in any other place, if you put that in the fundamental law.

Mr. CLAGGETT. Can't be anyhow, unless it is specially provided by law. It is only thus provided in nations which protect him under the law.

The CHAIR. It is moved and seconded that Section 8 (7) be amended by striking out all after the word "thereof" in line 5.

Mr. CLAGGETT. I don't suppose this convention proposes to muzzle freedom of speech in the legislature, after having adopted in the Bill of Rights that the privilege of freedom of speech outside, and of the press, shall remain inviolate. If there is any one place in the world where freedom of speech should be allowed, going almost to the verge of license, it is in the legislature. The rules of all parliamentary bodies provide that scandalous matter shall not be indulged in, but if any member of the legislature, who may be called upon to expose any scheme of corruption, is to be sued in an action for slander on the outside, I think you will muzzle your representatives in such a way that you will not have a very good government.

Mr. REID. I dislike to take issue with such a distinguished gentleman, but in the very Bill of Rights

it is reported as though they should be liable for slander only in such cases—when they published the truth it was all right. I don't want any uncertainty about this. If legislators expose corruption, they cannot be held to answer in any other place, but I don't want by a constitutional provision to allow them, as is sometimes done, to abuse their privileges. Of course they always have rules, outside of that, to restrain them; frequently men are expelled from such bodies for using language they ought not to. They are indictable under the law, and the privilege of free speech should and will protect them; but I don't want to put that clause in the fundamental law and make them secure from being questioned in any place if they choose to abuse their privileges. If they do not abuse it they will not be molested.

Mr. HEYBURN. I object to this sentence being in here, because it gives a right to the legislator that it does not give to the citizen outside, and the legislature is composed of a good many people, and their audience is generally pretty large, and it would be very difficult to find a better scene in which to disseminate a slander through the general public than in the legislature, if there is a man there malicious enough to do it. And they are protected by law to a reasonable extent. They cannot be questioned for any statement that is in the interest of the public welfare, or exposing fraud or crime in which the legislature is interested, but a man should not be allowed, under the guise of debate in the legislature to cast aspersions against some members there in the body or out of it, and refer to something that the law would not permit him to refer to if he were not a member of that body, and I am in favor of protecting the community against legislators as well as themselves. By the ordinary rules of parliamentary debate the protection thrown around members of that kind of body is sufficient to enable them to say all any man ought to want to say about any subject or any man's individual character.

Mr. MORGAN. You will find those words in almost

every constitution in this country. If the convention sees fit to strike them out, however, I have no objections. That is the reason they are put in.

Mr. PEFLEY. I will say that those are the sort of words that occur in the Constitution of the United States.

Mr. SWEET. I hope members will remember that those words do not apply to any sort of scandal members may see fit to promulgate. Those words are for the protection of members in debate, and it is so stated specifically, and it is simply intended in this clause, as it is in all other constitutions, to leave men free in the legislature in their debate, and I hope that it will not be stricken out. (Vote).

The CHAIR. The motion to amend is lost. (Division called for. Rising vote shows ayes 12, nays 25). The motion is lost—seems to be lost. (Laughter.) The question now recurs on the adoption of Section 8 (7). (Vote, and carried).

SECTION 8.

SECRETARY reads Section 9 (8), and it is moved and seconded that it be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 9 (8) by inserting after the word "shall" in the first line, "after the first session thereof," and strike out in the second line the words "in the year," and strike out in the third line the figures "1891," and "on the same day," so that the section shall read: "The sessions of the legislature shall, after the first session thereof, be held biennially, at the capital of the state, commencing on the first Monday after the first day of January, and every second year thereafter, unless a different day shall have been appointed by law, and at other times when convened by the governor."

Mr. MORGAN. That time provides for the first session.

Mr. HEYBURN. The words cannot provide any

time very safely. We do not know when Congress will act on this, and it may be deferred much longer than we think, and, the way it is drawn, there is an arbitrary date fixed, so that it would be for the best there should be no time fixed. Congress will no doubt, or the governor may, provide for the calling of the legislature together for the first time, and after that it will be fixed by law. But the time when the first legislature may be called together is too uncertain to attempt to fix it, it seems to me.

Mr. MORGAN. The section is as it is for this reason. That is about the time our legislature would be convened anyway, if we remain as a territory. If we are admitted into the Union, the governor is authorized by this constitution to call the legislature together at any time he sees fit, and the first session will be after that time is fixed. By the substitute it is not fixed, there is no time fixed for it, for the second time—the following legislature, no time is fixed. Either Congress can appoint a day for the holding of the first session of the legislature, or, if it does not do so, the governor is authorized to convene the legislature at any time within a month if we are admitted, and then the organization comes in 1891, about the time it would come anyway, and every two years thereafter.

Mr. GRAY. I think that should provide that the first session shall be called by the governor; doubtless the enabling act will fix the time; then let that session of the legislature fix the time for future legislatures.

Mr. MORGAN. That is what this bill does.

Mr. GRAY. No, this convenes the first one. I say let the governor, with the enabling act which they will give us with the passage of our constitution, fix the first session of the legislature; and then that session will fix the time of future sessions.

Mr. MORGAN. I would say in reply then that we would have the time for the meeting of the legislature subject to be changed at every meeting of the legislature. I think the time for the meeting of the legislature

ought to be fixed in the constitution. It is easy to have that say, convene every two years, commencing at 1891. If you do not want to fix it at that time, of course that figure can be changed, but I think the constitution should provide that the legislature should meet every two years, the first session of its organization being in 1891. If we should be admitted, any time, the governor under this constitution—the executive department, has the right to call the legislature together for any purpose.

Mr. HEYBURN. Mr. Chairman, the amendment was suggested to my mind this morning, and when we were passing on this executive bill, it was provided that the governor in calling this legislature together must specify the objects, and it can consider no other questions than those specified, and with the additional provision, in another bill already acted on, that it can only remain in session twenty days. Now that is impracticable, unless we release the legislature from that restriction, because the first one convened in this city will have considerable business to do, and it would be impossible for the governor in calling it together to specify with safety all that it may be called upon to consider, because there may be many other things devolved upon it by reason of any action of Congress that may be taken in regard to our admission; and for that reason I sought to exempt this first legislature from the provisions of the executive bill, that it can only be called to transact that business specified in the call, and also the limitation of twenty days upon it, and it seemed to me it met every requirement confronting us. Now if that amendment is adopted, when the constitution is adopted and accepted by Congress and we become a state, the governor may call this legislature together without any limitations, and it goes into session, and it may be in January, or next August, or it may be in October, but it goes into session, and after that I leave the provision of the gentleman, that after that it shall assemble bien-

nially, as he has drawn it. It seemed to me that was necessary.

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

Mr. MAYHEW. Your idea, Judge Morgan, is, that the governor convenes an extraordinary session of the legislature?

Mr. MORGAN. Certainly.

Mr. MAYHEW. But in all extraordinary sessions the governor is compelled, or rather required, that he shall specify for what purpose it shall be convened.

Mr. MORGAN. Yes.

Mr. MAYHEW. But at the organization of any legislature, the governor delivers a biennial message to that legislature upon the general subjects.

Mr. MORGAN. I understand it in that way, generally.

SECRETARY reads Mr. Heyburn's amendment.

Mr. MORGAN. That does not fix the time for convening the first legislature; it still remains with the governor.

Mr. HEYBURN. That is the intention, to leave it with the governor or Congress.

Mr. MORGAN. So that it is left exactly as it was.

Mr. CLAGGETT. I have drawn another section. (Reading). "The first session of the legislature shall be held at such time as may be prescribed by Congress, and if no time shall be prescribed by Congress, then at such time as the governor may designate by proclamation. The first legislature shall fix the date for the sessions of the legislature thereafter, which will be once every two years."

Mr. HEYBURN. I would suggest to the mover that he should relieve the legislature from the terms imposed on the ordinary call of the governor, because it has been restricted. You simply say the governor may call it, and if he calls it, he calls it with the restrictions, unless you release him from them.

Mr. CLAGGETT. We have got to be admitted by

an act of Congress, and that act of Congress will no doubt prescribe the time for the first call of the legislature. But in case the act of Congress does not prescribe the time, then the governor may fix the time himself by proclamation, if the state has been admitted into the Union, and then the first legislature that convenes under the proclamation of the governor or at the time prescribed by Congress, fixes the regular date for the organization.

Mr. HEYBURN. I think the gentleman misunderstood me. That is good so far as it goes, but suppose the governor does have to call that extraordinary session. Then, unless some exception is made, it will have to be subject to the limitation of twenty days and the consideration of the questions specified in the call.

Mr. MORGAN. I should like to hear the proposed amendment read.

SECRETARY reads: The first session of the legislature shall be held at such time as may be prescribed by Congress. If no time shall be prescribed by Congress, then at such time after the admission of the state as the governor may designate by proclamation. The first legislature shall fix the date for the regular session thereafter, which shall be once every two years.

