

call of the house be suspended. (Vote). The chair is in doubt. (Rising vote; 18 in favor; 10 opposed). The motion to suspend proceedings is carried. The question is now, shall Section 14 be stricken out.

Mr. MAYHEW. I move we take a recess until 8 o'clock.

Mr. SHOUP. I move we adjourn until 9 o'clock tomorrow morning.

Mr. MAYHEW. I accept the amendment.

The CHAIR. The motion of the gentleman from Shoshone was not supported. The question is, shall the convention adjourn until nine o'clock tomorrow morning. (Vote and carried).

## TWENTY-FOURTH DAY.

*August 1, 1889, 9:00 o'Clock A. M.*

Convention called to order by the President.

Prayer by Chaplain Smith.

Roll call:

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

Absent: Andrews, Ballentine, Brigham, Crook, Gray, Hagan, Hammell, Harkness, Hendryx, Howe, Lemp, McMahon, Poe, Pritchard, Robbins, Salisbury, Standrod, Steunenbergh, Stull, Taylor, Woods.

Mr. CAVANAH. I ask to have the record corrected in this respect, that I answered to my name yesterday morning.

The CHAIR. If there are no other corrections the journal will stand approved.

Presentation of petitions and memorials. None.

Reports of standing committees.

## COMMITTEE REPORTS.

Mr. CRUTCHER. The committee on Mines and Mining desires to report.

Mr. SHOUP. The committee on Apportionment desires to report.

SECRETARY reads: Mr. President, your committee on Mines and Mining beg leave to report that in all matters properly coming within the jurisdiction of your committee, consultations have been had and conferences held with the committee on Revenue and Finance, and Manufactures and Irrigation; and such provisions necessary to be inserted in the constitution as relates to mines and mining have been adopted and inserted in the proposed articles to the constitution reported by the said committees. Wherefore, your said committee reports no additional article to the constitution relating to the subject of mines and mining. Respectfully submitted. J. F. Crutcher, Chairman.

The CHAIR. If there are no objections the report will be received.

SECRETARY reads: Mr. President, the Apportionment committee respectfully submits the following report. James M. Shoup, Chairman.

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

Mr. BEATTY. Mr. President, I move that the committee on Apportionment be required to attach to their report the schedule showing the number of votes in each county upon which this apportionment is based, and that that be printed with the report, similar to the schedule attached to the report of the committee on Finance. We would like to know just the number of votes upon which this apportionment is based. (Seconded).

Put to vote and carried.

Mr. WHITTON. Mr. President, the secretary read the county of Latah as two members; it has three.

The SECRETARY. The County of Latah, two members, is the way it is written here.



Mr. SHOUP. There was so much confusion back here that I was unable to hear what the gentleman from Alturas said.

Mr. WHITTON. I said the county of Latah had three members instead of two representatives, unless it was changed.

Mr. SHOUP. Now is not the proper time to discuss this bill. It will be discussed after it is laid over and printed.

Mr. HASBROUCK. The committee on Engrossment is ready to report.

SECRETARY reads: Mr. President, your committee on Engrossed Articles of the Constitution have the honor to report that they have carefully examined the following articles, viz: Seat of Government, Public Institutions, Buildings and Grounds, Public and Private Corporations, and Labor, and find the same correctly engrossed. Hasbrouck, Chairman.

The CHAIR. The secretary will read the reports which went over until this morning, in their order.

SECRETARY reads the report of the Committee on State Government, Public Institutions, Buildings and Grounds.

#### ARTICLE X. ADOPTED.

The CHAIR. The question is upon the final reading of the article on State Government, Public Institutions, Buildings and Grounds. The secretary will call the roll.

Roll call:

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—46.

Nays: Mayhew—1.

And the article was adopted and referred to the

committee on Revision and Enrollment to be incorporated in the constitution.

#### ARTICLE XI. ADOPTED.

SECRETARY reads the report of the committee on Public and Private Corporations.

The question being on the adoption of the article on Public and Private Corporations, the secretary called the roll.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—47.

Nays: None.

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

#### ARTICLE XIII.—IMMIGRATION AND LABOR.

SECRETARY reads number 15 (13), the article on Labor.

#### SECTION 8.

Mr. ARMSTRONG. Mr. President, I have an additional section to offer to the Labor article.

Mr. MAYHEW. I make the point of order, that it is too late to offer an amendment.

Mr. REID. It was agreed the other day when this bill was put on its final passage, the salary should be put in, and this was passed over by unanimous consent at that time.

The CHAIR. If there is no objection the secretary will read it.

SECRETARY reads: The Commissioner of Immigration, Labor and Statistics shall perform such duties



and receive such compensation as may be prescribed by law.

Moved and seconded that the same be adopted.

Mr. REID. The duties are stated specifically, and Section 7 requires a board of arbitration. It may be necessary, and the legislature may want, to put him on the board of arbitration. Having prescribed his duties here, I think that would limit them.

The CHAIR. It is moved and seconded that the amendment offered by the gentleman from Logan be inserted at the end of the article as an additional section.

Put to vote and carried.

Mr. MAYHEW. The question is now whether that bill does not require to be engrossed.

Mr. REID. I ask unanimous consent that it be referred to the committee on Revision without further engrossment.

The SECRETARY. The engrossing clerk can write that right on the end of the article here.

Mr. REID. I move that it be put on its final passage and be considered engrossed. (Seconded).

Mr. CLARK. Mr. President, please have that additional section read.

SECRETARY reads the section as set forth above.

Roll call on adoption of the article:

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Underwood, Vineyard, Whitton, Wilson, Mr. President—49.

Nays: None.

And the article was adopted.

#### ARTICLE I., SECTION 14.

The CHAIR. The regular order of business and the special business is finished for the day. The matter now

before the convention consists of the unfinished business of yesterday, namely, the consideration of the article on Bill of Rights, Section 14.

Mr. SHOUP. Mr. President, I do not wish to take up the time of the convention in discussing this article or to go into the merits of the article. It was discussed two days in committee of the Whole, and I have no doubt every member of the convention has made up his mind as to how he will vote on this section. The question, however, has been repeatedly raised here that this section is an innovation—that it is contrary to all law and to all precedent. I will read a few extracts from some of the constitutions of the states on that question—the right of taking private property for private use in specific or express circumstances. I read from the constitution of Alabama, Art. 1, Sec. 25:

“Provided, however, that laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and for works of internal improvement, the right to establish depots, stations and turnouts, but just compensation shall, in all cases, be first made to the owner.”

I read now from Art. 18, Sec. 14, Constitution of Michigan:

“Private roads may be opened in the manner prescribed by law; but in every case the necessity of the road and the amount of all damages to be sustained by the opening thereof shall be first determined by a jury of freeholders; and such amount, together with the expenses of proceedings, shall be paid by the person or persons to be benefited.”

Constitution of New Jersey:<sup>1</sup>

“Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.”

The constitution of New York, Art. 1, Sec. 7, provides:

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<sup>1</sup>—Art. 4, Sec. 7, Subd. 8.



“Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefitted.”

Art. 1, Sec. 23, Constitution of South Carolina:<sup>1</sup>

“*Provided, however,* That laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and for works of internal improvement, the right to establish depots, stations, turnouts, etc.; but a just compensation shall, in all cases, be first made to the owner.”

The constitution of Colorado<sup>2</sup> contains the following:

“Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes. Private property shall not be taken or damaged, for public or private use, without just compensation.”

I think, Mr. President and gentlemen of the convention, that there is no doubt but what there are precedents for such a law as this. This provision in the constitution of Colorado has been in force for thirteen years. It passed congress and has gone through the test of the courts of Colorado. I think there is no necessity of arguing further on the merits of this section. It is noticed here that nearly every delegate upon this floor, if not every one, who is opposed to this section, has no interest whatever in agriculture. It is a well known fact that it will be impossible to irrigate many sections of land in this territory unless we have some provision in our constitution that the ownership of land at the mouth of a canyon contemplates the rights neces-

<sup>1</sup>—Const. of 1868.

<sup>2</sup>—Art. 2, Secs. 14 and 15.

sary to take the water out in order to get a grade so as to take it on the high bench lands. It has been repeatedly said here, and the impression, as I take it, to be given to members of this convention is, that it will destroy the property of the owner—running a ditch over a man's land. It does nothing of that kind. All that is proposed to do is to compel the owner of land, provided he shall not agree to anything reasonable—to compel him to allow another person the right of way over his land—just ground enough to run his ditch; but it is also provided that he shall be paid every dollar that the land is worth. I think there is no necessity for discussing this section any longer.

Mr. BATTEN. I desire to withdraw my motion to strike out the section, or rather, to move it be struck out—the section as it now reads—and substitute the original section. The original section, as I understand it, is a literal copy of the Colorado section touching this matter, and inasmuch as it has stood the test there for some years and all relates to this vital matter, and there has been some adjudication upon the Colorado constitution in this regard, I am willing to stand by the Colorado constitution. So I offer this in place of my previous motion.

The CHAIR. Is there a second to the substitute?

Mr. BATTEN. I move to strike out Section 14 and substitute the following section to be numbered 14:

“Section 14.<sup>1</sup> Private property shall not be taken for private use unless by consent of the owner except for private ways of necessity and for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes. Private property shall not be taken or damaged for public or private use, without just compensation. Such compensation shall be ascertained in such manner as may be prescribed by law; and until the same shall be paid to the owner or into court for the owner, the property shall not be needlessly disturbed or the proprietary rights of the owner divested.”

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<sup>1</sup>—The first sentence of this proposed section is an exact copy of Sec. 14, Art. 2, Colorado constitution. The remainder is taken from Sec. 15, same article.



That is the original section.

Mr. MAYHEW. We will adopt the original section as printed in the bill.

Mr. SHOUP. Mr. Hammell, member of the committee, drew that section and he said that he copied it verbatim from the Colorado constitution. I have been searching for the last twenty-four hours for the Colorado constitution and have been unable to find it in the city; although I did compare the section at the time to the Colorado constitution, and my recollection is that it is verbatim, but I am not positive on that point. It seems to be impossible to find a copy of it.

The CHAIR. Are there any seconds to the amendment offered by the gentleman from Alturas? (Seconded, seconded.)

The CHAIR. The gentleman from Alturas moves to amend Section 14 by striking same out and substituting the section which has been sent to the secretary's desk.

Mr. MORGAN. Mr. President, as has been well said by Mr. Shoup in his remarks this morning, this section was discussed, re-discussed and discussed again for almost two days, in this convention, and both of these sections were discussed at length. The section that has just now been proposed is a substitute for this one and should go in another place, if at all—under the article on Irrigation.

Mr. BATTEN. If you refer to Section 4 on Irrigation, you will find this subject is virtually covered.

The CHAIR. Section 4 was stricken out for the reason that this section covers the case.

Mr. MORGAN. Gentlemen, you recollect that at adjourning at that time, so far as the irrigation of lands was concerned, that Section 4 in the report of that committee was entirely sufficient, in my opinion, for this purpose. But many gentlemen regard that this should apply to mining interests, and I am told by prominent mining men upon the floor that it is a section absolutely necessary to the interests of miners to

enable them to develop and work their property. It seems to me this has been abundantly discussed, and it is only necessary for me or anyone else to say that it is impossible to irrigate the lands of this territory in these sagebrush districts unless you have some provision about this. If it cannot be done, then the people might as well leave this territory. It is an absolute necessity, and I am told by mining men that it is just as necessary for their benefit as it is for those of the agricultural interests. This property is not to be taken without compensation; nobody is to be unnecessarily injured or damaged. The law must provide a means and method for ascertaining the necessity for going across the lands of another, so that it cannot be done needlessly or unnecessarily. It has to be submitted to a jury or to the court—the necessity for crossing the lands is to be submitted to a court and a full hearing with all the parties interested in court. Not only this, but the law will provide and this section requires that whatever damages shall be assessed must be paid to the owner of the land or property or else paid into court for his use. It seems to me that there ought to be but one opinion with reference to this. The gentleman read some remarks of Judge Cooley with reference to the common law—that the common law was against this thing. Well, we know that. There are a hundred things, I might almost say a thousand things, that are in our statutes today that were forbidden by the common law. The interests of the country as civilization progresses and improvements are made compel us from time to time to enact new laws which are in derogation of the common law and do away entirely with the principles of the common law. So it is with this. Judge Cooley, in writing that, correctly stated the common law with reference to this matter; that private property could only be taken for public use, but we see here an absolute necessity for taking it for private use. It was illustrated, I believe, upon the floor yesterday, the statement was made—it is only necessary to illustrate by making the statement



with reference to this little valley. Suppose Tom Davis or a few other parties who came into this town at an early date, had taken up land across this valley extending to the bench on each side—which they might have done—the country below was open and free—and said simply to the people below, “Here, you can’t improve this land—you can’t take a ditch across my land.” He could have kept ten thousand or perhaps a hundred thousand acres below him upon this stream absolutely in its desert condition. That is no rare thing. You see, gentlemen, this is a necessity. A private person must have the right to take his ditch across the farm of another private person or else the country cannot be improved.

Mr. Morgan in the chair.

(“Question, question.”)

Mr. VINEYARD. The question is, does not this substitute cover the whole ground, as introduced by Mr. Batten? In other words, doesn’t the original section as reported in the Bill of Rights cover everything Judge Morgan asks for? “Private property shall not be taken for private use unless by the consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes or ditches, on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.” That covers the whole case. And that is the Colorado constitution under which they have been living for thirteen years. Under that provision you have this right. You have a right to condemn those lands on the ground of public necessity for the purposes therein specified; to the extent of working mines; to the extent of laying out private ways; to the extent of establishing reservoirs and other basins for public good. The public necessity of the case under this law would justify all these things. Therefore I can’t see why we should go beyond that and say for the veriest whimsical and flimsy pretext that private property may be condemned for private use when everything laid down in this section is covered. I was not here when this original

debate was had on this particular section, but I don't see but what the whole matter is covered, and we are willing, so far as I am concerned, that the section in the Colorado constitution be engrafted in this constitution on this subject. There is no doubt as to the extent of this and the power the legislature would have under it to enact all the necessary laws upon this subject. It extends to every known case of necessity that might arise in a country of this character.

Mr. PYEATT. Please state your objection to this section.

Mr. BEATTY. Mr. President, I thought we had done with this matter. I regret it comes up again in the shape it is now. There is now a proposition to go back to what we condemned and abandon what we had approved. The last gentleman who was upon the floor says he does not want to take property for merely whimsical purposes. Why, the member cannot have examined this section that we had adopted the other day. There is no proposition to take property here for whimsical purposes. If you will read Section 14 as amended, you will see that it must be a matter of necessity that these rights of way are taken—the necessary use of lands for the construction of reservoirs or storage, etc. Now that implies a good deal, Mr. President. It implies that before a party can take the private property of another for use it must be from a matter of necessity; it must be an actual one. It is not taken simply at the whim of anyone; he must have some actual use for it. Now there has been a great deal said here as though some private rights would be interfered with, as though some great damage would be done. Why, gentlemen, the law will provide accurately as to how these rights are to be taken. I can't go and condemn any person's property simply because I want it. It has got to be obtained by a regular process of law. It comes before a court, or before such a jury as the legislature may provide. The opponents of this measure argue and talk as though we were leaving it virtually to one individual



to go and take the property of another without any process of law. That is not the fact at all. Every step will be accurately provided for by the legislature, and every man will be protected in his rights and interests, and it is only because of the actual necessity that this law is urged. Now, gentlemen, you forget one thing. We are referred so often to what has been done in the older states, that there they have no such provision as this. Why? Because the necessity does not exist there. I will point you to instances where the necessity does exist, and where it has been the law for a hundred years. Suppose you have a farm inside of another or other farms; has not the law for a hundred years or more given you the right of way across one farm to another? This law exists in every state in the Union, and I say to you here now that Indiana, Ohio, Virginia, and all the older states, for a hundred years have had just the same law there that they have now with reference to right of way across the land of another. This law is urged because of its actual necessity. They do not need this law back in the eastern states, because they have no irrigation there. But I am not talking alone—I am not advocating this alone for the benefit of those who need the law for irrigation. There is another interest that I am looking after and that I am very much interested in. Many gentlemen who have advocated this law because of its actual necessity for farming and irrigation purposes forget that there is another interest, and that is the mining interest, and I am as much interested in that as I am in the agricultural interest. The two in this country must go together. If you protect one you must protect the other, for I say the two are dependent on each other. Now this section my colleague from Alturas proposes to introduce instead of the one we have adopted—in other words, the section as originally reported—if you will examine it carefully you will see that it makes precious little provision for the mining interests. It leaves out all reference to tunnels, shafts, hoisting works, etc., all

of which are just as essential for mining purposes as your ditches are for agricultural purposes, and I insist that Section 14 as originally reported—whether it be from Colorado or not, I do not care—does not fill the bill as well as the section which we almost unanimously adopted in this matter, and I hope the old section as reported by the committee will not be adopted instead of the new. If you will take it you will see a great difference: (Reading) “Private property shall not be taken for private use, unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural”—now they simply provide for flumes and ditches across the land of another—“mining, milling, domestic, or sanitary purposes.” Where is that right of way for a tunnel? Where is your right of way for hoisting works? Where is your right of way for a road across the mining claim of another and all the easements necessary in developing a mine? This section points almost entirely to agricultural interests, and I say the miners here cannot support that section. The only section they can consistently support is the amended section.

Mr. SHOUP. What is a private way of necessity except for a road? Private ways of necessity are provided for in the original section in line 2.

Mr. BEATTY. Private ways of necessity—well, that may cover a road; it would not cover a shaft; it would not cover hoisting works; it would not cover a tunnel. Possibly it might be construed so, but I am very doubtful about that, and we don't want any doubt about this. We want the mining interests protected just as much as your agricultural interests.

Mr. VINEYARD. Allow me to ask the gentleman if the mining interests cannot be protected in line 4: (Reading) “Private property shall not be taken or damaged for private or public use without just compensation.” Wouldn't that cover it?

Mr. BEATTY. No, sir, not at all.



Mr. MYER. Allow me to inquire if the five-minute rule is being enforced?

The CHAIR. It is not being enforced.

Mr. BEATTY. If my time is up, I shall not intrude. (Cries of "question.").

The CHAIR. The question is upon the adoption of the substitute of the gentleman from Alturas.

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

Mr. CAVANAHAH. I would like to hear the substitute read.

SECRETARY reads:

"Section 14. Private property shall not be taken for private use, unless by consent of the owner, except for private ways of necessity and for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes. Private property shall not be taken or damaged for public or private use, without just compensation. Such compensation shall be ascertained in such manner as may be prescribed by law; and until the same shall be paid to the owner or into court for the owner, the property shall not be needlessly disturbed or the proprietary rights of the owner divested."

Mr. CLAGGETT. Mr. President and gentlemen of the convention: When this question first came up it contained in the Bill of Rights the proposition which has now been offered in the shape of a substitute by the gentleman from Alturas. It was antagonized then by the same gentlemen, so far as my observation goes, as are now insisting upon re-inserting it. It was antagonized upon the broad proposition that it was taking private property for private use, and their criticism in that regard was well taken, for although it is competent for the state in the exercise of its sovereign powers to take private property for private use, and although they may so declare in their organic law, it is so much in violation of the theory or idea of taking private property as known to the common law, as known to precedent, that I for one most strenuously objected to it in that form, in every sense of the term. It is not the taking of private property for private use to say that a right of way shall

be given to any number of people or to a single individual to go across a piece of land in order to utilize the material resources of the state. What is the question which determines the matter of public use? Why, that it is necessary to the interests of the public. It is upon that theory that rights of way for the construction of railroads have been justified and maintained in every state in this Union. You take the right of way from the private individual and give it to the corporation. If you carry your criticism to its legitimate extent, it will amount to this: that you are taking that private right of way—or that right of way consisting of the private property of an individual—and giving it to another corporation or individual, and yet why is it justified? We call it, however, a public use, and why? Because it is necessary that it should be done, in order to promote the general prosperity of the people. That is the test as to what is or what is not a public use. And so will any gentleman who criticises this substitute, will he say it is not an absolute public necessity that the rights of individuals, upon compensation being made, shall be compelled to give way in order to construct a great reservoir or storage basin for the storage or reserving of water, in order to cultivate these great plains? Will anyone say it is not a matter of public necessity and public use to take a mere easement upon the land of another for the construction of a ditch across it? Will anyone say that it is not a public use to provide for the condemnation by a proper act of easements upon mining property necessary to their complete development, and specially when the congress of the United States has declared in specific terms as long ago as 1866<sup>1</sup> that in the absence of legislation by congress, the local legislature shall have power to make rules for the drainage of mines and the working thereof, by establishing all the easements and rights of way and uses necessary to their complete development? That is already the law, and with the exception of three classes, namely, the one in

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<sup>1</sup>—14 U. S. Stat. at Large, p. 252.



regard to storage basins and reservoirs, and the other proposition in regard to any use necessary to the complete development of the material resources of the state, and to preserve the health of its inhabitants, there is not a single thing that is in Section 14 that is not already the law of this territory and has been for years past. Now in this criticism, when gentlemen get up and criticise Section 14, what clause of it do they object to? They do not object to anything in particular; they simply object in a broad and general way. Their first objection was, it was taking private property for private use. Then they objected to the substitute, and when the convention acted upon that theory as to these necessities, as to public uses, and so declared in this article as it now stands, now they wheel around and say they want the old original section back again, and have it there in specific terms in the constitution that private property shall not be taken for private use and only for public use. There is not a single clause in this section as it now stands that is subject to any legitimate criticism, and no legitimate criticism has been made upon it. I again call the attention of the convention to this fact, that this matter has been discussed for two whole days and settled by a vote of 49 to 11, that being the vote in the committee of the Whole upon this section as it not stands; and when the convention is largely dissipated and many gentlemen who heard this matter discussed have gone home, and when this thing was considered as finally settled, it seems to me in good faith to the absentees, if nothing else, that in the absence of some great and overwhelming and true reason to the contrary, the previous action of the convention should be sustained. When the matter came up on the report of the committee on Irrigation the other day, and my friend from Custer insisted on incorporating a copy in Section 4, it was nevertheless stricken out of that report for the reason that it was already incorporated here. But as stated by the gentleman from Alturas, this is not a question of irrigation only; it is a question of

mining development, and it is as absolutely necessary that it should go in for the mining interests as it is for the irrigating interests. I was informed by the gentleman from Custer (MR. SALISBURY) at the close of the last discussion, that it was absolutely necessary for the miners, and for the poorer miners rather than the richer ones. He went on and stated to me that he had patented the whole of the Ramshorn hill, and around the margins of his patented claims were a large number of mine owners, owning small claims, but who had no means of dumping upon his land, and, as he said to me, they should have the right to dump upon his land—I am allowing them to do it now as a matter of neighborhood custom and as a matter of convenience and kindness, but they should have the right to come in and dump on the surface portion of my land, if it is necessary for the working of the mine. Why did congress provide this? Everything that is done under the law—

Mr. MAYHEW. I insist on the rule. I understand we cannot extend the time.

The CHAIR. No, sir, he has more time.

Mr. CLAGGETT. Why did congress make this provision? Why did the territory make the provision that is contained in here in regard to rights of way for the construction of ditches, which you will find in the law of your territory today? Why was it that two years ago there was such a strong discussion in the legislature, participated in and advocated by my distinguished friend from Shoshone county, in a bill which gave these rights of mining easement and so on, for the purpose of storage and the development of the mining resources of the country? If you were to strike out "use," by the way, from this section, and put in "easement," it would be precisely the same thing in principle and in effect.

Mr. REID. I am prepared to vote for this new section that has been put in, if you will strike out one clause in it. I know we may be fooled by the gentleman's eloquence and his appeal, and all that. Colorado



today is as much a mining state as Idaho ever will be, and this committee, by offering Section 14 in the bill, has covered every possible phase of the mining law as it is in the Colorado constitution, but they have put in a clause there that I never will support. I am willing to go as far as any gentleman on this floor to protect mines and agriculture and domestic uses and anything else.

Mr. MORGAN. Will the gentleman describe what it is?

Mr. REID. Yes, I will. I am not going to offer a motion, because the vote is now on the substitute. If that is lost I shall offer an amendment. After providing in line 3 for ditches, flumes and pipes, they say: "for any useful, beneficial or necessary purpose." You can take it for any purpose on God's green earth that you want to take it. Now if you will cut that out, it will provide for agriculture, for mining or anything else, but they have gone and put that clause in there, and they won't find it, I take it, in another constitution in this Union. That is the reason I support the substitute. I will support the original section if they will strike out that clause, but here we are called upon to say that you may take it for any useful, beneficial or necessary purpose.

The CHAIR. Will the gentleman permit me to suggest, it will be noticed in line 2: "the necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, for the rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use for any useful purpose."

Mr. REID. Yes, for any useful, beneficial or necessary purpose, not limited to mines or irrigation, but for any purpose in the world.

The CHAIR. Suppose it is for domestic purposes?

Mr. REID. That is all provided for in the irrigation clause—agriculture is provided for in the irrigation clause. But here we propose to provide for mining.

That is right, but instead of providing to do that they let down the bars and conclude by saying "for any useful, beneficial or necessary purpose." That will give rise to a whole lot of litigation, and when you carry it up into the courts it will be in conflict with the constitution of the United States.

Mr. SHOUP. There is no provision in the irrigation bill for right of way.

Mr. REID. There is a provision here for it. I don't object to any part of it in the world but that particular clause, "for any useful, beneficial or necessary purpose." And I don't propose to be drawn into this thing and vote for it, notwithstanding the gentleman's appeal. I take it there are as many away opposed to it as there are that were in favor of it. But if you gentlemen who have been through this vain struggle—for a week or ten days it has been a proposition that has been one of difficulty to deal with, and for quite good reason—after getting the Colorado constitution, and we are afforded an opportunity to compare each line, if you strike that clause out, then I am willing to have it in the constitution—the fourteenth section as originally reported, or I am willing to have it as it is now, because they are both, in substance, the Colorado constitution. I think the last section goes a little farther than the other and is the better, if you strike out this clause. As the question is upon the adoption of the substitute I shall vote for it, and I shall vote to strike out that clause, "for any useful or beneficial purpose;" then you have all the protection you want for mining, agriculture or anything else; but I don't think the members should be held down to use such broad and sweeping terms as "useful, beneficial or necessary purpose." Who is to say it is a beneficial purpose? Necessary to what? Useful to whom? You may consider any sort of thing, and all a man has to say is that it is necessary or beneficial, and no matter what the damage to his neighbor is he can carry through his project. I say it is in violation of the constitution of the



United States, and the convention knows we have made innovations enough.

Mr. McCONNELL. I want to ask the gentleman a question. What could be done in that way that would damage anybody, if it was for a useful or beneficial purpose?

Mr. HEYBURN. Take out the comma after "useful."

Mr. REID. Yes, take the comma out, and this would limit it to mining. There is no argument made here for anything but mining. We have protected irrigation in another clause. No gentleman will go further than I will to protect mining, but without jeopardizing any part of our development here.