Mr. MORGAN. The amendment, or proposed amendment, makes no change from this section other than the first part of it. If Congress fixes the time for the first sitting of the legislature, it does not interfere with this section, nor does this section interfere with that law, and could not if it wanted to. In any case the governor can call the session together, notwithstanding this section, as I before stated. That disposes of the first two points offered in the amendment of the gentleman from Shoshone, Mr. Claggett. The objection to the latter part of the amendment is the one stated before, that the legislature would be continually changing the time for the convening of its own sessions, which I think should be fixed in the constitution, and placed in this law to be on the first Monday after the first day

of January in 1891, and every two years thereafter.

Mr. HEYBURN. I would like to ask the gentleman a question. Would it not be a fact, if that section is unchanged, that the legislature could not meet before the first day of January, 1891?

Mr. MORGAN. I think so; except on the special call of the governor.

Mr. CLAGGETT. Certainly.

Mr. MORGAN. It can meet in either of the cases suggested, in the amendment suggested by the gentleman from Shoshone, Mr. Claggett, if Congress should authorize the meeting of it, it certainly can meet notwithstanding this, and if the governor should call a session, it can meet; this does not interfere with it.

Mr. HEYBURN. Suppose Congress fails to call it, and the governor calls it, then it will be subject to the restrictions of the business for which he calls it.

Mr. MORGAN. No doubt, but the amendment does not change this section at all, except it leaves it for the legislature hereafter to fix the time of their meeting.

Mr. GRAY. Suppose the call of the governor or by Congress was in 1890, the latter part of the season. Perhaps we need no session then, and you only put the state to the expense of a session in 1891. If Congress granted it, it might grant us the authorization to transact all kinds of business, and then we will have to come again in 1891.

Mr. MORGAN. That is the only objection I have heard to this section yet, Mr. Gray.

Mr. GRAY. Thanks.

Mr. MORGAN. That we would have a session so soon after the one authorized by Congress. If any gentleman has a proposition to fix that any better than this, I would be glad to listen to it. I think if we are admitted at all at this session of Congress, we will be admitted next winter, which will give abundant time for the meeting of the legislature. We must have a meeting of the legislature almost immediately upon our admission into the Union.

Mr. HEYBURN. How will we get it?

Mr. MORGAN. Either by the act of Congress or a call of the governor.

Mr. HEYBURN. If it is by a call of the governor, won't it be improper under these restrictions to transact any other business than that specified?

Mr. MORGAN. Yes.

Mr. MAYHEW. How are you going to call the legislature when you haven't got any provision for its election? How do you know who are going to be elected? I would like to call my friend's attention to this matter; if this constitution is to be approved by Congress, Congress will provide for the election of members of the legislature. I don't think we can provide in this constitution for the election of members of the legislature; but the enabling act itself, after Congress approves this constitution and admits us into the Union, will provide for the election of members of the legislature, and perhaps all state officers—state officers and members of the legislature. Now Congress may admit us by an enabling act, and authorize the governor to call an election for the election of certain officers. I don't see how it will follow that Congress will call an election in this territory or in this state for the election of state officers and members of the legislature immediately. It would be like the enabling acts in Montana and Washington and Dakota; it makes the election for members of the legislature late this fall, may be way in October.

Mr. MORGAN. Then there would be no necessity for the session to meet until the first Monday in January in 1891.

Mr. MAYHEW. That might be, but we can't determine when that session shall be.

Mr. MORGAN. There certainly can't be an election called this fall in October.

Mr. MAYHEW. No, I don't think we are going to be admitted so quick as all that. Congress does not meet until December.

The CHAIR. The question is on the amendment offered by Mr. Heyburn.

SECRETARY reads Mr. Heyburn's amendment. (Vote).

The CHAIR. The ayes seem to have it; the amendment is adopted. The question is now upon the amendment as amended. There is a substitute offered by the gentleman from Shoshone, Mr. Claggett. The question now is upon the adoption of the substitute offered by Mr. Claggett.

Mr. CLAGGETT. I call for the reading of the substitute.

SECRETARY reads Mr. Claggett's substitute.

The CHAIR. It is moved and seconded that the substitute as read be adopted. (Vote). The motion to adopt the substitute is lost. The question now recurs on the adoption of the section as amended. (Vote and carried). The section is adopted.

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

The CHAIR. The chair is in doubt. (Rising vote shows 26 ayes, 15 nays.) The motion is carried and the committee rises.

CONVENTION IN SESSION.

President in the Chair.

Mr. McCONNELL. Mr. President, your committee of the Whole have had under consideration the report of the committee on Legislative Department, have come to no conclusion, and ask leave to sit again.

It is moved and seconded that the report of the committee be adopted. (Carried).

Mr. POE. I move that when we adjourn, or that when we take a recess, it be until half past seven this evening. (Seconded).

Mr. MAYHEW. I offer the amendment, that we adjourn until Monday morning at 10:00 o'clock.

The CHAIR. It is moved and seconded that we

now take a recess until half past seven o'clock; to that there is an amendment made that we adjourn until ten o'clock Monday morning. (Vote). The chair is in doubt. (Rising vote shows ayes 19, nays 26). The motion to adjourn is lost. The question recurs upon the motion to take a recess until half past seven.

Mr. BEATTY. I move to amend by making it eight o'clock.

Mr. MAYHEW. I move to amend to make it nine o'clock.

Mr. GRAY. I second the amendment of nine o'clock.

Mr. AINSLIE. Too late; it would mean that we would be here until twelve o'clock at night. I move to amend by making it seven o'clock.

Mr. HEYBURN. I second the last motion.

The CHAIR. The last motion was at the tail end of four or five, and it is out of order to go beyond the second. The first is to take a recess until half past seven; to that there is an amendment to take a recess until eight; the last is to take a recess until nine. (Vote). The chair's in doubt. Those in favor of taking a recess until nine o'clock rise and be counted. (Rising vote shows 14). The motion is lost. Those in favor of taking a recess until eight o'clock say aye. (Vote). The chair's in doubt. (Rising vote shows 25 ayes, 20 nays). The motion is carried, and the convention will take a recess until eight o'clock this evening.

Evening Session 8:00 P. M.

Convention called to order by the President.

APPOINTMENT OF RECEPTION COMMITTEE.

The CHAIR. In response to the invitation that was extended by the convention to the congressional party at Salt Lake, the chair received this afternoon the following reply: (Reading) "Our party heartily accepts the invitation of the constitutional convention extended from Gov. Shoup, and will spend Tuesday in Boise City. Signed, George E. Dorsey." This morning a motion was made for the appointment of a committee of three

for the reception of this party, in case they should accept this invitation. The chair did not appoint the committee at the time, not knowing whether the gentlemen would be here or not. The motion was to the effect that the governor should be the chairman of the committee, and I will now appoint the mover of the motion, Mr. Ainslie of Boise, Mr. Reid of Nez Perce and Mr. Hays of Owyhee, as the three members of that committee.

Mr. AINSLIE. Mr. President, I desire to make a motion, if the house concurs, and that is, that the president of this convention be added to that committee. (Seconded).

The CHAIR. It is moved and seconded that the president act with the committee. (Carried).

LEAVES OF ABSENCE.

Mr. CAVANAH. Mr. President, I ask for indefinite leave of absence. I ask for unanimous consent for it.

The CHAIR. Is there any objection?

Mr. CLARK. The reasons should be given.

Mr. CAVANAH. Well, I have a case in court that comes up next Tuesday, and my counsel, Mr. R. Z. Johnson, says it is absolutely necessary that I should be there; otherwise I would not ask such leave.

The CHAIR. Is there any objection? If not, indefinite leave of absence will be granted the member by the convention.

Mr. HAMMELL. I am requested by Major W. W. Woods of Shoshone to ask indefinite leave of absence for him, on account of physical disability.

The CHAIR. Is there any objection? If not, it will be so ordered.

COMMITTEE CHANGE.

Mr. CAVANAH. Mr. President, I would ask unanimous consent that my colleague, Mr. Sinnott, should be placed on the committee on Apportionment. Our county should be represented, and on account of being away myself, I think it is nothing but right.

The CHAIR. If there is no objection it will be so ordered. Is there any objection? It is so ordered.

Mr. MORGAN. I move that the convention now go into committee of the Whole upon the report of the committee on Legislative Department.

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

COMMITTEE OF THE WHOLE.

Mr. McCONNELL in the Chair.

ARTICLE 3—LEGISLATIVE DEPARTMENT.

The CHAIR. The first thing now is Section 10 (9).

SECTION 9.

SECRETARY reads Section 10 (9), and it is moved and seconded that it be adopted. Carried.

SECTION 10.