Mr. McCONNELL. What damage could be done to any person's place by taking water across it for a useful purpose?

Mr. BEATTY. I desire to ask Mr. Reid a question; whether, if you were to construe the clause as you propose, there is any provision left in the section by which you can convey water across the land of another for placer mining purposes. I am not personally interested in that, but would like your understanding of it.

Mr. REID. I think the second line covers it; that is the reason I voted for it—the right of way for the construction of canals—the latter part of the second line.

Mr. BEATTY. I would ask you, Mr. Reid, if that clause does not all refer to "purposes of irrigation,"—"the necessary use of lands for the construction of reservoirs or storage basins for the purposes of irrigation"?

Mr. REID. No, the disjunctive conjunction is there, you see. This, too; "or for the drainage of mines or the working thereof."

(Cries of "question.")

Mr. HAMPTON. I am opposed to the substitute for the very reason that my friend from Nez Perce seems to be in favor of it. He says he is in favor of

it because it restricts the operation of this part of the constitution to mining and agriculture. I propose to consider that part which relates to any other useful or beneficial purpose, and leave the parts about mines and agriculture. That is the very reason why the constitution of Colorado is not what we want here; it is too narrow; it is not broad enough. We want something that will cover every industry. We don't want the legislature to favor agriculture and mining alone. It seems to be the argument of the gentlemen here who represent the mining districts that this legislation, or this part of the constitution will be in favor of maintaining the rights of the agricultural districts alone, but such is not the case. The language of the section proposed to be adopted, as amended in committee of the Whole, is broad; it covers everything, and that is the reason I am in favor of it, and that is the reason I believe every gentleman should be in favor of it. But there is a phase of this question that seems to have been overlooked in the discussion. It is that which has come up in California and has given rise to a great amount of litigation. It has been found in the courts there, and has been decided in the courts, that riparian rights, that is, the rights of the old common law, obtained in California, and that the system of appropriation which has grown up on our Pacific coast did not prohibit riparian rights, and so it does not. But the constitution of California has a clause that provides that private property may be taken for public use, and under that section the courts have held that riparian rights can be taken away and can be applied to a great extent to the more beneficial use which is provided for by appropriation. It is well known that the old doctrine of riparian rights to a great extent has been against this doctrine of appropriation. It has been said that men who have settled on a stream and have acquired riparian rights have been enabled, as they have been in California and other territories, to entirely do away or in other words prohibit the very execution of the law of appro-



priation.. Now, sir, this will cover the ground. It has been decided, I say, in the courts of California, as all attorneys on the floor will remember, that the rights which have been acquired under the old riparian system have been held to be subject to be condemned to private use, and water may be taken to supply the needs of an irrigating community where it might otherwise be cut off. That is the reason I am in favor of this part.

Gentlemen on the floor have made out a very strained and peculiar kind of argument. It was said yesterday—and the statement seemed to have had a great deal of effect upon the convention—that an honorable and distinguished member of this convention has left the convention because he was disgusted with a vote of this convention. Now I say, gentlemen, that this either reflects upon the gentleman himself, or it is unjust to him to make such a statement here. If any gentleman of this convention is so imbued with the importance of his own judgment that he will forget his duties to the state and leave this convention for some particular idea of his, which may be a pet idea, after it has been sat down upon by the convention, it is fair at least to say that it is not wholly creditable to him. But I believe the gentleman has been misrepresented to some extent. If possibly he made such a remark in the heat of his excitement, it is unfair, almost childish, for a member of this convention to get up and make an argument on that kind of proposition, and unfair to him to make such a statement as coming from him, because it might be a mistake. I never met the gentleman before, but I have seen him in this convention, and I believe him to be a gentleman of ability and discretion. I say it is unfair, both to the gentleman himself, and unfair as an argument to this convention.

The CHAIR. The gentleman's time is up.

Mr. SHOUP. I rise now to explain how I shall vote on this question, and why I shall so vote, as regards this Section 14, or the substitute which is now offered for the original report of the committee. This section

has not been before this convention. Before this section came up the substitute was offered; it was the substitute that was adopted. The whole discussion was upon the substitute, and this Section 14 was not discussed at all in the convention as originally reported by the committee. I have contended all the time that the original report was better than the substitute. The substitute goes entirely too far. There is in effect no end to it, and whenever a case comes in court under this substitute, I think the courts will decide that every use in the world can be made a public use and there is no such thing as a private use, and the word "private" may just as well be stricken out of the English language. How are we ever going to tell when to stop?

Mr. HAMPTON. I rise to a question of order; the gentleman has spoken twice on this question.

Mr. SHOUP. I have only spoken once on this question.

The CHAIR. I think he has only spoken once.

Mr. SHOUP. I have this bill in charge, and I think I should be allowed to proceed, if any gentleman desires to hear me.

Mr. HAMPHON. I withdraw my objection.

Mr. SHOUP. Now, I do not believe that the substitute gives the guarantees the original does. The original section is plainer; but it does not tie it up in any shape or manner whatever, but says for certain things private property can be taken for private use. But the other section does not make any exceptions whatever. It says it can be taken for anything necessary to the complete development all through the state, but I believe, in my opinion, that will ultimately destroy the entire section and it will be of no use whatever. When this question was under discussion in the committee of the Whole, the gentleman from Bingham (MR. MORGAN) arose and asked the gentleman from Shoshone (MR. CLAGGETT) this question: He said; do you think that under this substitute it will be construed that the individual—one individual alone—will have a right of way



across the ranch of another person? He said; I have some doubt about that, but there is a provision in the irrigation bill that effectively covers that case. That was Section 4 in the irrigation bill, which was finally stricken out. I am in favor of the original section, for I believe it is stronger, and the guarantee just what we want and just what is needed for a right of way in individual cases.

The CHAIR. The question is on the adoption of the substitute. (Cries of "question.") As many as—

Mr. MAYHEW. I call for the ayes and nays. (Sec-  
onded.)

Mr. AINSLIE. I shall vote against the substitute and against the proposition incorporated in the bill both, until it is got in better shape.

Roll call.

Yeas: Batten, Chaney, Clark, Heyburn, Jewell, Kinport, Lamoreaux, Mayhew, Pefley, Pierce, Pyeatt, Reid, Shoup, Vineyard—14.

Nays: Ainslie, Allen, Anderson, Armstrong, Beane, Beatty, Bevan, Campbell, Cavanah, Coston, Crutcher, Glidden, Hampton, Harris, Hasbrouck, Hays, Hogan, King, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Pinkham, Savidge, Sinnott, Underwood, Whitton, Wilson, Mr. President—33.

The substitute is lost.

Mr. REID. I offer the following amendment. (Sec-  
onded.)

Mr. SHOUP. I now move the adoption of Section  
14.

The CHAIR. The question is upon the adoption of the amendment offered by the gentleman from Nez Perce; the secretary will read it.

SECRETARY reads: Section 14, line 3; strike out the following: "for any useful, beneficial or necessary purpose."

The CHAIR. You have heard the amendment read; are you—

Mr. BEATTY. I want to ask the gentleman a question before that is put. (Mr. Claggett rises.) I will yield for Judge Claggett.

Mr. CLAGGETT. I simply wish to explain this matter of punctuation in Section 14 as it now stands. (Reading) "The necessary use of lands for the construction of reservoirs or storage basins for the purposes of irrigation." There should be a semi-colon; "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." If my friend from Nez Perce will turn to the decisions of the Pacific coast, he will find that the whole doctrine of the appropriation of water is limited to useful and beneficial purposes under the decisions. If he will turn to the law relating to the appropriation of water, of the territory, and which has been the law from the time this territory was first organized, he will see that the territory of Idaho has provided that all kinds of appropriation may be made for useful and beneficial purposes.<sup>1</sup> If he will turn to the report of the committee on Irrigation, which has already been passed by this convention, he will see that he himself voted for this proposition, namely, that (reading from Section 3, Article XV.) "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied." Now we have read in the decisions of our court—all forty-nine of those here, and in the twenty-five years of legislation on the part of this territory, as well as in the very article which has been adopted by this convention, the doctrine laid down that appropriations of water are limited to useful and necessary purposes. But why give the right to lead it from the point of diversion to the place of use? There is where the law ends, in a nutshell. If water may be appropriated for a useful and beneficial purpose, what is the object of appropriation if you deny to the appropriator a right of way across lands for the purpose of getting that water to the place of use? Read the section again, and the gentleman will see I am correct.

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<sup>1</sup>—Rev. Stat. 1887, Sec. 3156.



A right of way for "ditches, flumes or pipes, to convey water to the place of use, for any useful, beneficial or necessary purpose."

Mr. BEATTY. I would like to ask the mover of this amendment a question; it is this, Mr. Reid. If you strike out that clause; "for any useful, beneficial or necessary purpose," and insert nothing else in lieu of it, what provision will you have in that section for a sawmill, or say any manufacturing establishment, carrying water across the lands of another for that purpose?

Mr. CLAGGETT. Or domestic use.

Mr. BEATTY. Yes, for any purpose; but I refer particularly now to manufacturing interests.

Mr. REID. If you will read the last part of the second line; "for rights of way for the construction of canals," etc., you can carry water over anybody's land for any purpose. I will admit that I have not been practicing quite as long as he has, but I have as much respect for constitutional rights as the distinguished and learned gentleman. In this committee, I had, as several of us have, discussed the matter, and I have heard more than one member of the committee say that by taking the well-considered articles on the rights of irrigation in our statutes prepared by Mr. Johnson,<sup>1</sup> who has been as long as the gentleman engaged in this water right business, we would have had everything this territory or state will need for years to come. In that it is provided for useful and beneficial purposes. But the gentleman goes beyond the question. It is just the very error pointed out to you by the chairman of this convention that you are led to commit now. As a lawyer, if I desired litigation to spring up, and litigation which would be susceptible, from so many considerations, to throw people into trouble and make business for lawyers, I should vote for this, but I am legislating for the good of the people, and I think the matter should be put certain and definite, and you have

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<sup>1</sup>—Referring to Richard Z. Johnson, Chairman of the Commission which codified the Revised Statutes of 1887.

made it so broad it is going to be inoperative, and you destroy the very purpose you wish to achieve. Limit it to what you propose. That is the reason I offer the amendment. I offer it in good faith. I do not want the law to be a nullity on our statute book. I want to say we have made many innovations, and in trying to protect mines we are going to throw down every safeguard surrounding them. I have never seen a better statute—I have studied the question of law carefully, the decisions, too, and no state or territory has any better statutes than we have so far as I have been able to find, and I have read them carefully, and I think if we stick to them we would be all right, but we propose to go further than Colorado. Colorado has more need for irrigation than this state has. Colorado has more mines than this state will ever have, or as many, and yet they find the law there sufficient. It has been construed, their rights are adjudicated, and we have their decisions and statutes to govern us by, and yet we propose to go to an extent here beyond what was ever put in a statute before, and, as the chairman of the committee says, in going that far we shall nullify everything that we are trying to accomplish.

The Chair puts the question.

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

SECRETARY reads: Section 14, line 3, strike out the following: “for any useful, beneficial or necessary purpose.”

The CHAIR. Is the call for the ayes and nays seconded? I did not hear a second.

Mr. CLARK. I second it.

Roll call.

Yeas: Ainslie, Batten, Blake, Campbell, Chaney, Clark, Hasbrouck, Heyburn, Hogan, Jewell, Kinport, Lamoreaux, Mayhew, Pefley, Pyeatt, Reid, Vineyard—17.

Nays: Allen, Anderson, Armstrong, Beane, Beatty, Bevan, Cavanah, Coston, Crutcher, Glidden, Hampton, Harris Hays, King, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Moss, Pierce, Pinkham, Savidge, Sinnott, Shoup, Underwood, Whitton, Wilson, Mr. President—31.



The CHAIR. It is lost. The question is on the adoption of the section.

Mr. AINSLIE. I have an amendment to offer to lines 6 and 7.

SECRETARY reads: Amend by striking out in lines 6 and 7 "or any other use necessary to the complete development of the material resources of the state." Also insert "for" after "or" in line 7.

Mr. AINSLIE. I move the adoption of that amendment. (Seconded.) Now upon that I desire to say a few words. This section as it stands, without this in the sixth and seventh line, covers every imaginable purpose that water can be used for, and the right of eminent domain to condemn private property for public use, or public property for private use, without leaving the words in, can be extended to any useful or beneficial purpose. Now after these rights are given we have covered agriculture and the irrigation interests, and the mining interests, and we have covered any other useful or beneficial or necessary purpose. Now the words proposed to be stricken out, "or any other use necessary to the complete development of the material resources of the state," is a regular rainbow-chasing expression, is something that you cannot give a definition of in any words of the English language, as to what is "the complete development of the material resources of the state," and it just leaves a loop-hole there, as my brother Reid from Nez Perce says, to make more trouble and litigation for lawyers. Now the lawyers have been abused for trying to make litigation for themselves in legislatures as well as in conventions, but I think the question as to what is any use necessary to the complete development of the material resources of the state, is one of the largest and most sweeping in its terms I ever saw embodied in any act of a legislative assembly, or any act of congress, or anything else. I think those words had better be stricken out. We have covered everything else before that, and putting the word "for" in there, it says; "or for the preservation

of the health of its inhabitants." And I think it would do away with a great deal of the objection that has been manifested to this section all the way through.

Mr. PIERCE. This question seems to have been pretty thoroughly discussed, and I move the previous question. (Seconded.)

Mr. AINSLIE. I call for the ayes and nays on that last motion. (Seconded.)