SECRETARY reads Section 11 (10), and it is moved and seconded that the same be adopted. Carried.

SECTION 11.

SECRETARY reads Section 12 (11), and it is moved and seconded that the same be adopted.

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

SECRETARY reads: If any person elected, or who is a member of either house of the legislature, offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into the legislature, in consideration of or upon condition that any other person elected to or who is a member of the same legislature, will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced into such legislature, the person making such offer or promise is guilty of solicitation of bribery, and if any such person give his vote or influence in favor of or against any measure pending in such legislature, upon condition that any other member will give, or promise or assent

to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced into such legislature, or in consideration that any other member has given his vote or influence for or against any other measure or proposition in such legislature, he is guilty of bribery. Any such person who is guilty of either of such offenses shall be expelled and shall not thereafter be eligible to the legislature or the right of suffrage, and on conviction of such offense in the courts shall be liable to such further penalty as may be prescribed by law.

Mr. BEATTY. Mr. Chairman, I move the adoption of that amendment. (Seconded).

The CHAIR. It is moved and seconded that the amendment be adopted. Are you ready for the question?

Mr. BEATTY. Mr. Chairman, that is not original with me; it was first used in the constitution of the state of Colorado.¹ Montana,² in the constitution prepared by it some time ago adopted the same section, and I know of nothing that is more important than some provision of that kind, either in the constitution or in the laws of the territory. Any one who has ever attended a legislature in this territory, or in any other state or territory, knows that the great bane of legislation is this manner of obtaining votes, and the evil that results from it—it results in more corruption than any other thing that exists in legislation. This is intended to guard against that, and while members perhaps could not catch exactly the drift of it, I say it is carefully worded—is worded from this Colorado section. There are one or two little changes in phraseology, but the sense is precisely the same as in Colorado. I think it is an important section, especially if it results in the end designed, which is to stop that pernicious practice of trading votes and making combines upon dif-

¹—Sec. 40, Art. 5, Colo. Const. 1876.

²—Sec. 41, Art. 5, Mont. Const. 1889.

ferent bills. It is not worth while for me to spend the time of men who know anything about legislative bodies and what is done there, and the evils that result from it.

Mr. SWEET. Mr. Chairman, I did not perhaps catch that amendment, or substitute, or whatever it may be. It seems to me it went to the extent of forbidding members or candidates for the legislature from pledging to the people their support of men or measures. If it goes to that extent, it certainly should not be adopted.

Mr. REID. Before the gentleman proceeds with his argument, I would like to have the substitute read.

SECRETARY reads Mr. Beatty's amendment again.

Mr. MORGAN. Mr. Chairman, I would be in favor of this section as the law of the land in this territory, or in this state after it is admitted. I think it ought to be upon the statutes, but I think it is a thing that should not go into the constitution. If we are going to undertake to embody all the criminal law, there are many other offenses that are equally heinous, and perhaps more so than this, which we might embody in the constitution, but I don't think this is the place for those laws which we put upon the statute book. Another reason is, the section is so long and so worded that it is impossible for us to tell anything about it; it needs careful consideration, and should be referred to some committee. If it is desired to put it in this legislative department, it should have been referred to the committee on Legislative Department, or some other committee should have carefully examined the bill, to see if it could not have been made up in briefer terms and better language. I am opposed to its being introduced into the constitution at any rate, for the reason that I think it should be in the law and not in the constitution.

Mr. REID. I agree with the gentleman that the amendment ought not to go in here but to go in the statute law, but I would like to ask him a question as to Section 12 (11). Each house may, with the concurrence of two-thirds of all the members, expel a member.

I would ask the chairman if he does not think the cause should be stated there—for good cause shown? With that broad statement there, for any reason, they might attack a man and expel him with only a two-thirds majority against him. Suppose the vote for United States senator was depending upon the expulsion of a man—one vote—on some question of that sort; for some slight cause they might fire the member out. Without this statement there they might do it—just two-thirds; it does not state any cause. Shouldn't there be some limit on that?

Mr. MORGAN. I think the experience of the country is that it is a very difficult thing to expel a member from either house of the legislature in any of the states of the Union. It is a thing that is hardly ever done, I believe, in general, excepting on conviction of a most heinous offense.

Mr. REID. I would ask the gentleman if in the last senatorial fight—I am reminded of it by the member from Shoshone—if a member was not expelled and it turned the scales in Indiana?

Mr. MORGAN. In Indiana?

Mr. REID. Yes, that is what brings it to my mind. They needed one vote and expelled a man without any cause, or slight cause, and turned the tie. I think some limit should be placed upon that.

Mr. MORGAN. It may be so, but I will suggest the difficulty in changing the section in the manner proposed; if we say “for good cause,” then the section will be as broad as it is now.

Mr. REID. I ask the gentleman to accept this amendment: “Each house may, with the concurrence of two-thirds of all the members, for good cause shown, expel a member.”

The CHAIR. We are discussing the substitute.

Mr. REID. That is an inquiry.

The CHAIR. The substitute is offered by the gentleman from Alturas.

Mr. REID. That is an amendment to the main prop-

osition; that and the main proposition all came up together.

The CHAIR. Well, go on.

Mr. MORGAN. I don't understand.

Mr. REID. I ask the gentleman to accept this amendment: "Each house may, for good cause shown, with the concurrence of two-thirds," etc.

Mr. MORGAN. Yes, I have no objections to that at all.

Mr. REID. I move that that be incorporated, after the words "Each house may," "for good cause shown." It was the amendment suggested by the gentleman from Shoshone to cover the case.

Mr. BEATTY. I have a word further to say in support of the amendment I have offered. It has been suggested that this ought to be enacted by the legislature. Well, possibly it ought to be, but it never will be if it is left to the legislature. Legislatures are not in the habit of enacting provisions of that kind to tie themselves up. It has been found wise to insert it in constitutions in other states, and I can see no objection to its going in here. It is not any more legislation than hundreds of other provisions that we have put in the constitution. I want it put in here by this convention, because I believe it will not be put in by the legislature, and I believe it is an important measure to have incorporated in the laws in some place, to bind the legislature. Now the suggestion that the gentleman from Bingham makes, that it is long, is not a valid objection—it is lengthy, and so forth. As to its length, it is I think, pretty near as brief as we can make it if we worked at it all night. It is not my language; it is the language of the convention of the state of Colorado, and I did not introduce it carelessly. I copied it, after looking over the section as carefully as I could, in the short time I have had. There are one or two words changed. Instead of using the words "legislative assembly," I have used the word "legislature," and there are a few little changes of that kind, but nothing to change in any part of the

sense of the section. I believe it is an important section, and I believe if it is embodied it may prevent a great deal of unjust legislation and a great deal of trading votes in the legislature.

Mr. AINSLIE. I think the proposition suggested by the gentleman from Alturas would meet the approbation of almost any man. I don't think you could get a legislature together in this territory that was mean enough, or had so many mean members in it, that they would not adopt that provision, and I think members of the legislature voting against it would be sufficient cause for them to be expelled, but I think, like the gentleman from Bingham, that the proper place for it is in the code of criminal procedure. If we are going to put in all these little provisions proposed, we shall have a constitution so long that Congress will never get through reading it, and I believe in making a constitution as short as possible. I don't think any person will object to any such provision. A man that will object to it is not fit to sit in the legislature.

Mr. HEYBURN. I would make the inquiry whether or not it would be competent for the legislature in a criminal statute to prescribe the terms on which the legislature should expel one of its own members.

Mr. AINSLIE. Of course it can. It defines what is and what is not a crime.

Mr. HEYBURN. But they are not vested with that kind of judicial power or powers over their own members, and they are not a criminal court.

Mr. AINSLIE. They can expel a member after he has committed any crime, without this provision here you have brought into the committee. They can make a crime and a member of the legislature a criminal, the same as anybody else in the territory. The criminal laws act with equal application over all classes.

Mr. CLAGGETT. As stated by the gentleman from Alturas, any one who has attended a legislative body or any member of them, recognizes the fact that bad legislation is had by this system of trading votes. Combines

are formed upon local measures. It has not only blocked the wheels of legislation, but assists most powerfully in the passage of bad legislation of all sorts. I don't know that I need to go any further than to refer to the last session of the legislature, where combines upon the question of the division of Alturas county and the promises of votes absolutely destroyed, to all intents and purposes, the labor of four years of legislation. I know that it was so two years ago, for I was here and saw the proceedings of the legislature. It may be claimed, just as it is claimed by the gentleman from Boise, that any legislature would adopt it. I have seen substantially this matter presented to two or three legislatures, and I have seen it scouted with scorn every time. If a legislature has a good many crooks in it, they won't have it, and if it is made up of honest men, they feel that the presentation of such a bill is an imputation upon their integrity. And another thing I have noticed, and that is, that there are a large number of members of the legislature who look upon votes in legislation substantially as they look upon votes in the convention, that is, a thing which they can trade off in any way they see fit, and it needs just such a provision as this in the constitution to teach them and call their attention to the fact that it is really a perversion of the powers given to them as members of the legislature. One thing is certain, in my judgment, that if you put it in the constitution it will be a very great check to one of the most dangerous evils today so far as legislation is concerned.