The CHAIR. The chair does not hear a second.

Mr. PIERCE. It was seconded, Mr. President.

Mr. GRAY. I would like to have the amendment read again.

SECRETARY reads: Amend by striking out in lines 6 and 7 "or any other use necessary to the complete development of the material resources of the state." Also insert "for" after "or" in line 7.

The CHAIR. The question is on the adoption of this amendment. (Vote and carried).

Mr. AINSLIE. There was a demand for the ayes and nays. . .

Roll call.

Yeas: Ainslie, Batten, Beane, Blake, Campbell, Chaney, Clark, Gray, Hasbrouck, Heyburn, Hogan, Jewell, Lamoreaux, Mayhew, Morgan, Pefley, Pinkham, Pyeatt, Reid, Shoup, Sweet, Vineyard—22.

Nays: Allen, Anderson, Armstrong, Beatty, Bevan, Cavanah, Coston, Crutcher, Glidden, Hampton, Harris, Hays, King, Kinport, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Moss, Pierce, Sinnott, Underwood, Whitton, Wilson, Mr. President—27.

The CHAIR. The amendment is lost. The question is upon the adoption of Section 14; are you ready for the question? (Cries of "question.")

Mr. MAYHEW. Before we vote on that I desire to have Mr. Claggett answer a question—what he means by "the complete development"? I would like to understand that term. That has been determined by a court?

Mr. CLAGETT. No sir; it is to be adjudicated by the court on the judgment of the people as expressed in the legislature of the state through their representatives. There is no power given under this section



except such powers as are necessary. The word "necessary" being put in the constitution cuts off all need of any interpretation on the part of the legislature, and will enable the court to say as to whether it is or is not necessary, provided the legislature should abuse the power which is here conferred. Section 14 is to arm the state with all the power which is commensurate with its needs.

Mr. MAYHEW. To its complete development?

Mr. CLAGGETT. Yes, to its complete development; provided the use of lands is necessary to that complete development.

Mr. MAYHEW. He has not answered my question. I asked the gentleman if he could tell me what he meant by the complete development of a mine—if you can explain it to me—does it mean to take all the ore out, or—

Mr. CAVANAH. Develop it until it pays.

Mr. MAYHEW. To develop it to such a condition that it can be worked. What is complete development? What is the meaning of the words in the sense intended to be used here? I mean now in a legal sense?

Mr. CLAGGETT. If the gentleman will go back to the law of 1866, the first mining act, he will see that congress provided those words, and we have taken it, word for word, from that act of congress; that it shall have power, in the absence of legislation by congress—the local legislature shall have the power to make rules for the drainage of mines or for the working thereof by means of drainage, and a number of other things, means or easements, necessary to their complete development.<sup>1</sup> What does the act of congress mean? We have been operating under it for nearly twenty-two years?

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<sup>1</sup>—The exact wording of the statute referred to (Sec. 5, 14 U. S. Stat. at Large, p. 252) is as follows: "In the absence of the necessary legislation by congress, the local legislature of any state or territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development."

Mr. AINSLIE. There is nothing of that kind in the Colorado constitution.

Mr. CLAGGETT. There is in the laws of the United States, though.

The CHAIR. The question is in the adoption of Section 14.

Mr. REID. Is this on its final reading?

Mr. MAYHEW. Oh no.

Mr. REID. Has it been engrossed?

The SECRETARY. No sir; it was reported back from the committee of the Whole with amendments and laid on the table and ordered printed with the amendments. It is unfinished business. It has not been engrossed. (Vote.)

The CHAIR. The ayes seem to have it; the ayes have it. Is there a division called for?

Mr. MAYHEW. The ayes and nays are called for—if I can get the support.

The CHAIR. Is it supported?

Mr. SHOUP. It is too late now.

Mr. BEATTY. It is too late now; the vote has been announced.

### SECTION 15.

Section 15 read, and it is moved and seconded that it be adopted.

Mr. HEYBURN. I move that the section be stricken out. I don't see how it got into that shape. It started in a pretty respectable section, but there is nothing definite left to it now. Who is to declare the fraud, and what is the fraud?

Mr. REID. There is the same provision in the North Carolina constitution.<sup>1</sup>

Mr. HEYBURN. It is a very ridiculous one, whatever it is.

Mr. CLAGGETT. If you strike it out, it will be

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<sup>1</sup>—Art. 1, Sec. 16, North Carolina Const., 1876.



competent for the legislature then to provide for imprisonment for debt in all civil cases.

The question was put by the chair. The vote was taken and the section adopted.

#### SECTION 16.

Section 16 read, and it is moved and seconded that it be adopted. Carried.

#### SECTION STRICKEN OUT.

Section 17 was read.

Mr. SHOUP. I thought that section was stricken out.

Mr. CLAGETT. In case that section stands where it is I was going to move to strike it out by unanimous consent in the judiciary bill.

Mr. SHOUP. I thought it was stricken out in this bill.

Mr. HEYBURN. Section 5 was adopted in the judiciary bill yesterday.

Mr. CLAGETT. But it is not the same as this. The object of the bill which it aims at particularly is against the legislature bringing in bills of attainder, and that is not covered by the article in the judiciary bill. The Constitution of the United States simply applies to the United States, but not to the states.

The CHAIR. The motion is out of order unless there is a motion to reconsider. The secretary will read it.

Section 17 was read.

Mr. HEYBURN. I move to strike Section 17 out.

The question was put by the chair and a viva voce vote taken. The chair being in doubt a rising vote was required, the result of which was Yeas 26; Nays 4; and the motion to strike out prevailed.

#### SECTION 18.

Section 18 read, and it is moved and seconded that it be adopted. Carried.

## SECTION 19.

Section 19 read, and it moved and seconded that it be adopted. Carried.

## SECTION 20.

Section 20 read, and it is moved and seconded that it be adopted. Carried.

Mr. CLAGGETT. Before Section 21 is read the gentleman from Boise desires to offer a section, which was passed upon by committee of the Whole, and by mistake the committee has left it out in this printed bill.

Mr. AINSLIE. Section 17 was in the first printed copy of the Declaration of Rights, and amended by the committee of the Whole by changing one word, and it was left out by the printer.

## SECTION 17.

The CHAIR. Does the chair understand that this is a motion offered to amend Section 17?

Mr. AINSLIE. It is one that was put in originally and inadvertently left out. It was in the original bill and adopted by the committee.

SECRETARY reads: "The right of the people to be secure in their persons and houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized."

Mr. SHOUP. That was in the original report, Mr. President.

The CHAIR. Yes, this is offered as an additional section, I suppose.

Mr. AINSLIE. It would have to be so now, inasmuch as it has been left out. Before we put the motion I would suggest that that section be marked Section 21, and that 21 in the reprint be numbered 22, so as to make 21 the last section.



The CHAIR. That can be fixed by the committee on Revision. The question is on the adoption of the section. Put to vote and carried.

The CHAIR. By unanimous consent that section may be placed in the place of Section 17.

Mr. SHOUP. Section 17, which is read now, was stricken out in committee of the Whole, and this other section which the gentleman from Boise proposes was not stricken out, and that is where the mistake occurs.

The CHAIR. If there is no objection it will be inserted in the place of Section 17.

#### SECTION 21.

Section 21 read, and it is moved and seconded that it be adopted. Carried.

#### SECTION 9.

Mr. SHOUP. I ask unanimous consent to offer an amendment to Section 9. I don't think it will give rise to any debate at all.

SECRETARY reads: Add after the word "liberty" in line two, the following: "In all prosecutions for libel the truth thereof may be given in evidence."

Mr. CLAGGETT. The gentleman has got it too narrow. That would authorize the truthful publication from merely scandalous motives, which is the very thing we want to avoid. If the gentleman will offer what was stricken out I shall support it, not because I think it is necessary; but because I think it will be due to the people at large as a law on the subject.

The CHAIR. Do I understand the gentleman from Shoshone to object?

Mr. SHOUP. I do not ask unanimous consent to have it inserted, but I ask unanimous consent to move it as an amendment.

The CHAIR. If there is no objection the gentleman will be permitted to move it as an amendment to the section.

Mr. AINSIE. Let us hear it read first.

SECRETARY reads: Add after the word "liberty" in line 2, Section 9, the following: "In all prosecutions for libel the truth thereof may be given in evidence."

Mr. AINSLIE. You can do that anyway.

The CHAIR. The question before the house—

Mr. SHOUP. The section as originally read was objected to on the ground that it stated that the truth could be given when spoken for justifiable ends. I copied this from the best state in the Union, the state of Missouri.<sup>1</sup>

The question upon the adoption of the amendment was stated by the chair. A viva voce vote was taken and the chair being in doubt a rising vote was required, which resulted as follows: Yeas 6, contrary not counted, but the amendment was lost.

The CHAIR. The question is now on the adoption of the preamble. The secretary will read.

### SECTION 18.

Mr. HAMPTON. I move to reconsider Section 18 for the purpose of striking out the word "sale" in the third line.

Mr. AINSLIE. I object; we shall never get through.

The CHAIR. There is no second to the motion.

Mr. REID. I move the adoption of the article as read.

The CHAIR. The preamble has not yet been adopted.

Mr. REID. I thought that was to be adopted after the constitution.

### ARTICLE I. ADOPTED.

The CHAIR. I think that is correct. The question is upon the adoption of the article as amended. Are you ready for the question?

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

Mr. CLAGGETT. I move that the article, with the exception of the preamble, may be considered as en-

<sup>1</sup>—Art. 2, Sec. 14, Missouri Const., 1875.



grossed and referred to the committee on Revision and Enrollment, simply for the purpose of expediting the business of that committee. (Seconded.)

Mr. REID. I think we would have to suspend the rules for that, and I think we had better take the usual course. It won't take but an hour or so to engross it, and the gentleman can move that it be taken up at two o'clock.

The CHAIR. I am informed by the secretary that the bill is almost engrossed now.

## SECTION 2.

Mr. ALLEN. Mr. President, in Section 2, line 2, the words occur, "to alter, reform or abolish the same whenever they may deem it necessary." I do not find in other constitutions the word "abolish," but only to "alter or reform." I do not really believe it is intended the state shall have the right to abolish its government.

The CHAIR. The chair is of the opinion that it is not properly before the house now.

Mr. CLAGGETT. I move the convention now take up Article XVII. (VII.), the report of the committee on Revenue and Finance.

Mr. SHOUP. I think we can fix a time for the final reading of the bill. I move that we fix a time at nine o'clock tomorrow morning for final reading.

Mr. MAYHEW. Put it at two o'clock this afternoon; it is nearly engrossed.

Mr. SHOUP. Very well, I will accept the amendment. (Put to vote and carried).

## ARTICLE VII.—FINANCE AND REVENUE.

Mr. CLAGGETT. I move now to take up Article XVII. (VII.), the report of the committee on Revenue and Finance. (Seconded.)

Mr. Claggett in the chair.

## SECTION 1.

SECRETARY reads Section 1, and it is moved and

seconded that it be adopted. Carried.

### SECTION 2.

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

Mr. BEATTY. The words "legislative assembly" I suppose the clerk is authorized to change to "legislature."

The CHAIR. Yes, by journal order.

Put to vote and Section 2 is adopted.

### SECTION 3.

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

### SECTION 4.

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

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

SECRETARY reads: I move to amend Section 4 by inserting after the word "taxation" in the third line the words "and the legislature may provide for the exemption of a limited amount of the improvements on land from taxation." (Seconded.)

Mr. MYER. I have an amendment.

Mr. KING. Mr. President, I am sorry I have so little time to speak upon this subject. It is one of the most important subjects that can possibly come before this convention; next to the taking of a man's life and his liberty, is the question of taking his property. It is a question that is agitating every civilized government on the face of the earth. The reputation of men as statesmen have been founded upon this question. It is a question that reaches into every man's pocket, and the right to take a man's earnings from him for the public good, should be so clearly defined that every person may feel satisfied that he is dealt justly by. The laws of this country are as loose, probably, as they are upon any country on the face of the globe. We find that the great bulk of all the valuable property, the most valu-



able property that there is in the United States, is practically exempt from all manner of taxation. The holders of that property do not contribute one solitary cent for the support of this government. I allude to that class of property called bonds, notes, mortgages and stocks. We have an amount of property of that description that exceeds belief; it is almost impossible to conceive of the amount of it. For instance, we have railroad bonds and railroad stocks amounting to over eight thousand millions of dollars. It is the most valuable property there is in the country. Much of that property, if you look at the reports every day in the paper and see the quotations of it, is for sale at from 2 to 50 and 60 and 70 and 80 and 100 per cent premium, and yet it pays no tax. There is a vast amount of bonds that are issued by towns, counties, cities and states, and the school districts, together amounting in the aggregate to over three thousand millions of dollars, drawing a rate of interest far greater than that amount of capital can earn if invested in the ordinary pursuits of life. No portion of that is taxed; you cannot find any instance upon record hardly where you have seen a dollar's worth of these bonds ever taxed. There is besides that in private mortgages the private property of individuals more than that; it is estimated at five thousand million dollars. Five billions of dollars, and scarcely a dollar of that is ever taxed for the support of our government. But in the aggregate what is it? Over eight thousand million dollars of railroad stocks and bonds; over three thousand million dollars of our state, town, county, city and school district bonds; and five thousand million dollars of mortgages upon private property. Why, the income derived from that amount of bonds exceeds the net earnings of every working man that is upon the continent of America. And yet you cannot show me a law that will reach one of them. A year or so before William H. Vanderbilt died he had listed his property according to the laws of the state of New York, that was required to be listed, but he did not list any of his

bonds or stocks. The commissioners of taxation of the city of New York summoned him before that committee with the ablest counsel that could be found and questioned him why he did not list his property? He died about a year after that time, leaving, as it was stated in a paper, \$220,000,000; and the ablest lawyers that could be brought before that committee could find no law by which it could be taxed, nor did he contribute out of that vast wealth as much to the support of the paupers, of the common schools and the support of the government as was paid by many a farmer on forty acres of land. It is very evident that there is something loose in this manner or form of taxation. We attempt in all ways to do fairly. The constitution of the United States provides that the rule of taxation shall be uniform. Then how is it all this vast wealth escapes taxation? The constitution of every state in the Union provides, too, that the rule of taxation shall be uniform. The provisions that have been reported here by the committee on Finance virtually say the same thing. "The legislative assembly shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided." And then it provides for the exemption of certain property. That looks fair and square; it looks as though under that every man could be taxed. I want to call the attention of this convention to the practical workings of that law. I will show you to the satisfaction of every man in this house that that provision is in the exclusive interest of the money-lending class and the speculator in real estate. No living man can derive any benefit from that but that class of men, as I will attempt to show. For instance, here are two pieces of land lying side by side, each a quarter section, equal in value and of equal quality. The assessor comes along under this law, and looks at those quarters and values them at what? He says, "I think they are worth \$500 each."