Mr. HEYBURN. I desire to say to the convention what I said in substance in the inquiry to the gentleman. I am not convinced that it is competent for the legislature to enact a criminal statute and call upon the legislature to enforce it in its own body. Criminal statutes are enforced in courts organized for that purpose, and it would be a vain and useless thing, I think, for the legislature to enact a criminal statute and say that the legislature itself should enforce it. I believe

that the proper place to provide for this thing is in the constitution. I am in hearty accord with the gentleman who proposed that measure. I do not believe that legislatures would enforce it, or that they would ever adopt it, rather, or that they would enforce it if it was in the nature of a criminal statute.

Mr. MORGAN. One word more with reference to this matter. I have no objections to this clause whatever. As I stated before, I think it is not the proper place to put it in the constitution. But I do not think there is any question but that the legislature would have the right to pass a law; inasmuch as they have the right to judge upon the qualifications of their own members and of the causes for which they should expel a member, they would certainly have the right to pass a law denominating a crime, upon the commission of which the legislature should expel a member. I do not think there is any question about that at all; so long as it relates to the conduct of one of their own members they would certainly have a right to enforce a law of that kind. As to the question whether a legislature can be obtained that would pass a law of that kind, I don't know, I'm sure. I think, as Mr. Ainslie has well said, that any member who would vote against such a provision in the statute would certainly be left at home in the next legislature; I think there is no question about that.

There is another serious objection I have had, and that is that this expression of the one reason for the expulsion of a member—would the question immediately arise whether the expression of the cause does not exclude every other cause, when you put it in this section, so that the legislature would be practically prohibited from the expulsion of a member for any cause excepting the one named in this section?

If however the convention desires to insert this as a part of the constitution, it must recommend that it be referred to a committee. It is certainly three times as long as it ought to be to express anything there is in

it. I think with a little time it can be made much briefer than it is.

The CHAIR. The question is upon the adoption of the amendment to Section 12 (11). (Vote). The chair's in doubt. (Rising vote shows ayes 30, nays 12). The amendment is adopted. The question now recurs upon the adoption of the section as amended. (Vote). The ayes have it; the section is adopted.

SECTION 12.

SECRETARY reads Section 13 (12), and it is moved and seconded that the same be adopted. (Vote and carried).

SECTION 13.

SECRETARY reads Section 14 (13), and it is moved and seconded that the same be adopted. Carried.

The SECRETARY. Mr. Chairman, there was a matter sent up by Mr. Parker which the page laid on my desk; it was intended as an amendment to Section 14 (13).

Mr. CLARK. My friend from Idaho county is quite deaf, and finds it quite difficult to put in his motion. The chair did not see him and he did not speak loud enough.

Mr. REID. I ask unanimous consent that his amendment be now considered.

The CHAIR. The section has already been adopted.

Mr. MORGAN. I call for the reading of it.

SECRETARY reads: To amend Section 13 (12) by leaving out all in line 2 after the word "openly," and insert "during the sittings of the legislature."

Mr. HOWE. I move to reconsider the vote whereby the section was adopted. (Seconded and vote).

The CHAIR. The chair's in doubt. (Rising vote shows ayes 15, nays 17). The motion is lost.

SECTION STRICKEN OUT.

SECRETARY reads Section 15, and it is moved and seconded that the same be adopted.

Mr. AINSLIE. That provision will not stand the test of the courts.

Mr. REID. I move that the section be stricken out. It is unconstitutional. (Seconded).

Mr. SWEET. I hope that no part of the criminal code will be stricken out of this constitution. (Laughter).

The CHAIR. As many as are in favor of striking out Section 15, say aye. (Vote and carried).

SECTION 14.

SECRETARY reads Section 16 (14), and it is moved and seconded that the same be adopted.

Mr. PARKER. I have sent up an amendment.

SECRETARY reads: To amend section 16 (14) by adding after the word "representative" in line 3, "Bills appropriating money from the state treasury shall require a majority in both houses of two-thirds of the members present."

The CHAIR. Is there any second to the adoption of it?

Mr. HOWE. I second it.

Mr. REID. Let's hear the amendment again.

SECRETARY reads Mr. Parker's amendment again. Cries of "Question."

The CHAIR. As many as are in favor of the adoption of the amendment say aye. Absolute silence. (Laughter.) Those opposed no. (Vote.) The motion is lost. The question recurs upon the adoption of section 16 (14). (Vote.) It is carried; the section is adopted.

SECTION 15.

SECRETARY reads Section 17 (15) and it is moved and seconded that the same be adopted.

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Strike out in the 9th line all after the word "members" and substitute the word "present."

Mr. HEYBURN, Mr. Chairman, I understand that

we have provided that a quorum shall consist of a majority of the members present. This provides that a majority of all persons elected shall concur in every bill. It is an unusual provision in a legislature, I think, contrary to every rule. A majority of a quorum present is sufficient to pass a bill, I think.

The CHAIR. Are you ready for the question?

Mr. MORGAN. I think the section ought to be adopted as it reads. I think a majority of all elected to each house ought to concur in the passage of each bill. I call the attention of the gentleman to the result of his amendment. We have concluded to have 18 members in the senate. Ten will constitute a quorum for the transaction of business. Six of the ten can pass any bill, so that six, one-third——

Mr. HEYBURN. Suppose, under the authority given, it does attempt to do business with a bare quorum; what business could it do?

Mr. MORGAN. Any business.

Mr. HEYBURN. It could not pass a bill, because a quorum is not a majority of all members elected.

Mr. MORGAN. But in the bill as it is——

Mr. HEYBURN. Yes, so I think it is a useless bill.

Mr. MORGAN. They could pass a bill to a vote with six, one-third of the members elected.

Mr. HEYBURN. That is the way all legislative bodies act, I understand.

The CHAIR. The question is on the amendment offered by the gentleman from Shoshone. (Vote.) The chair is in doubt. (Rising vote shows ayes 31, nays 10.) The amendment is carried. The question now recurs on the adoption of section 17 (15) as amended. It is moved and seconded that it be adopted. (Vote and carried.)

SECTION 16.

SECRETARY reads Section 18 (16) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 17.

SECRETARY reads Section 19 (17) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 18.

SECRETARY reads Section 20 (18), and it is moved and seconded that it be adopted.

Mr. AINSLIE. It will cause a great deal of trouble and expense to the state. It says "No act shall be revised or amended by mere reference to its title," etc. It will cause a great deal of expense in public printing, it seems to me. To amend half a dozen sections in the act of civil procedure, it would be an unnecessary expense to the state to go to printing the whole act of civil procedure. I think that can be arranged with less expense in the way of printing.

Mr. MORGAN. I would say that this provision is now in force in our state. It was put in by the revisers after very careful consideration. The difficulty of amending acts by their title is, it leaves it uncertain as to what act was amended, leaves it for the court to construe, and makes it difficult to find. If the section as amended is stated and published in full there is no difficulty about it then. The statute book that we have now in force is numbered for this purpose, leaving certain numbers out to be added to the chapters, and it is a provision of our present statute, and I think a very wise one.

Mr. POE. Mr. Chairman, it seems to me if this is adopted, that if we undertake to amend one section of the act of civil procedure, or criminal procedure, it would require the publication of the whole act to get that one amendment in. It seems to me that by referring to the title of the section, and stating that title so and so, chapter so and so, is amended by a certain statement, would be sufficient. But I don't think there is any necessity for it at all, and the statute can regulate that, and I move to amend it by striking the whole of that section out. (Seconded.)

Mr. MORGAN. You will notice in the second line of that section that it only provides for the publication of the section that is amended, when there is only one section amended.

Mr. POE. I don't understand it that way.

SECTION 16.

Mr. AINSLIE. I will call the attention of the gentleman from Bingham to section 18, (16) which was not in force at the time of the adoption of the Revised Statutes of Idaho, and that does away with the necessity of section 20. Section 18 (16) provides; "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Now if a member of the legislature cannot draft a bill to amend an act, and provide as closely for its identification as it is in section 18, (16) he has no business in the legislature.