and so sets it down. There is a tax to be collected upon that land the same as every other quarter section, amounting to \$10, we will say. As long as those two quarter sections remain unimproved each individual will pay \$10 tax, two percent upon the valuation. Now, let us see what will be the effect. One of those owners goes on his land and makes an improvement amounting in value to \$1,000. The tax to be collected upon it is the same as it was before, \$20 on that half section, \$10 upon each. That is, it would be if it were equal; but under the provisions of this law the assessor must assess the improvement amounting to \$1,000. The consequence is what? The land that has not been improved is assessed as it was before, at \$500; the land of the settler is assessed at \$500, and in addition to that, \$1,000 of improvements, so that the assessment upon the property of the settler is then \$1,500, and upon the property of the speculator it is \$500. There has to be \$20 collected upon that, and as a natural consequence the settler has got to pay \$15 and the speculator but \$5. If that is not the correct practical working of this taxation system, then I know nothing about the business, and I have had a good many years experience one time and another in the assessment and collection of taxes. This would be the result. You reduce the tax of the speculator \$5 upon his quarter section, and increase the taxes of the settler \$5. You may think because it is only a couple of instances, a couple of pieces of land, that it would not work so on a large scale; but let us take a township of land in which there are thirty-six sections, and twenty-five of them are rented. That would make 100 quarter sections in that township. The amount—

Mr. BEATTY. I would like to interrupt the gentleman a moment. Mr. President, I desire to call the committee on Revision out into the other room for consultation a few minutes. I will state that I have made two calls and have nobody present. I desire to notify the convention of the amount of work we have before us,

and upon the report of this committee depends our early adjournment, and I would like to have the committee excused immediately, that we may go out and consult upon our work.

Mr. AINSLIE. As the gentleman has been interrupted in his argument, I move that we take a recess until two o'clock. (Seconded.)

Mr. GRAY. Before that motion is put, might I ask the committee on Schedule when they wish to meet?

Motion to adjourn put to vote and carried.

#### AFTERNOON SESSION.

The CHAIR. The special order for this hour is the final reading of the article on Judiciary.

Mr. SHOUP. The committee on Apportionment desires to report.

SECRETARY reads: Mr. President, your committee on Engrossed Articles have the honor to report that they have carefully examined the articles in relation to Judiciary and Declaration of Rights and find the same correctly engrossed. Hasbrouck, Chairman.

The CHAIR. The secretary will read the articles.

#### ARTICLE V., JUDICIARY, ADOPTED.

SECRETARY reads the Judiciary article.

#### SECTION 6.

Mr. WILSON. I would suggest that the words "as hereinafter provided" in line three of Section 6 be stricken out, because we do not provide hereinafter for their election at all. Then the section will read, "The justices of the supreme court shall be elected by the electors of the state at large." I would ask unanimous consent that that be done.

Mr. MAYHEW. I think that had better go to the committee on Revision.

Mr. WILSON. That was intended to refer to Section 18, and we have struck that section out.



The CHAIR. If there is no objection the secretary will strike out the words "as hereinafter provided."

Mr. MAYHEW. It does seem to me, Mr. President, that this article on amounts, etc., ought to be in the report of the committee on Schedule.

The CHAIR. The matter can be re-arranged by the committee on Revision.

Mr. HEYBURN. We were ordered by the convention to report it.

Roll call on the Judiciary article.

Yeas: Ainslie, Anderson, Armstrong, Batten, Beane, Bevan, Blake, Campbell, Cavanah, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Harris, Hasbrouck, Hays, Heyburn, Hogan, Jewell, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Moss, Parker, Pefley, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Vineyard, Whitton, Wilson, Mr. President—47.

Nays: None.

And the article was adopted and referred to the committee on Revision.

#### ARTICLE I. ADOPTED.

SECRETARY reads the article on Bill of Rights.

Roll call upon the adoption of the article.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Blake Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hampton, Hasbrouck, Hays, Hogan, Jewell, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Moss, Pinkham, Pyeatt, Reid, Savidge, Sinnott, Shoup, Sweet, Vineyard, Whitton, Wilson, Mr. President—44.

Nays: Parker, Pefley—2.

Mr. PARKER. I would like to have my vote recorded in the negative as to Section 4 and Section 14 of the Bill of Rights.

The CHAIR. It will be so recorded. The article is adopted, and referred to the committee on Revision and Enrollment.

All the special orders of the hour having been disposed of, the next business before the convention is the

consideration of Article XVII. (VII), being the report of the committee on Revenue and Finance. The secretary will read, beginning with Section 4.

ARTICLE VII.—FINANCE AND REVENUE.

Mr. REID. I make the point of order, that when we adjourned for recess the gentleman from Shoshone was discussing Section 4 and its amendment.

The CHAIR. Yes, but we want the section read.

SECRETARY reads Section 4.

Mr. HAYS. I move that Section 4 be stricken out.

Mr. KING. Mr. President—

A MEMBER. My recollection is the gentleman's time had expired.

Mr. REID. I hope the gentleman will not make that point on the gentleman from Shoshone. He has not taken up much time in this convention, and I know the rule has not been observed, because some gentlemen today have spoken as much as fifteen minutes. I ask the unanimous consent that he be allowed to proceed.

The CHAIR. Is there any objection? There is no objection and the gentleman from Shoshone is entitled to the floor.

SECTION 2.

Mr. KING. Mr. President, the committee on Revenue informs me that the section I was speaking on they will ask leave to withdraw, and the section preceding it. Therefore my amendment will not apply to that, and so I ask leave to offer the same amendment to Section 2, and send it up. It is the same thing and with the same object.

SECRETARY reads: I move to add after the word "tax" in the sixth line of Section 2 the words "provided the legislature may exempt a limited amount of improvements upon land from taxation."

The SECRETARY. Mr. President, the section has been adopted.

The CHAIR. Is there any objection to entertaining this amendment to Section 2, which has been adopted?



There is no objection and the gentleman will proceed.

Mr. KING. Section 2 provides for the taxation of all property at its full value, I presume it means, "except as in this article herein otherwise provided," and then they have stricken out the sections providing for the exception of certain property. What I want to show to this convention is, that the strict adherence to that rule works an injustice upon the industrious, energetic business men of the country, for the exclusive benefit of those men who live by speculating upon land and loaning money. If we are going to tax property according to its value, then of course all the work that you do upon land increases its value. You tax those improvements. The assessor goes on and finds improvements made upon the land and he increases the assessment upon that land to the amount of the value of the improvements. Upon the land that is not improved of course there is no increase of assessment. Now, I wish to show to the convention the practical workings of that law. We will take for instance a township of land in which there have been twenty-five full sections entered. That would be one hundred quarter sections of land. Now, suppose fifty settlers go on to those lands, and the other fifty quarter sections are left in the hands of speculators. Those lands are all of equal value to begin with, and the assessor assesses them \$500 apiece. The amount of the tax that is collected in that township for all purposes to contribute their portion to the state tax, county tax, to defraying the expenses of the township, supporting the public schools, is \$1,000. Now, if there are one hundred quarter sections of land in that township of equal value the amount levied upon each quarter section would be \$10, would it not? And it would remain so for years and years, so long as no one made any improvement. Each quarter section would pay the same amount, \$10. But let fifty of those men go on to those lands and improve them, build houses, fence them, dig ditches, and make improvements to the extent of \$1,000 each; what is the result? The result is that when the assessor

comes along the next year he will assess those farmers each \$500 on his land as the valuation of his land, because it has not decreased the value of the land; he will assess the speculator \$500 upon his land, and he will assess the farmer, who has made \$1,000 worth of improvements, \$1,000 therefor. This then will make each quarter section of land that has been improved assessed by the assessor at \$1,500 while the land speculators' land will be assessed at \$500 only. The consequence is that the fifty settlers in that township have got to pay three-fourths of the tax, would they not, if there was to be \$1,000 collected. Those fifty settlers then upon their property would have to pay \$750 out of the \$1,000, because they are assessed three times the amount of the fifty speculators. Then they would pay \$750 out of the \$1,000, and the speculators would pay but \$250. In other words you reduce the tax of the speculators \$250, and you increase the tax of those men, who by their labor, have done something for the benefit of the country in the way of building fifty houses and fifty barns, and breaking up a large amount of the land, just as much as you decrease the tax of the speculators.. Is there justice in that? They have done nothing but increase the value of the speculator's land. His land is more valuable than before they made the improvements, and they have then to pay three-fourths of the tax assessed for the benefit of that township. In addition to that, each settler is compelled to work two days in the year in building roads and bridges, which are built throughout the township, benefiting alike the settler and the man who owns the land that has not been improved, but which land has been enhanced in value in reality, and has a greater selling value than it had before these men made their settlements, and yet their taxes are reduced \$250, and to that same extent put upon the land of the men who have made the improvements. Now, take it in the whole country and it works precisely the same. Suppose there are two thousand quarter sections of land in the county all of about equal value, whether



that value be \$500 a quarter or \$1,000 a quarter. For the purpose of making these calculations we will suppose them to be worth each \$500. The county board meets to ascertain the amount of tax apportioned to them; they make calculations of the amount of tax required for all county purposes, support of schools and everything else, and it is found it is necessary to levy a tax of \$20,000 upon that 2,000 quarter sections of land. It so happens that 1,000 of those quarters may be in the hands of speculators, and the other 1,000 in the hands of farmers, who go on them and work and build a thousand houses and a thousand barns, and break up thousands of acres of ground, dig ditches, build fences, and do something to benefit the country, giving employment to the mills to furnish them lumber, to the manufacturer to make them their tools, and everything of that kind; they do something to make that country good and glorious and a good country to live in, something to benefit the state, and you go on and assess their land and every dollar's worth of improvement they make, and the result is, if you tax it as in this other case—the result is the settlers must pay three-fourths of the tax, three-fourths of that \$20,000 to support the county. While, if the land was of equal value, before they made the improvements, it is now of more value, yet the tax is reduced to \$5,000. There is no justice in such a law as that, but that is the practical working of the law, and any man of common sense who studies it will say that is the practical working of the law; it cannot be any other way—you cannot come to any other conclusion regarding it. The more you raise the tax of the settler, the less must be the tax of the speculator. If there were to be a tax levied, instead of levying it by valuation—say there should be a tax of one, or two or three or four or five per cent on the valuation; the tax on the speculator's land would be just the same; if we valued a quarter section at \$500, and the assessment was two per cent it would be \$10 for his tax; and the tax upon those men that have made the improve-

ments which enhance the value of the farms in the country to twice or three times or five times the value of it theretofore, would of course go away up, and there would be raised then a larger amount of money than could possibly be used in paying the expenses of the government. It would be unnecessary to raise so large an amount. You cannot keep the even tax upon the speculator. But if you adopt the system laid down here, because it is done in every state in the Union I have lived in, it enhances the burden of taxation upon those men that are a benefit to the country and decreases it upon those who hold it for speculation. You cannot arrive at any other conclusion. The section I have put in here is not for the purpose of exempting any of the property from taxation by constitutional amendment; but I simply want to have this clause put there in order that the legislature in the future may not be tied down by a cast iron rule they cannot break, that they never have the power of exempting any property from taxation. I apprehend, gentlemen, that the day is coming when the people of this state will find it will be to their interest for them to pass a general law exempting certain kinds of property from taxation, which they cannot do under the provisions in that section, because all property must be taxed according to it. The day is coming, I apprehend, when it will be something of an object if the legislature could provide by law that the poor settlers that in the future are going to settle up this vast plain along here for hundreds of miles—it would be an inducement to them if we could say to them “you are poor men, you have a hard row to hoe, and we will exempt the first \$500 of improvements you make from all manner of taxation.” Wouldn't it be a great inducement for men to come in; wouldn't it relieve the burden that rests upon the best class of society you can get into the country, that class which produces something by their labor, and not tax them for the simple benefit which no man can derive unless he be a speculator? Again, we may find in the future that it



would be largely for our interest if we could pass a general law providing that men who introduce machinery into this country—for instance, provide by law that men who come in here and take the risk of expending money in the building of flour mills for the benefit of the people—should not be punished by a heavy tax for doing it. And I want to provide that in the future we can say to the men of capital in the country, “We have valuable mines that cannot be worked without machinery, and we want to offer you an inducement in the way of exempting your industry from taxation.” Not by giving them any bonus; I don’t believe in that way of levying a tax upon one class of people for the benefit of another class; but I want to have the legislature given power, if they see fit at some future day, to pass a law providing that the necessary machinery for the development of mining may be exempted from taxation. For what term of years I have not fixed; I leave that to the discretion of the legislature. I have a case in my own mind that occurred in our county when one of our citizens came there years ago and found a prospect which he bought; he then went to work and set a lot of men to work developing it. It was far out in the wilderness, with nothing but the merest trail to it, no roads, and no railroads within a great many miles. He went in there and built a house and cabins in which men could live and set them to work, and kept them to work month after month in the development of that property. After he was satisfied it was a good property he spent some \$60,000 in bringing machinery into it; he put up that machinery and the necessary buildings, built a road over the mountains so he could haul ore to the railroad, and with fifty to one hundred men at work he made a market for a large amount of farm produce for the nearest farmers, made customers for a large amount of merchandise, and made work for a large number of men, and did the country a benefit; the whole country for miles and miles around was benefited by the labors and risk of that one man. What did he

get in return for it? Why, the county turns in and fines him \$2,000 every year of his life as long as he runs that mill, just because he did that. Is there any justice, is there any sense in it; punishing a man who comes here and benefits your country, giving employment to hundreds of men, giving employment to your railroads? He has furnished at least a thousand tons of freight for your railroad; given employment to the farmers, and it takes a large number of farms to supply that mill. And there is another mill right along side of it doing the same thing, which is also punished by a heavy fine. Have they ever done the country any harm? Had they not put those mills in, there would be no taxable property there, would there? Now, because they have done this, and have put this property in there, giving employment to a vast number of men, giving employment to the railroads and building up the country, then you punish them by making them pay \$2,000 cash every year as a fine for doing it. Now, I want this legislature in the future to have that power; that it is understood that it is to offer inducements to capitalists to come into the country and spend their money, and when they take all the risks a miner has to take as to whether he will ever get any return for it, he should not be punished for it. I ask nothing more. I just want to break down this cast-iron rule of taxing all property, and take it out of the power of the legislature ever to repeal it. I think we could do nothing better, gentlemen, than to leave that thing open to the future legislature. The people will discuss this matter, and when they see the necessity of it, I have no doubt in a few years there will be provision made to encourage men to come in and develop our mines, and encourage hundreds of thousands of settlers to come here and settle on these vast plains and do something to redeem the country.

The CHAIR. The question is upon the adoption of the amendment of the gentleman from Shoshone (MR. KING). It is the same amendment renewed to Section 2.

SECRETARY reads: I move to add after the word



“tax” in line 6, Section 2, the words “Provided the legislature may exempt a limited amount of improvements upon land, from taxation.”

“Question, question.”

A viva voce vote was taken and the chair being in doubt called for a rising vote, resulting: Yeas 33; nays 6; and the amendment was adopted.

Mr. AINSLIE. Mr. Chairman, was Section 4 stricken out?

Mr. VINEYARD. No, there is a motion pending.

The CHAIR. By unanimous consent we went back to Section 2.

Mr. MAYHEW. Isn't it necessary now to adopt Section 2 as amended?

The CHAIR. It was already adopted, and the amendment was added to it. But all in favor of adopting Section 2 as amended say Aye. (Vote.) It is carried and the section is adopted.

#### SECTION 4.

Section 4 was read.

Mr. MAYHEW. Has Section 3 been adopted?

The CHAIR. Yes, this morning.

Mr. MYER. Here is an amendment to Section 4.

Mr. VINEYARD. I move to strike out Section 4. SECRETARY reads: Amend line 2, Section 4, by striking out the words “and private.”

Mr. MYER. Mr. President, private libraries are now exempt from taxation<sup>1</sup> by the state of Idaho, and if the legislature in its future wisdom sees fit to continue that provision, I see no occasion for private property being exempted from taxation in this constitution.

Mr. AINSLIE. I think if you strike that section out it would be something unusual. I don't know any state in the Union where the property of the United States, state and towns and other municipal corporations, are placed in a category with other property, and allowed

<sup>1</sup>—Sec. 1401, Subd. 8, Rev. Stat. 1887.

to be taxed by the legislature, and leave it to say whether it shall be or shall not be taxed. I think the constitution of every state provides for the exemption of the property of the United States and towns and cities and counties. It is an organic prohibition upon the legislature to tax anything of that kind. Without that provision the legislature could tax state property, and I am willing to support the amendment of my colleague from Boise to strike out "private libraries," and I have prepared a substitute for the section; but his amendment covers the same thing.

The CHAIR. It is moved and seconded that Section 4 be stricken out.

Mr. HEYBURN. Before voting on that I would call the attention of the convention to the fact that in the enabling act of all these other states that are forming constitutions, they are required by the terms, to act in an affirmative manner, namely, that those lands shall never be taxed.<sup>1</sup> If we do not do it here we will be compelled to do it somewhere else.

Mr. SHOUP. The enabling act also provides that the land owned by Indians shall be exempt from taxation.

Mr. PARKER. I have an amendment.

SECRETARY reads:

"Substitute for Section 4. Property, real and personal, of the United States, and property of the state and counties, and property of municipalities and common school properties, cemeteries not owned or used for private or corporate profit, public libraries, growing crops, livestock under six months old, and all mines and mining claims, both placer and in rock in place, containing or bearing gold, silver, copper, coal or other valuable mineral deposits, shall be exempt from taxation: *Provided*, That all machinery used in mining, and all property and surface improvements appurtenant to or upon mining claims, which have a separate and independent value, shall be taxed as provided by law, and all laws exempting from taxation property other than hereinbefore mentioned shall be void."

<sup>1</sup>—Sec. 4 of the Congressional Enabling Act of Feb. 22, 1889, for North and South Dakota, Montana and Washington. 25 Stat. at Large, 676; 7 Fed. Stat., Ann. 121.



Mr. PARKER. Mr. President—

Mr. MAYHEW. I will support the amendment to hear the speech (laughter).

Mr. PARKER. This substitute is practically a consolidation of two sections, and I have submitted it with the intention of preventing in this constitution the making of any exemptions whatever in private or theological seminaries; not that I am opposed to those exemptions, but they are not democratic.

Mr. PEFLEY. Read the substitute.

Mr. AINSLIE. I believe this is a substitute for one section we have not reached yet. I understand the chairman of the committee has a substitute for Section 5, which covers the same ground.

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

Mr. MAYHEW. I second it.

The CHAIR. The first question is upon the adoption of the substitute of the gentleman from Idaho.

Put to vote and lost.

The CHAIR. The question now recurs upon the motion to strike out Section 4.

Put to vote and lost.

The CHAIR. The question now recurs upon the amendment of the gentleman from Boise, to strike out the words "and private" in the second line of the fourth section.

Put to vote and carried.

Mr. MAYHEW. I now move the adoption of the section as amended. (Carried.)

### SECTION 5.

Section 5 was read.

Mr. HAYS. I have a substitute for the section.

Mr. PYEATT. I move to strike out the section.

Mr. AINSLIE. I have an amendment.

SECRETARY reads:

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax,

and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; provided that mines and mining claims bearing gold, silver or other precious metals, except the net proceeds and surface improvements thereof, shall be exempt from taxation for a period of ten years from the date of the adoption of this constitution, and thereafter may be taxed as provided by law; and provided further that the household goods of every person being the head of a family to the value of \$200 shall be exempt from taxation; and ditches, canals and flumes owned and used by individuals or corporations for irrigating land owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purpose; and lots with the buildings thereon, if said buildings are used solely for religious worship or for charitable purposes; also cemeteries not used or held for corporate or private profit, shall be exempt from taxation unless otherwise provided by general law. All laws exempting from taxation property other than that herein mentioned shall be void."

(Seconded.)

Mr. SHOUP. Mr. President, I would like to have the secretary read the restrictions placed on other states in the enabling acts in regard to taxation. I have them here and send them forward. I think it is necessary for us to follow these enabling acts.

The CHAIR. If there is no objection the secretary will read for the information of the convention.

SECRETARY reads:

"And said conventions shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

"First, that perfect toleration of religious sentiment shall be secured; and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second, that the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that



the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of congress may prescribe.

Third, that the debts and liabilities of said territories shall be assumed and paid by said states respectively.”<sup>1</sup>

Mr. SHOUP. That is all, Mr. Secretary.

Mr. AINSLIE. I will state to the gentleman from Custer that these provisions were provided in the Colorado convention, and provided under ordinances which form no part of the article on revenue and taxation. After the constitution was finished and signed, it was provided by ordinances subscribing to those provisions. That was expecting the ordinances would be put in by the schedule committee, by which they would agree upon those propositions. We would have to formulate our ordinances similar to that of some other state.

Mr. McCONNELL. Mr. President, I believe the question is on the adoption of the substitute. This substitute is quite a lengthy one, and something we can hardly analyze by hearing it read from the desk, and it provides for quite a number of exemptions from taxation. I would like to have this printed. It is a very important matter. I would like to have it where I can examine it carefully before voting upon it. I may feel like voting upon it, and I may not. As it is now, I certainly would not feel like voting for it.

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<sup>1</sup>—Taken from Sec. 4 of the Congressional Enabling Act of Feb. 22, 1889, for North and South Dakota, Montana and Washington. 25 Stat. at Large, 676; 7 Fed. Stat. Ann. 121.

Mr. AINSLIE. It is taken right from the Colorado constitution,<sup>1</sup> combining several sections in one, that is all.

Mr. McCONNELL. Well, mining interests predominate largely there, and I cannot see why net income of mines should be exempt for ten years any more than farm property should be exempt ten years or any other property. Because Colorado exempted it ten years, I don't think it is any reason why we should.

Mr. CHANEY. Colorado does not do it.

Mr. AINSLIE. I don't think it excepts that.

Mr. McCONNELL. I think we can take up the printed section and amend it so as to satisfy everybody. But I certainly would not feel like supporting that substitute unless I was in a position to examine it.

Mr. MAYHEW. I don't feel like supporting that substitute in whole.

Mr. AINSLIE. Here is the Colorado section.<sup>2</sup>

<sup>2</sup>—Art. 10, Sec. 3, Colo. Const. 1876.

“Provided, that mines and mining claims bearing gold, silver and other precious metals (except the net proceeds and surface improvements thereof), shall be exempt from taxation for a period of ten years.” It does not exempt the net proceeds, but mines and mining claims, etc.

Mr. McCONNELL. What else is exempted?

Mr. AINSLIE. That is all—oh, irrigation ditches, “ditches, canals and flumes owned and used by such individuals or corporations or the individual members thereof.” That is a provision similar to the Colorado section. It does not exempt them from taxation, but assesses them in connection with the improvements owned by the individual; that is, if I own a ditch on land they do not assess my farm and the ditch in two places, but assess them both together. The same way with a company owning a lot of land; if they build a ditch to irrigate it, it is assessed together and not sep-

<sup>1</sup>—Not in the Colorado constitution, but the substance of it is found in the Colorado Enabling Act.



arately, where used solely for the purpose of irrigating those lands. But whenever they go to selling the water upon different lands, then the ditch is assessed separately.

Mr. MAYHEW. It does not exempt those corporations having water for sale?

Mr. CHANEY. I think it does.

Mr. MAYHEW. Then it is a bad provision.

Mr. AINSLIE. It reads thus: "ditches, canals and flumes owned and used by individuals and corporations for irrigating lands owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed, so long as they shall be owned and used exclusively for such purpose." That is all.

Mr. SHOUP. I think the convention should have time to consider this substitute. It makes no difference whether it is in the Colorado constitution or not.

The CHAIR. The substitute has been seconded. Unless some motion is made to print it, there is nothing to do but consider it and act upon it.

"Question, question."

Mr. MAYHEW. I move it be passed over until tomorrow morning, and be printed and laid on the table. (Seconded.) Vote and carried.

#### SECTION STRICKEN OUT.

Section 6 was read.

Mr. HAYS. I move that Section 6 be stricken out. Motion seconded.

Mr. BEATTY. I don't think it is proper to strike that section out now; our action on this section may depend upon our action on the substitute. If we adopt the substitute, it goes out. If we do not adopt it, we may want it; and I move it be passed over until tomorrow after we have considered the other.

Mr. HAYS. I will withdraw my motion to strike it out.

The CHAIR. It is moved and seconded that Section 6 be passed over until tomorrow. (Carried.)

## SECTION 6.

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

Mr. BEATTY. It strikes me that the language of that first line is rather obscure. "The legislature shall not impose taxes for the purpose of any county," etc. It ought to be that "the legislature shall not impose taxes upon the property of any county," if I understand the meaning of it.

Mr. HEYBURN. I do not understand that to be the meaning.

Mr. BEATTY. Then I do not know the meaning of it, and I call upon the chairman for an explanation of it.

Mr. AINSLIE. I believe I could explain that to the gentleman. I understand this is taken from Colorado also.<sup>1</sup> "The legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation." Now, under the revenue law the state may exact a levy of so much for state purposes; and authorize the county to levy a tax, not exceeding so much more; and then the county commissioners of each county levy their own rate. In one county it may be more than it is in another. If the state makes a levy itself, if the legislature makes a levy, the rate of taxation in each county in the territory would be exactly the same; but they authorize the different counties to levy a rate of taxation between so much, not to exceed so much, and they can go under that any amount they please. In some counties they might make a higher levy than another. It is to levy a tax not to exceed so much.

"Question, question."

Put to vote and carried.

## SECTION 7.

Section 8 (7) read, and it is moved and seconded that it be adopted. Carried.

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<sup>1</sup>—Art. 10, Sec. 7, Colo. Const. 1876.