Mr. BEATTY. Mr. Chairman, I hope that the provision, if not exactly like this one, yet one somewhat similar will be adopted. The great difficulty with legislation in Idaho has been that the legislature has simply passed an act, put in it what it pleased, and at the end repealed everything in conflict with that. Now laws are made not for lawyers alone; they are made for the people. A lawyer can take that act and find what particular statute has been repealed by it, but I defy any layman to take up the acts of the state of Idaho and tell what the laws are. Now the committee on Revision, which undertook to revise the statutes a few years ago, put those statutes, as you are aware, in sections, and they embodied a provision in those statutes that they should be amended section by section, respectively, as passed and something of that kind should be retained. Otherwise, when legislatures meet, they will go ahead and put in an act what they please, and at the end of it say they repeal everything in conflict with that. That throws the old statutes in a few years into utter confusion, and you are compelled again to appoint another committee on revision to revise the old statutes to find out what the laws are. Now I believe always the laws should be so drawn that the layman shall understand what the laws are, and not

have to go to an attorney and pay him five dollars or a hundred dollars to tell him what the laws are. If something like this provision is put into the constitution, it will require legislatures in amending a law to refer to it so that you may understand what the law means. But I am inclined to think the word "acts" should be stricken out, and that it should apply to sections, so that when any section is amended that will be repeated, and that will meet the difficulty. We all know of private acts passed by the last legislature. Now if you wish to amend some act of that kind under this provision you will have to repeat the whole act, and I suggest that it be amended to confine it to the section.

The CHAIR. If you have an amendment, prepare your amendment and send it up.

Mr. REID. While the gentleman is writing his amendment, I will call the attention of the committee to these two sections 18 (16) and 20, (18) taken together. They are going to cause the state a great deal of unnecessary expense in the way of public printing in that way. I will illustrate it. The legislature meets and wants to amend the code of civil procedure. Some member will introduce a bill, and it will be referred to the committee on Judiciary. Now it is usual for that committee, when amendments are proposed to the act of civil procedure, by one act, to propose they become one bill, and all be printed as one bill and incorporated in the general law, and it is the business of lawyers to find out and see what amendments are made. Under this section 18 (16) which you have adopted, you can embrace but one subject in the bill. It has got to go through several revisions and printings, and you have got to pay the expense incident to all of it, and when you get down here you have to reproduce every one of those acts as sections every time you amend it, and giving the measure out to the printer,—all those matters would take, you will find, three-fourths of the session of every legislature on account of those two sections.

Mr. ALLEN. I think the trouble began in section

17, (15) which says, "Any bill" and so forth. I think if we are going to cure it, we should go back to the origin of this difficulty. The legislature have some discretion.

Mr. REID. I will add to what the gentleman says that all this is a matter either for the code or the work of the legislature themselves. It does not belong to the constitution; it is statute law.

Mr. MORGAN. These statutes, or the same sections, were introduced into the constitution of the state of Illinois at the time they drafted a new constitution in 1870.¹ I did not get them from that constitution, but they are adopted there, and I will explain the reason why they are adopted in this new constitution. It had been found to be the case in these log-rolling schemes in the legislature, to which reference has been made here, that they would embrace a dozen bills in one act, by getting together and agreeing upon what bills they would pass; they would pass a whole batch of them together in what was called an omnibus bill. In that way they would get through the legislature that which never ought to have been enacted into statute, because they would get such a combination that nobody could resist it,—every fellow that wanted a bill passed would agree with every other fellow and put it in the omnibus bill and pass it all together.

Now with reference to section 18, (16) the object of that is this: Another difficulty has arisen. They would conceal provisions in a bill relating to one subject,—they would conceal provisions relating to an entirely different subject, and the members of the house or senate, looking over the bill hastily, would not see that they had concealed provisions not belonging to it at all, and in that way they could enact that which, if expressed in plain terms in its title, the members would not vote for. That was done in regard to the abuse which was sought to be covered by this provision. The provision in section 18,

¹—Art. 4, Sec. 13, Ill. Const. 1870.

(16) does not refer to the same matter as the one in section 20, (18) at all,—doesn't refer to it. It simply means this; that when a bill is drafted for the purpose of enacting a statute the title of the bill shall express the substance of it, the subject upon which it treats, so that the attention of the members of the legislature shall be called to the subject which is under discussion and which it is proposed to enact into a law. But if the title does not express the whole subject embraced in the bill, as I said before, they would conceal other measures that ought never to be enacted and that members of the legislature would not vote for, and I regard it as a very important provision. Now section 20, (18) is to cure another defect, as Mr. Beatty has well said. If you revise sections of a statute at various sessions of the legislature simply by enacting a bill which strikes out any particular word of the section, or two or three words, after three or four sessions of the legislature it is almost impossible to tell what the statutes are; but if every time a section is amended it is required to be stated in full in the act as amended, it then goes into the new statute as amended, and the old section is repealed, and everybody at a glance can tell how the section has been changed and what the law is. Otherwise you will have to hire a lawyer or two to tell you what the laws are, and ten chances to one he will get it wrong himself after there has been four or five sessions of the legislature.

SECTION 18.

Mr. AINSLIE. I have an amendment.

SECRETARY reads: Amend section 20, (18) so as to make line 2 read; "The section as amended shall be set forth and published at full length."

Mr. MORGAN. I have no objections to that.

Mr. AINSLIE. I think that covers the whole thing.

Mr. MORGAN. I accept the amendment. Would it be well to change the word "act" in the first line also?

Mr. AINSLIE. No. It will then read; "No act shall be revised or amended by mere reference to its title,

but the section as amended shall be set forth and published at full length.”

Mr. MORGAN. I have no objections to it.

Mr. HOWE. I would like to ask if this would apply to the codification of the laws.

Mr. MORGAN. O, certainly; they would then publish it at any rate.

Mr. HOWE. Then I think it would make a volume so voluminous that it could not very well be handled; if in the codification every section that had been amended should be repeated it would make too voluminous a volume altogether.

Mr. MORGAN. I think you misapprehend the section, Mr. Howe. The section as amended, the one amended, is to be published in full in the act. There would be nothing published except the laws that were in force.

The CHAIR. By consent, I understand, section 20, (18) has been amended. The question now recurs on the adoption of the section as amended. (Vote.) The chair is in doubt. (Rising vote, but result not declared.) The ayes have it, the section is adopted.

SECTION 19.

SECRETARY reads Section 21, (19).

Mr. REID. I would ask the chairman of the committee if line 37 of this section will conflict with the judiciary report, wherein they allow special courts for incorporated cities and towns.

Mr. MORGAN. No sir; not at all.

Mr. REID. Mr. Chairman, I move to strike out lines 37 and 38. I think that conflicts; (it is page 8). My reason for doing it is this. This prohibits the legislature from passing,—I read; “The legislature shall not pass local or special laws in any of the following enumerated cases: Creating offices or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts.” Now in the judiciary report it is provided that the legislature may establish criminal courts in incorporated cities and

towns. For instance, suppose Boise City or Hailey, or any city in this territory becomes a large city, of 15, 25, or 50,000 inhabitants or less, and it becomes necessary to establish a city criminal court with a judge; under the provisions of lines 37 and 38 I do not believe that can be established, and the very clause,—the very protection the committee seems to desire by enacting these two lines is secured in the judiciary act. It says that the laws to govern all the courts shall be uniform throughout the territory, and I think this will conflict with the power we propose to give in the judiciary act to the legislature to establish criminal and other police courts in the incorporated cities and towns.

(Motion seconded.)

Mr. MORGAN. I think the gentleman's objection is not well taken to the section.

Mr. REID. Before the gentleman proceeds, if he will just accept an amendment to strike out "cities," I think it will meet it.

Mr. MORGAN. I think we can obviate the difficulty in this way. It is a very common thing in other states which have a provision of this kind in their constitutions. If a law is passed authorizing all cities of a certain size or certain population to establish city courts, it covers it, and all cities, as fast as they get to be that size can adopt the provision; and of course it is not necessary to establish police or city courts unless in cities and towns where they are necessary, that have attained a population which requires the establishment of these courts. Then the legislature can say that all cities of a certain size or certain population may establish police courts, and they can go on and regulate the jurisdiction of these courts, specify the duties and qualifications of the judges, and everything. It is then a general law, and applies to all towns and cities that have arrived at that point where they need them. They can make this the number of population.

Mr. REID. If the gentleman will allow me to interrupt him, that is the very language we had in the

judiciary act. We made it uniform, except that the legislature may, in incorporated cities and towns, provide for special courts. I do not believe that it ought to be applied to a certain number of inhabitants or property. I think whenever,—no matter what the size of the town is or the city,—whenever there is special need or necessity requires, that there should be a special court for the protection of law and order, and when it is made to appear to the legislature that that necessity exists, they ought to establish a court there, and that is the reason I want cities stricken out here, because they could not establish a special court.

Mr. MORGAN. This covers a great deal of ground that is not covered by the judiciary act; creating offices and prescribing the powers and duties of officers in counties, and so forth.

Mr. REID. I will withdraw my motion to strike it out, if he will allow the word "cities" to be stricken from that.

Mr. MORGAN. Then it would allow the legislature to pass special laws creating offices, prescribing the powers and duties of officers in cities.

Mr. REID. Will the gentleman accept this amendment; except as otherwise provided in this constitution, at the end of the line?

Mr. MORGAN. Yes, I think that is all right.

Mr. REID. "Except as in this constitution otherwise provided."

Mr. MORGAN. Yes.

The CHAIR. Mr. Parker has an amendment.

SECRETARY reads: Amend section 21; (19) after the word "state" in line 12, insert: "Provided, that the legislature may appropriate money for the purpose of constructing or aiding in the construction of wagon roads through two or more counties, where the necessity for such exists."

Mr. CLARK. Mr. Chairman, the gentleman from Idaho will address you upon this amendment. While he is doing so I wish the chairman of the committee would

look over the amendment and see if it is in proper form. The gentleman from Idaho has devoted his best energies for two years to the great project for a wagon road from some point on the Oregon Short Line, through Washington, Boise and Idaho counties to Lewiston. An enabling act was passed through the last legislature, and some action is before Congress in regard to the matter, and he does not wish his project forbidden in this constitution, and I trust it will be examined carefully by the chairman.

Mr. PARKER. I hope the gentlemen of the convention will give my amendment good consideration. We have a great deal of development in the central territory of this state of Idaho, which requires to be opened up by wagon roads. My county, Idaho, is a county 200 miles in extent east and west, and 200 miles in extent north and south. Its western boundary is the Snake river, and its eastern boundary is the mountains, taking the whole extent of the Territory, and it is bounded on the north by the Clearwater river, and on the south by Custer, Lemhi and Washington counties, and in all that great stretch of rich country there is only about 90 miles of wagon road. As I have stated, we are bounded on the south by Custer, Lemhi, Washington and Boise counties, and the only way citizens of those counties can get into Idaho is to travel hundreds of miles over a wagon road. Now during your last session of the legislature a bill passed¹ appropriating \$50,000 of the territorial money to build a wagon road to connect northern and southern Idaho,—one of the most necessary and beneficial acts the legislature ever enacted. But under the act of Congress which prohibits the territorial legislature from increasing their indebtedness, we had to go to Congress to get that appropriation ratified, and it is now pending. But if this section 21 (19) as reported by the committee is adopted we shall be in a worse condition than we are now, because as a territory we can

¹—Sess. Laws 1889, p. 30.

appropriate money and get Congress to ratify it, but under this clause of section 21 (19) we are absolutely prohibited from so doing, and I say therefore that my amendment is necessary to give the state legislature authority to appropriate money to such objects, when we are no longer in a state of territorial vassalage like we are today.

Mr. MORGAN. I do not think the amendment should be adopted. One of the objects of this section is to prevent different parts of the state, or persons interested in different parts of the state, from going to the legislature and lobbying through bills for the purpose of appropriating money for laying out, altering or changing roads in different parts of the territory. There is a continual pulling at the legislature to get them to appropriate money to those purposes. The legislature might appropriate money generally for the construction of roads throughout the territory, but to appropriate money for the construction of particular roads in particular parts of the territory,—I do not think it is a good plan, and therefore I am opposed to the amendment.

Mr. ALLEN. I think there are some good reasons why the material interests of this territory should have some care taken of them. The criminal code and the civil code are discussed, until it is almost beyond the reach of any lawyer in this body to know where they are going or where they are stopping at the present time. I think there should be some latitude given to the legislature and the people themselves, that, when such important measures come up, that the people of the territory have the right to express their will through the legislature, and I shall move at the proper time to strike out another line which covers the same proposition, which limits the power of the legislature to grant charters or privileges of any character specially for the construction of bridges or toll-roads or ferries. I think this is a time when we should consider these things in a little broader and more liberal spirit than this section

indicates, and that we should have some faith in the fairness and intelligence of the legislature.

Mr. SWEET. As I understand it, there is to be a provision in this constitution which prohibits the state from contracting any indebtedness beyond a certain amount, or from levying taxes beyond a certain amount. That provision will certainly guard the state against unreasonable indebtedness, and it seems to me, Mr. Chairman, that we have a provision here that does go almost too far to protect the people of this state against internal improvements.

Mr. REID. I would ask the gentleman from Latah also, if the inhibition put in the article on municipal corporations does not prevent the state from contributing to private enterprises?

Mr. SWEET. I am not familiar with that. I know the report of the committee on Finance provides that we shall not levy taxes beyond a certain amount, and that certainly protects the state from unreasonable indebtedness, and I do think we ought not to place ourselves in the position that we could not open up these mountain counties.

Mr. AINSLIE. It seems to me that the amendment proposed by the gentleman from Idaho county is covered by 10, 11 and 12, already passed. I understand this road is going to be built at the expense of the state; it is going to be state property, and would not come under this inhibition here.

The CHAIR. The question is upon the adoption of the amendment. As many as are in favor of it say aye. (Not one.) Those opposed no. (Vote.) The motion is lost.

Mr. ALLEN. I move to strike out line 34. I will state one reason——

The CHAIR. It is moved to strike out line 34.

Mr. ALLEN. I will state as one reason that possibly this may be changed, by a little investigation, that we have within the borders of Idaho one of the most scenic points on this continent,—that of Shoshone Falls. Now

it is to be hoped that a bridge or other facilities may be secured, but it is beyond the reach of an ordinary individual,—there is no profit in it,—yet by a charter which might be desirable to secure through the legislature for that purpose, it is presumed at least that some company may be secured to build it and make the improvements, and I think they ought to have the right to grant a ferry or toll-bridge at that point.

The CHAIR. The question is upon the motion to strike out line 34. All in favor of the motion say aye. (Allen, aye.) Those opposed no. (Vote.) The motion is lost.

The question now recurs upon the motion to adopt the section.

Mr. HOWE. Lines 37 and 38 have not been acted upon.

Mr. REID. Yes, he accepted the amendment.

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

SECRETARY reads: Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts, except as in this constitution otherwise provided.

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

SECTION 20.

SECRETARY reads Sec. 22 (20), and it is moved and seconded that it be adopted. (Carried.)

SECTION STRICKEN OUT.

SECRETARY reads Section 23.

Mr. REID. That matter is provided for in the judiciary act, which provides that parties having claims against the state may bring their suits in the supreme court, and they shall ascertain and report them to the legislature, and I move to strike out the section. (Put to vote and carried.)

The CHAIR. It is stricken out.

SECTION 21.

SECRETARY reads Section 24 (21), and it is moved and seconded that the same be adopted. (Carried.)

SECTION STRICKEN OUT.

SECRETARY reads Section 25.

Mr. HEYBURN. I would like to ask the chairman of the committee, is not that the ordinary rule in the conduct of legislative bodies, without enacting it into the constitution? It seems to me an ordinary rule of order.

Mr. MORGAN. I think it is ordinarily the rule, but I am not certain upon that subject. I think it ought to go into the constitution itself.

Mr. HEYBURN. It seems to me it is about enough to have the legislature in, without having the rules of legislative bodies in there. I move to strike that section out.

The CHAIR. It is moved and seconded that the same be stricken out. (Vote.) The chair's in doubt. (Rising vote shows 19 ayes, 18 noes.)

The CHAIR. The motion is carried; the motion prevails and the section is stricken out.

Mr. SWEET. Mr. Chairman, I think the majority voted against the striking of this section out. I think the majority are opposed to striking anything out of that bill.

The CHAIR. Well, it is a matter of taking another vote.

Mr. HEYBURN. I rise to a point of order, Mr. Chairman; it has been voted upon and the vote announced.

Mr. HOWE. I move to reconsider.

Mr. REID. I move to lay that motion on the table.

Mr. HEYBURN. I second the motion.

The CHAIR. It has been moved and seconded to lay the motion to reconsider on the table.

Mr. REID. I withdraw the motion to lay on the

table, in courtesy to my colleague, if he wants to have it heard.

Mr. HEYBURN. I rise to the point of order that the——

The CHAIR. It is moved and seconded that the motion to strike out section 25,—that the motion by which section 25 was stricken out be reconsidered.

Mr. REID. The gentleman, (Mr. HEYBURN) rose to a point of order, and the gentleman, (Mr. HOWE) who moved the reconsideration voted in the negative, and was not entitled to make it.

The CHAIR. If that is a fact, that he voted in the negative, the point is well taken.

Mr. HOWE. I voted in the negative. (Laughter.)

SECTION 22.

SECRETARY reads section 26 (22), and it is moved and seconded that the same be adopted. (Carried.)

SECTION 23.

SECRETARY reads Section 27 (23).

Mr. MORGAN. I move to strike out the words "legislative assembly" in the first line of the section, and insert the word "legislature."

Mr. SINNOTT. I move to strike out the words "three hundred" in the third line, and insert the words "four hundred and twenty." The reason is that this constitution already provides for a legislature of the number of 84 members.