## SECTION 8.

Section 9 (8) was read.

Mr. PARKER. I have an amendment.

SECRETARY reads: Amend Section 9 (8) by omitting in line 4 and 5 the words "and not by this constitution exempted from taxation." (Seconded.)

Mr. HEYBURN. I would like to hear the reasons of the mover of that amendment.

Mr. PARKER. I have offered that amendment with the idea of having no exemptions in this constitution at all. Here is a clause which provides that certain properties, corporations, etc., may be exempt from taxation. Now, in a democratic government we ought not to have any exemptions whatever.

Mr. AINSLIE. There is no doubt but what it is the disposition of this body, as of any in the mining territories, to exempt mining claims from taxation. You can tax improvements on them, but I have no doubt it would be the unanimous thing to exempt the claims themselves. Now, corporations may own mining claims the same as individuals, and if you exempt the mining claims themselves, it is necessary for that provision to stay in there, and that will come up tomorrow at nine o'clock when the substitute is submitted by which the property, ground itself, is exempted from taxation; but improvements, machinery, hoisting works and everything of that character, will be taxed. I don't believe anybody in the territory expressly contemplates taxing a mine itself, because it may not have anything in it, and it might. You don't know what value to put on it, and I think it is necessary to keep that provision in.

The question was put by the chair on the adoption of the amendment. Lost.

The CHAIR. The question now recurs on the adoption of Section 9 (8). (Vote and carried.)

## SECTION 9.

Section 10 (9) was read.

Mr. McCONNELL. I move to strike the section out.

Mr. HEYBURN. I second the motion,

Mr. AINSLIE. I would like to know the reason of that. I am not ready to vote on it yet; I would like to know what the object of the gentleman is to strike it out. You have got to place some limit on the legislature or they might swamp us. They might put it up to twenty-five mills for state purposes, if you don't put any limit on them, and it is not very inviting for foreign capital to come in if you give the legislature power to impose unlimited taxation.

Mr. McCONNELL. I am sorry to learn there is a change of mind come over some of these gentlemen. They had unlimited confidence in the legislature a few days ago. I dislike to have it in the constitution because it will be necessary every year to advertise to the world what our taxation is, and there may occasions arise when it will be necessary for us to either issue bonds or increase the rate of taxation. And the rate of taxation would have to be increased to pay these bonds the next year. I have confidence in the legislature not running the territory in debt, any more than the United States.

Mr. AINSLIE. If I am not mistaken, I think there has been restrictions placed on the legislature now in regard to the amount of debt they can contract in the territory. I think one and one-half per cent; I think the gentleman made the amendment himself, to make it one and a half, and it carried. Now, if you do not place safe restrictions on the legislature they might have an immense fund on hand, increase the taxation unnecessarily, and then come up your schemes in the legislature for getting away with the surplus you have on hand. The surplus was not very popular in the last campaign; it may be more popular in this legislature when the legislature have that power of imposing taxes. We want the legislature to have authority to make a sufficient levy to pay the interest upon our state bonds, and pay all the expenses of carrying on our state government; but we don't want them to have power to impose taxation upon the people over and above what



is necessary, and absolutely necessary, for that purpose. I think if the gentleman will examine the constitutions of a great many states he will find they all limit the legislature in regard to the limit at which they shall levy taxes on the people. If seven mills is not enough, in the first line of the section, on taking an abstract of the amount of taxable property in the territory, and the amount estimated by the committee to carry on the state government, you can increase it to seven and a half or eight mills, if necessary; but I think it is absolutely necessary that some limit should be put upon the legislature, that they shall not burden the people with unnecessary taxation.

Mr. MAYHEW. Upon that proposition I hope this section will not be stricken out. I do not desire to go into any discussion, but just call the convention's attention to another fact. By having these provisions in here limiting the legislature for the amount of taxation to be levied, it will have this tendency, in addition to what has been said by the gentleman from Boise, namely, a tendency to prevent the people in the different sections of the territory, and in fact the legislature, from becoming extravagant and running the territory in debt. There is no doubt, if you put these restrictions in the constitution upon your legislature, the provision as provided here has the tendency to prevent their extravagance. And in addition to that I believe in giving some advertisement to the outside world that taxation is limited by the constitution; that the legislature is limited by the constitution, so that persons with capital, who come in and desire to invest in mines, farms and other interests in the territory, will not be taxed to death and ruined by taxation. I think it is a wise provision to be placed in the constitution, and therefore I hope the motion to strike it out will not prevail.

Mr. SHOUP. I wish to offer an amendment before the vote is taken.

SECRETARY reads: I move to strike out all after

the word "valuation" in line 2 to the word "and" in line 4.

Mr. MORGAN. I second the motion.

Mr. HEYBURN. Mr. President, I second the motion of the gentleman from Latah, because it would seem to me that this is inconsistent with the provisions we had made and passed upon finally, I believe, in the article on public indebtedness. There we limit the indebtedness to one and one-half per cent. Now, we limit that limitation by this, as I understand it. The rate of five mills on fifty millions would give \$250,000 income; so would a rate of two and a half on one hundred millions. The rate on three hundred millions at one per cent would give \$300,000 income. Now, I understand, if I have not forgotten the proceedings of the convention, that we have given the authority to make an indebtedness of one and one-half per cent on the taxable property. Now, the question is whether this is inconsistent with that. One and a half per cent on our present valuation would be more. Under the provision of that article on public indebtedness, I believe we might now levy a tax or create an indebtedness of more than the limit of this first provision. One and a half per cent of our assessed valuation would be \$345,000, as near as I can figure it briefly; and the question is whether or not this is not inconsistent with that provision. I only second the motion in the interest of consistency in our financial arrangements.

Mr. AINSLIE. That provision is contained in Section 1 of the report of the committee on Public Indebtedness and Subsidies. That section reads: "The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate, exclusive of the debt of the territory at the date of its admission as a state, exceed the sum of one and one-half per cent." Now, there is no conflict at all between the provisions of this section and that section in the revenue and finance bill. While you cannot allow the indebtedness to exceed one and a half per



cent, you can still go on and stuff your treasury full of greenbacks that you have no use for at all. The state may go into debt to the extent of one and a half per cent of its whole valuation; but the tax is not a debt due by the state, but you are taking from the pockets of the people an unnecessary amount of money, and have nothing to do with it. That is the trouble.

Mr. McCONNELL. Upon the examination of this, with the consent of my second, I will withdraw the motion to strike it out.

Mr. MORGAN. I am in favor of the amendment introduced or offered by the gentleman from Custer (MR. SHOUP), for this reason. It strikes out all after the word "valuation" in the second line, down to the word "and" in the fourth line, as follows: "and whenever the taxable property of the state shall amount to \$50,000,000 the rate shall not exceed four mills on the dollar of valuation." I don't think we ought to admit to congress that we have not a valuation of \$50,000,000 now, and if we do, I don't think they will admit us.

Mr. MAYHEW. I am in favor of that, if we can fool them.

Mr. HAYS. I shall oppose the motion to amend in the manner desired by the gentleman from Custer, for this reason: You strike out that portion, "and whenever the property of the state shall amount to \$50,000,000 the rate shall not exceed four mills on each dollar of valuation." The legislature may tax them seven mills on the dollar. And when we make a tax of seven mills on the dollar on \$50,000,000 valuation it would bring the net income to \$350,000. If you leave that phrase out you can do that, and for that reason I am opposed to the amendment. I move that the word "eight" be substituted for the word "seven" following the word "exceed" in line 2. I do this for the reason that considering the expenses of the state government, our committee, and I did myself, forgot to estimate the expenses of the university. We would have to make it about eight mills; there will be \$8,000 or \$10,000,

and I would suggest eight mills, and let the section stand as it is.

Mr. SHOUP. I do not desire to offer any amendment without being able to give some reason for it. My reason for offering this amendment is, first, I don't believe in parading our poverty before congress and the people. In regard to the objections offered by the chairman of the committee, I do not believe there is any danger of the legislature coming up to the full limit unless it is necessary to do so, and it will never be necessary. I think those words should be stricken out.

Mr. WILSON. I hope the amendment of the gentleman from Custer will prevail. For the simple reason, advanced by Judge Morgan, that it is policy that we do not show on the face of our constitution that we only have \$50,000,000 worth of taxable property in the territory. As a matter of fact we have more than that right now if the property was assessed as the law requires at its true valuation; but it is not so assessed. I don't think there is any danger of the legislature swamping us in debt, and I think it would work great good. I think representations of that kind have been made in congress, and I think for that reason we have received much encouragement towards this statehood movement already, and I should therefore favor striking out that clause; and as soon as it reaches \$100,000,000, the guards are there all right, but I would not admit on the face of the constitution that we have not \$50,000,000 of taxable property.

Mr. MAYHEW. My reasons for supporting that proposition are different. We cannot fool anybody about our valuation of property unless we do away with the publication of any statistics of the taxable property in this report. It has gone abroad and the report is made and published, and I suppose every member of the legislature last winter sent more than fifty—at least eight or ten—of those copies to his constituents, and all those reports go to Washington as to the amount of the taxable property; and we cannot fool anybody at all.



But I am in favor of it, and then dropping from seven to two mills when it reaches one hundred million; but it is not to deceive anybody, because we will be deceived ourselves.

Mr. HEYBURN. I would like to ask the chairman of the committee for information. I turn to the last page of this bill and find an estimate of the expenses of the three departments, executive, judiciary and legislative, fixed at \$140,000; and then we find there is an indebtedness unprovided for of \$110,000. And I find there is a funded debt due a year from the first of December of \$46,000; that makes \$296,000 to be provided for next year. Now, taking the present valuation of the assessed property of this territory on the basis of eight mills, it will not create that much of a fund. Now, how are you going to make up the balance? Is there not going to be a deficiency there? How are you making a sufficient provision, or are you hampering the legislature so that we will be about \$65,000 short? There is \$296,000 to be provided for within a year after the adoption of this constitution, which is very much in excess of what the legislature will be authorized to levy under this bill.

Mr. PARKER. I have an amendment.

SECRETARY reads:

Substitute for Section 10 (9). For the purpose of defraying the extraordinary expenditures, the state may contract a public debt, which shall not for the first fifteen years exceed \$50,000, and it shall never exceed \$100,000, and every such debt shall be authorized by law for some purpose or purposes to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal within ten years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest, and such appropriation shall not be repealed nor the taxes postponed nor diminished until the principal and interest of such debt have been wholly paid."

The CHAIR. Is there any second to the amendment? There is no second. The gentleman from Washington has the floor now.

Mr. HASBROUCK. Mr. President, I hope this first limit of seven mills on the dollar will not be changed. As to the policy of striking out \$50,000,000, as the gentleman from Custer suggests, that is another matter. I leave that with the sense of the convention. This amount of seven mills on the dollar was figured on the basis that the assessed value of the territory at the present time is about \$22,000,000. That at seven mills would amount to \$154,000. We find by carefully going through the comptroller's office, and in consultation with other parties, who we believe had a right to know the most about those matters, that the current annual expenses would amount to about \$140,000. This matter of this funded indebtedness that comes due December 1, 1891, was also taken into consideration; but we do not feel warranted in going before the people with taxes enough to raise that additional amount, and it was suggested that it would be better to refund this amount when it became due. If we go before the people with an exorbitant rate of taxation, or have the legislature limited, it will have a tendency to cost the constitution a great many votes. At least, that is what the committee who had this matter in charge thought, and it was for that reason that the limit of seven mills was placed as the first limit. I myself, was of the opinion, and really favored the amendment to the section as it was amended by the gentleman from Custer, for the purpose, as the gentlemen who have preceded me have said, that we do not exhibit our poverty to congress. And it may be well to do so yet, though I presume, as the gentleman from Shoshone said, they are as well posted perhaps on that matter as we are, only they may not take into consideration that we have a great deal of property more than the assessment shows. I think Governor Stevenson, in his last report, stated that if the property had been properly assessed it would have made a much better showing, perhaps even to the amount of \$50,000,000. I hope this limit will not be increased, and that it will pass as has been reported by the committee.



Mr. BEATTY. Mr. President, I take it from what I have heard stated here that this estimate is intended to barely meet our expenses. The estimate as made amounts to about \$154,000 a year at seven mills. Now, our expenses will probably reach that amount. We are leaving no latitude whatever for extraordinary expenses that may occur. Now, Mr. President and gentlemen, I have in view one object that I believe this state, when it becomes a state, will want to adopt. It will have to resort, in my opinion, to some internal improvements in the way of taking out ditches and redeeming our arid lands. To do that it will be necessary to issue our bonds. If we issue our bonds we must meet the interest on them from time to time until those bonds shall be redeemed by the sale of those lands. I think a scheme of that kind is plausible. I know it is under consideration, has been discussed, and in all probability will be put into execution if we do not hamper our legislature so that they cannot provide the means. Instead of keeping that at seven mills, I am in favor of making it more than eight. We have to trust some matters to the legislature; we cannot provide for all time to come for what we need, and contingencies will arise that we cannot now anticipate. I have listened to the remarks of the different gentlemen here, and I come to this conclusion, that they are trying to make a very close estimate of what the expenses will be, and then limit the legislature to the exact amount of expenses. We nearly do so by this provision as it is. If we add one mill to eight mills it is not enough in my opinion; and with this idea in view I believe it would be better if this section were left out entirely. We have other provisions of the constitution by which the power to create debt is limited. We are putting in a second limitation, and I think we are cutting it down too close entirely. I would prefer myself to see the section entirely omitted; but as it seems to be the sentiment that it shall remain, I propose that that limit shall be, instead of seven mills, ten mills, and I make a motion accordingly.