The CHAIR. Is there a second to the motion? (Seconded.)

The CHAIR. It is moved and seconded that——

Mr. SINNOTT. Mr. Chairman, we have provided eventually a number of 84 senators and representatives altogether, which would at five dollars a day amount to \$420.

Mr. REID. The way it reads now, all the money they will get, the whole business, shall be \$420 a day. "The legislature shall receive for their services a sum not exceeding five dollars a day from the commencement of the session, but such pay shall not exceed the aggre-

gate sum of \$420." That is the way that is, with the amendment put in; it says originally "legislative assembly."

The CHAIR. I did not hear any second to his amendment as offered.

Mr. REID. Well, I will second it now.

The CHAIR. But in the meantime there is another motion made and seconded before the house.

Mr. REID. They are both before the house and seconded. I am discussing both amendments together, having obtained the floor for that purpose, and am preparing now to introduce a third, to amend the word "the" to read as "each." It reads that the entire legislature, the members of the legislature, shall receive for their services a sum not exceeding,—it does not say each one of them, but the whole of them,—not exceeding five dollars a day from the commencement of the session, but such pay shall not exceed the aggregate sum of \$420 per diem for any one session. If it is left that way I shall be opposed to it.

Mr. HEYBURN. I move an amendment, and I will send it up. I will state to the committee that I move to strike out the word "the," the first word in the section, and insert the word "each," so that it will read; "Each member of the legislative assembly shall receive," etc. and insert "for his services."

The CHAIR. I think it would be in order to put the other motions and amendments first.

Mr. HEYBURN. This is the third amendment to the section; in the third line, after the word "exceed," say "for each member," so that it will read; "but which pay shall not exceed for each member the aggregate of \$420." I will reduce it to writing.

Mr. BEATTY. I move that we select a grammar school teacher for the Legislative Committee hereafter. (Laughter.)

Mr. REID. I amend it by moving that the gentleman from Alturas be made that teacher. (Laughter.)

Mr. SWEET. I believe we have found out at last

what place the gentleman from Alturas is seeking. (Laughter.)

SECRETARY reads: To amend by inserting the word "each" after the word "day" in line 2.

Mr. MORGAN. Read the other amendment, proposed by Mr. Heyburn. If the gentleman from Alturas is to be added to the committee on the subject of grammar, I move that some members be there to tell him what words he shall insert, so that he will know. (Laughter.)

Mr. REID. I ask the chairman to accept the following amendments, in lines 5, 7, 8 and 9. "When convened in extra session by the governor they shall receive each five dollars per day; but no extra session shall continue for a longer period than twenty days. They shall also receive each the sum of ten cents per mile by the usual traveled route. The presiding officers of the legislature shall each by virtue of his office receive an additional sum equal to one-half of his per diem allowance."

The CHAIR. Any objections to the amendment? There are three amendments offered to this section, and under the rule I believe the one offered first has the preference. The gentleman from Elmore, (Mr. SINNOTT), offers to amend by inserting the words "four hundred and twenty" instead of "three hundred" in the third line. Are you ready for the question? (Vote.) The motion is lost.

SECRETARY reads: To amend section 27 (23) by striking out the word "the" in the first line and insert the word "each." Strike out the word "they" in the first line, and insert "his." After the word "exceeding" in the third line, insert "for each member." Insert the word "each" after the word "day" in the second line.

Mr. HEYBURN. I would ask the chairman if this amendment, the last part of it, is good English?

Mr. MORGAN. I would say, Mr. Chairman, that the amendment can be corrected in accordance with the provision we have already adopted, if there should be more members.

Mr. SHOUP. Mr. Chairman, it seems to me these

two sections are a little inconsistent. It is provided that no member shall receive more than \$300 for the entire session,—for a session of 60 days, but the speaker must receive more than \$300.

Mr. MORGAN. Those are construed together.

Mr. HEYBURN. I would suggest a very slight amendment; make the word “member” singular instead of plural.

Mr. MORGAN. The amendment will be accepted.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Shoshone. Are you ready for the question?

Mr. HOWE. Let’s have it read.

SECRETARY reads: To amend section 27 (23) by striking out the word “the” in the first line and insert the word “each.” Strike out the word “they” in the first line and insert “his.” After the word “exceeding” in the third line, insert “for each member.” Insert the word “each” after the word “day” in the second line.

Mr. SHOUP. I move to amend by inserting after the word “member” the words “except the presiding officer.”

Mr. WILSON. I would like to ask the chairman of the committee on Legislative Department if under this provision any mileage is given to the members when convened in regular session. It seems to me to read that they only get mileage when convened in special session.

Mr. MORGAN. They are getting mileage in both. The period cuts off the sentence from the rest.

Mr. HEYBURN. I would call the attention of the chairman of the committee further,—in line 5 the same error we have corrected before also appears. It reads: “When convened in extra session by the governor they shall receive five dollars per diem.”

Mr. REID. I changed that.

The SECRETARY. It has been changed by writing the word “each” after the word “shall” in that line; the word “each” after the word “receive.” “They shall also receive each the sum of ten cents per mile,” and the

word "each" after the word "shall"—"the presiding officers of the legislature shall each, in virtue of his office——"

Mr. BRIGHAM. I am opposed to this amendment, because I am afraid the gentleman has left the word "each" out in several places.

Mr. HEYBURN. Mr. Chairman, I will send up an amendment.

SECRETARY reads: Amend section 27 (23) by inserting after the word "days" in the sixth line the words; "except in the case of the first session of the legislature."

Mr. MORGAN. I have no objections.

Mr. HEYBURN. That makes it conform to what we had earlier in the bill.

Mr. SHOUP. I have an amendment to the amendment of the gentleman from Shoshone.

SECRETARY reads: Insert after the word "member" in the third line the words "except the presiding officers."

The CHAIR. The amendment which was read is an amendment to the amendment offered by the gentleman from Shoshone; is there a motion to adopt it?

Mr. HEYBURN. I accept that amendment.

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

Mr. BEATTY. Mr. Chairman, I am completely lost in the maze of amendments, and if the clerk can read the whole of it, or any of it, I would like to hear it.

The SECRETARY. There is an amendment upon the table, sent up by Mr. Morgan, that has not been acted upon. Strike out the words "Legislative Assembly" in the first line, and insert the word "Legislature."

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

The CHAIR. It is moved and seconded that the amendment just read be adopted. (Vote and carried.) It is adopted.

Mr. MORGAN. Let's have the section read now, as amended.

SECRETARY reads: Each member of the legislature shall receive for his services a sum not exceeding five dollars per day each——

Mr. MORGAN. O, leave that "each" out.

The SECRETARY. Well, gentlemen, you have it just exactly that way. (reading) Insert the word "each" after the word "day."

Mr. HOWE. I move to strike that word out.

The SECRETARY. It reads: Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such pay shall not exceed for each member, in the aggregate three hundred dollars for per diem allowances in any one session.

Mr. SHOUP. I think that is not correct; it should read; "for each member except the presiding officers."

The SECRETARY. Yes, there was another amendment. (reading) Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such such pay shall not exceed for each member, except the presiding officers, in the aggregate three hundred dollars for per diem allowances in any one session. When convened in extra session by the governor they shall each receive five dollars per day, but no extra session shall continue for a longer period than twenty days, except in the case of the first session of the legislature. They shall also receive each the sum of ten cents per mile each way by the usual traveled route. The presiding officers of the legislature shall each by virtue of his office receive an additional compensation equal to one-half his per diem allowance as members.

Mr. MAYHEW. As a member.

The SECRETARY. As a member.

Mr. HEYBURN. I move the adoption of the section as read. (Seconded.)

The CHAIR. The question is upon the adoption of

section 27 (23) as amended. (Vote.) The section is adopted.

SECTION 24.

SECRETARY reads section 28, (24) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 25.

SECRETARY reads section 29, (25) and it is moved and seconded that the same be adopted. (Carried.)

SECTION 26.

SECRETARY reads section 30, (26) and it is moved and seconded that the same be adopted. (Adopted; afterwards stricken out in convention.)

Mr. MORGAN. I now move that the article be adopted as a whole. (Seconded.)

SECTION 8.

Mr. CLAGGETT. Mr. Chairman, I have been sitting here figuring on some things with regard to this legislature, by the action of the house this afternoon. I want to preface these remarks to explain what I mean. We changed the number of senators from 12 to 18, and the members of the house from 24 to 36. Then we have a provision for biennial sessions of the legislature. I have figured up the cost of this legislature, and I find that the pay of members alone every two years will amount to \$16,200.

Mr. MORGAN. For one session?

Mr. CLAGGETT. Yes, for one session. For printing,—the average territorial printing has cost about \$2000, and attaches and the other expenses, with a session of the legislature of even 40 days, or 60 days, amounts to an average of \$2000 more, making an expense of \$21,000 every two years for legislative purposes. Now I want to suggest to the committee this proposition; that two years on general principles is too often to hold a regular session of the legislature. It should

not be held oftener than once in three years, which will diminish this cost by one third; and if we reconsider the vote by which we established the biennial session at two years, and fix it at three, and then adopt the suggestion of the gentleman from Nez Perce to have the senators and members of the house of representatives elected for the same time, and each for three years, and no hold-over senators, we will save one-third of this expense and avoid a great deal of the objection on account of expense that is made to the adoption of this constitution, and for that reason I want to bring the matter before the committee, and offer this resolution. I do not really know where it comes in, but I offer this resolution, that the vote on so much of the sections adopted as established biennial sessions of the legislature, and also so much of the section as adopted as provided for the election of senators for four years and their classification, be reconsidered,—these two questions. If the committee shall upon discussion of this resolution conclude that that reconsideration should be had, the whole matter can be covered by a recommendation that when the committee rise they report the bill back with this resolution attached to it for reconsideration, with instructions to recommend that it be referred to the committee on revision to go over it and change the phraseology and make it fit in wherever in this constitution this provision for three years for the sittings of the legislature and for the election of representatives properly belongs. I offer that resolution for the purpose of getting at the sense of the committee.

Mr. HOWE. I second the amendment.

The CHAIR. What is the resolution?

SECRETARY reads: Mr. Claggett moves to reconsider the vote on so much of the sections adopted as established biennial sessions of the legislature, and also so much of the section adopted as provides for the election of senators for four years and their classification.

Mr. REID. I think the object the gentleman desires to attain can be reached under section 9, (8)—until otherwise provided by legislative enactment, the sessions of the legislature shall be biennial, and so forth. I do not think that in a new territory, where conditions change sometimes in six months, much more in two years, we ought to limit the sessions of the legislature to triennial sessions; I think they ought to be biennial sessions. The governor can only call them together in extraordinary session, and then for a single purpose. We do not know what may take place. The river may be opened up and we may have a boom; new mines may be discovered, new counties desire to be formed, new irrigating ditches, and a great many things that we cannot foresee. I agree with the gentleman that after the law gets settled, and everything of that kind, we shall not need the legislature so often, but as soon as we adopt this constitution, and as soon as it goes into effect, there will be a hundred questions coming up in the application of the law that we do not anticipate or think about now, that we will have to go to the supreme court upon, or that will have to be remedied by legislative enactment, and we have provided that when the judges see any defect, or any remedy necessary, they shall report it to the governor, and he to the legislature. We are starting out to make experiments in some directions. I think we can come back to that by constitutional amendment, or authorize the legislature so that they can do it themselves, and that this object can be obtained by putting at the end of it,—by providing, until provided by other legislative enactment. Just try it a few years, and if we come to find out that we don't want a session every two years, and the people say so, the legislature has power to change it.

The CHAIR. It would be necessary to reconsider the vote.

Mr. REID. Yes, this is out of order, but I am not bound by that; it is the most direct way to get at it. If we raise the point of order, we will waste more time to

get back to it. In that way of proceeding it requires unanimous consent, but I don't think we should put it in the constitution so that we will have to leave it there. Let's try it with biennial sessions, and if we find out,—after experiencing the necessities that spring up, the developments in law, the creating of enterprises, the making of new counties and so forth, with the assurance of bringing in railroads and water by canals,—if we find we do not need our legislature to meet every two years, we can easily raise the issue in political campaigns, and bring members here to provide for quadrennial sessions; but until we get up to the plane of the old states we ought to have biennial sessions. They in all probability like to have them there, where the country has become settled, and do not need them, and there they do not want the law disturbed because they have had it adjudicated, their constitutions and statutes settled, and there is no new development requiring it, but in our state there will be, and I do not think we ought to make a limit, make a hide-bound rule, but leave it to the legislature themselves, and if the people find that they want it, they can easily elect a legislature that will give it to them.

Mr. HEYBURN. I would suggest another difficulty in attempting to consider this at this hour. We have provided the terms of the officers there, that they shall be for the length of time prescribed to suit the sessions of the legislature, that is, two years. Now if the legislatures are not going to meet every two years we have got to change that system all around that has been prescribed in the legislative and judicial bills presented to this body, so that it seems to me to attempt to consider that subject now will take longer than this body can sit here at this time. I therefore move that the committee rise and report progress to the house.

Mr. CLAGGETT. I rise to a point of order. We have a question before us that must be disposed of. My object in the matter is this; I think the expense is too great. I am opposed on principle to biennial sessions of

the legislature, and have been all my life. We have had sessions of the legislature in this territory every two years——

Mr. HEYBURN. I rise to a point of order. There is a motion that the committee rise, which has precedence over other matters.

Mr. CLAGGETT. I think not. The motion to reconsider under the rules takes precedence of everything except a motion to adjourn.

Mr. REID. I make this point; that in the committee of the Whole the only motion we can make is to rise, and that is the same as the motion you make in the house or convention to adjourn, and that takes precedence of everything. And we have to proceed in committee of the Whole, as far as applicable——

Mr. CLAGGETT. The rules provide specifically that a motion to reconsider takes precedence of everything except a motion to adjourn.

The CHAIR. Does not a motion to rise have the same effect as a motion to adjourn?

Mr. CLAGGETT. No sir, it does not.

The CHAIR. Can't I put the motion to adjourn in committee of the whole?

Mr. CLAGGETT. No sir. (reading Rule 39) "A motion to reconsider must be made by a member voting with the prevailing side, and such motion, to be in order, must be made within the next day of actual session of the convention after such vote is taken, and the same shall take precedence of all motions except a motion to adjourn." And we have another rule which is applicable, that those rules applicable to the convention apply to the committee. I rise for the purpose of supporting the suggestion made by the gentleman from Nez Perce. It will have a very great deal to do in assisting the carrying of this constitution, to be able to say that in the constitution, the constitution does not in an iron-clad way fix biennial sessions,—the principle of biennial sessions, but if it is modified in that way, that after the first session of the legislature, the legislature may ex-

tend the time, it will do away with a very great objection to this constitution, and I think the legislature will do it, and it will result in great saving to the people.

Mr. REID. Will the chairman of the committee on Legislative Apportionment,—or the legislative article, accept that amendment?

Mr. MORGAN. I do not understand it.

SECTION 8.

Mr. REID. It should be adopted in section 9. (8) That has already been adopted, but by unanimous consent we can take it up, if the chairman of the committee does not object. It will read this way: "Until otherwise provided by legislative enactment, the sessions of the legislature shall be held biennially," and so forth.

Mr. MORGAN. I have no objections whatever.

Mr. CLAGGETT. That phraseology is not good. That might be construed to say that the legislature may allow a session of the legislature every year. I was going to say "that until otherwise provided" on the theory that if that was ever changed the legislature might provide to extend the regular sessions to every three years. We will put it in shape, that the legislature may provide for holding——

Mr. REID. At the end of the section?

Mr. CLAGGETT. Yes, at the end: Provided, the legislature may hereafter extend the regular sessions of the legislature to three years. The objection to holding a session of the legislature every four years would be this; that if you make it four years, then it will make trouble with regard to our elections of United States senators, because they will fall into classifications of three years each, but you will have to call an extra session of the legislature, or else you must elect a man three years before he takes his seat under the four-year plan; but if you have a session of the legislature every three years it makes no trouble on that score.

Mr. REID. How could we have triennial or quad-

rennial sessions of the legislature with the other officers only two years?

Mr. CLAGGETT. It is a mere matter of phraseology.

Mr. REID. Suppose we let the matter go over and pass the bill; we have agreed upon the principle. We can insert it on its final passage.

Mr. MORGAN. I think the article now should be adopted as a whole, with the understanding that this correction should be made.

The CHAIR. It is moved and seconded that the article be now adopted. Are you ready for the question? (Vote, and the article is adopted.)

The CHAIR. It is moved and seconded that the committee now rise and report progress. (Vote and carried. Committee rises.)

CONVENTION IN SESSION. MR. PRESIDENT IN THE CHAIR.

Mr. McCONNELL. Mr. Chairman, your committee of the Whole desires to report progress, that they have had under consideration the report of the committee on Legislative Department, and report the same back with sundry amendments, and recommend its adoption.

Mr. HEYBURN. I move that the report of the committee be received. (Seconded and carried.)

Mr. MAXEY. I now move that we adjourn until nine o'clock Monday morning.

Mr. AINSLIE. I move to amend by making it ten o'clock Monday morning.

Mr. SHOUP. I move to amend the amendment by making it eight o'clock.

Mr. PRESIDENT. There is no second to the other amendments. It is moved and seconded that the convention now adjourn until nine o'clock Monday morning. (Carried; adjourned.)