Mr. CLARK. It seems to me, also, that the restriction upon the legislature here is altogether too close. At the second stage of the particular section, when the assessed value rises to \$50,000,000, the limit is placed at four mills, giving an income of \$200,000 per year. Now, if while we have an assessed valuation of \$22,000,000, we need an income of \$150,000 or more, why is it probable that, when we have doubled our population, and doubled our property valuation, we can run the state government upon \$200,000? Even this, however, is possible. But rise to the next stage; when we reach \$100,000,000, when we have multiplied our population, our business, our capital, our means, by four—when we are four times as large as we are now—they say then that the restriction shall be reduced to two mills on the dollar; that is, we still shall be compelled to run a state government on \$200,000. It seems to me that the mere statement of the proposition ought to convince gentlemen that it is entirely impracticable; that if it takes \$150,000 a year for our present population and a wealth of \$22,000,000, when we multiply all this by four, it certainly will be impossible to get along on \$200,000 a year.

Mr. HEYBURN. Mr. President, there is still the idea I advanced when I first seconded the motion of the gentleman from Latah. You have authorized the creation of a debt of about \$345,000; that is, one and a half per cent on the assessed valuation; that means an interest of about \$20,000 a year in round figures. Now, suppose the legislature or the state sees fit to borrow that much money that we have authorized it to; that is, to contract that much indebtedness. There is absolutely no provision here by which the legislature can provide for the payment of the interest on it; because this committee has estimated that the expenses of the government, aside from any of its extraordinary indebtedness—the expenses of the three branches of the government—are \$140,660. Now, that would leave a margin of about \$10,000, without counting any extraor-



dinary expenses at all—a margin of \$10,000 over this close estimate based on these salaries we have agreed to. Yet you have authorized the legislature to create a debt upon which the interest will be \$20,000 a year. Now, suppose the state takes you at your word, and creates the debt; how are you going to pay the interest? You haven't half money enough to do it, not counting anything for extraordinary expenses of the state government. These estimates are all very close estimates; there is no margin in them at all; there have been some cuts made on it, you have raised the governor's salary above what it is estimated here, and also the attorney general's salary; and by that you have increased the expenses of these departments. Yet you confine the legislature to seven mills on the dollar, which will produce a fund of about \$154,000, with the possibility of having this interest to pay on the debt you have authorized the state to contract. There is such a thing as being too close, especially in a state government, and in a state we claim to be a growing state, with new possibilities and new expenses necessary to be incurred which we cannot contemplate now; especially that suggested by the gentleman from Alturas, Mr. Beatty, or irrigating the lands and assisting our settlers in irrigating them, at least partly, at state expense. You are tying the legislature up in such a way as to absolutely cripple your state government, and you are doing it in the constitution where it cannot be changed. It is a dangerous place to make a mistake of that kind. It may be necessary to ask relief from the people, if you do it, in the way of an amendment to this constitution inside of five years. Now, just take it for granted that you are going to refund all this other indebtedness of \$110,000. Well, there is the interest on that \$110,000, to pay which will come pretty near absorbing this entire balance, leaving you with not a dollar's margin in the end. It seems to me it is a mistake.

Mr. McCONNELL. I will renew my motion, Mr. President, to strike out this section. (Seconded.)

It has been urged that if the door is left open, the legislature may tax the people of the territory very heavily, and pile up that money in the treasury for which we have no use. The legislature, as I understand, has to convene every two years; there can be no great accumulation of money in the interim, and when the next legislature meets they can make provision for paying this money out, if they have too much money in the treasury; and I do not believe in locking the state up to such an extent that it cannot undertake any internal improvements, or build necessary buildings for the state. We may need a new insane asylum, we may need a new penitentiary; and it may be a necessity for the state to raise considerable money and have to pay interest on that money; and I believe in trusting it to the legislature. We cannot tell what contingencies may arise in the future. I am not afraid, as a taxpayer, to trust the legislature of the state of Idaho.

Mr. KING. Mr. President, if I remember right, we have already incorporated in one section of the constitution, a provision by which this state may run in debt to an indefinite amount. It provides, first, that we can only incur a debt amounting to one and a half per cent of the assessed valuation of the property in the state. The section goes on further, and says that a debt for some specific purpose may be created upon submission of the question to a vote of the people. Now, I apprehend that the time is not far distant when the people of this state would be willing to incur a vast debt for a specific purpose; probably a debt of one million dollars, probably of two million dollars, perhaps more, and that is for the purpose of irrigating these plains. We have several million acres of land that can be made as fertile as a garden, you might say, capable of supporting a vast population. Now, that clause we have already adopted provides that we may incur a debt for any specific object that the people see proper. And I think it would be good policy in the near future to provide a debt of a million dollars for



the purpose of irrigating these plains. But if we are tied down by this provision that we can never levy a tax exceeding so many mills on the dollar, then of course we can never incur that debt.

Mr. HEYBURN. We couldn't pay the interest.

Mr. KING. Couldn't pay the interest, because, of course we cannot borrow money without paying the interest, and if we are limited to the amount that we might levy by the amounts put in there, it would not begin to pay one-quarter of the interest, in addition to paying the debts we already have, and support our state government. Therefore, I think if we adopt this we had better go back and reconsider that clause we have adopted, and say nothing about incurring any debt or any extraordinary expenses. Now, I think that one of the best things that could ever be done in this state would be, as soon as the proper estimates can be made, the proper surveys made, to go to work in a systematic manner, to dam up this big river for the purpose of obtaining water to irrigate these vast plains, and make homes for millions of people—hundreds of thousands at the least calculation; add them to the wealth and glory of the state—a thing that we cannot do unless we borrow the money to do it. Therefore I am in favor of striking that section out entirely.

The question was put by the chair.

Mr. AINSLIE. I call for the ayes and nays on that vote.

Roll call.

Yeas: Anderson, Beatty, Chaney, Coston, Hampton, Heyburn, King, Kinport, Lewis, Maxey, McConnell, Morgan, Parker, Pierce, Pinkham, Mr. President—16.

Nays: Ainslie, Armstrong, Batten, Bevan, Campbell, Cavanah, Clark, Crutcher, Glidden, Hasbrouck, Hays, Hogan, Jewell, Lamoreaux, Mayhew, Melder, Myer, Pefley, Reid, Sinnott, Shoup, Vineyard, Wilson, Woods—24.

The CHAIR. The question now recurs on the amendment offered by the gentleman from Alturas to strike out the word "seven" in line 2, and insert the word "ten." (Vote taken viva voce.) The chair is in doubt.

(Rising vote results: Yeas, 19, Nays, 11). The amendment is adopted.

The question now recurs on the motion made by the gentleman from Custer, to strike out all that after the word "valuation" in line 2 of Section 10 (9), down to the word "and" in line four.

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

Roll call.

Ayes: Anderson, Armstrong, Beatty, Hampton, King, Maxey, Mayhew, Morgan, Pinkham, Reid, Shoup, Sweet, Wilson—13.

Nays: Ainslie, Batten, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Hasbrouck, Hays, Heyburn, Hogan, Jewell, Kinport, Lewis, McConnell, Melder, Myer, Pefley, Pierce, Sinnott, Vineyard, Whitton, Mr. President—25.

And the amendment was lost.

Mr. HEYBURN. I have an amendment.

The CHAIR. The trouble with it now is, that if in the second line the word "whenever" is stricken out, and "if" put in, it will avoid this question of advertisement of which you speak; "whenever the taxable property of the state shall amount to fifty million dollars the rate shall not exceed four mills on each dollar of valuation." The word "if" leaves it indefinite.

SECRETARY reads: Amend Section 10 (9) by striking out the word "four" in line 4, and inserting "six."

Mr. MAYHEW. I second that amendment.

Mr. HEYBURN. That is inconsistent with the amendment we made in the second line, of "ten" mills. Ten mills would give us \$230,000 on our present valuation; six mills on \$50,000,000, would give us \$300,000, which is just about the proper proportion in the growth of people represented by \$23,000,000 and \$50,000,000 assessment. I also propose in the sixth line to strike out "two;" and insert "four," which would maintain the same proportion; and in the eighth line strike out "one" and insert "two," which, it seems to me, would be in proportion to the growth of the people. The people are supposed to increase with the increase of property.



Mr. HASBROUCK. Mr. President, I shall not favor this amendment. The whole theory, as it seems to me to be, is to run the state in debt as much as possible; at least, collect taxes for the purpose of paying debts of the state. I am in favor of the state not running in debt. The estimate made may not be as close as the gentleman supposes. It is not supposed that for the next three years our assessed valuation will remain at \$22,000,000; but that is the theory the whole argument is made upon. I would not be at all surprised—and I hope it will be so that before three years roll around we will have \$50,000,000; and if so, seven mills would be sufficient to meet the interest on these debts that the gentleman wishes to contract; but I am opposed, in any instance, for the state to run largely in debt. I do not believe in the principle; I don't believe it is a correct principle, and I am afraid, further, that this constitution will fail of meeting with the approval of the voters, and will not be ratified if these excessive rates of taxation are maintained, or put in this constitution. I know that it is the great cry in my county, that the state government will cost so much more than the territorial government is costing, so that if it is a fact that the constitution provides and shows that that will be the case, they will not vote for it. I have had dozens of men tell me that, and that the expenses will be greater; and to show that fact to this convention, these statistics were prepared; to show that it is not in accord with the proclamation of the governor, that the expense would be comparatively little more for the state government than we are paying for the territorial government. I do not believe it is good policy, and I shall oppose these amendments.

Mr. SHOUP. I desire to offer an amendment.

Mr. CLARK. Mr. President, I move the amendment offered by the gentleman from Shoshone be amended by striking out "six" and inserting "five," so as to limit the tax to five mills.

Mr. HEYBURN. I will accept that amendment.

SECRETARY reads the amendment offered by Mr. Shoup: Strike out the word "whenever" in line two and insert the word "if."

The CHAIR. The question first is on the amendment offered by the gentleman from Custer, to strike out the word "whenever" in the second line, and insert "if."

The vote was taken and a division called for. The rising vote resulted: Yeas 19; Nays 9; and the amendment was adopted.

The CHAIR. The question recurs on the amendment offered by the gentleman from Shoshone on the acceptance of the amendment to the amendment offered by the gentleman from Ada to strike out the word "four" in line four and insert the word "five," so that it will read "exceed five mills on each dollar of valuation."

Put to vote and carried.

Mr. HEYBURN. Now, Mr. President, I move to strike out "two" and insert "three."

Mr. MAYHEW. I second the amendment.

Put to vote and carried.

Mr. HEYBURN. I move that we strike out the word "one" in the eighth line and insert "two."

Mr. MAYHEW. I second the amendment.

Mr. SHOUP. I move that we make it one and a half.

Mr. HEYBURN. I will accept that amendment.

Mr. MAYHEW. I will have to make another demand for a call of the house. There are only thirty-six present.

Mr. MORGAN. I second the call.

The CHAIR. It is moved and seconded that Section 10 (9) be amended by striking out the word "one" in line eight, and inserting "one and a half."

Put to vote and carried.

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

Mr. HAMPTON. I have an amendment.

SECRETARY reads: I move to amend Section 10



(9) by striking out in line 8 the word "unless" and insert instead thereof the words "provided that." Also add "s" to the word "rate," and immediately thereafter add the word "respectively" in the ninth line.

Mr. HAMPHON. It will be seen, Mr. President, that the latter part of this section, which I suppose was intended to apply to the whole section, provides that the people might vote upon a higher rate of taxation, only applies to the condition where there is over \$300,000,000 of taxable property. It ought to apply to the whole section, and I think if it is changed it will enable them to do so. The people cannot vote upon increasing taxation, I take it, until the taxable property in the state reaches over \$300,000,000. With the amendment suggested it would apply to the other circumstances and conditions when you had \$100,000,000 or \$200,000,000.

Mr. HASBROUCK. If that amendment prevails you might as well strike the section out; because there would be no limit on the legislature whatever. I understand this section is to place a limit on the legislature, that they shall not levy any tax to exceed the amount named here. If you break that down by saying they may do so by a vote of the people, there is no limit at all, and it does not amount to anything.

"Question, question."

The question was put by the chair. Vote and lost; and the amendment was rejected.

The CHAIR. I would like to ask the chairman of the committee, Mr. Hays, as to whether it is the intention of the committee—I ask this as a member—to make these various levies or designations upon future levies based upon the assessed valuation?

Mr. HAYS. Yes.

Mr. CLAGGETT. I would suggest then that in the second line it would be a good plan to make it so appear, because it is very indefinite now; and put in the word "assessed" after the word "of" and before the

word "valuation." Otherwise the legislature would have no strings on them in spite of all limitations.

Mr. HEYBURN. I move that amendment, Mr. President.

Mr. AINSLIE. I ask unanimous consent for it.

Moved and seconded that Section 10 (9) as amended be adopted. Carried.

## SECTION STRICKEN OUT.

Section 11 was read.

Moved and seconded that Section 11 be adopted.

Mr. PARKER. I have an amendment.

SECRETARY reads: Amend Section 11 by adding after the word "therefor" in line 11 the following: "The legislature shall require him to give a separate bond to secure the safety of the school moneys entrusted to his custody."

Mr. PEFLEY. I second it.

Put to vote and lost.

Mr. REID. Mr. President, I would like to ask the chairman of the committee if they made any estimate of what that publication is going to cost in line 6, "and give the number and amount of every warrant." It seems to me that is going to be a pretty big item. The convention will understand we have those little books or pamphlets issued by the comptrollers and treasurers in pamphlet form, in which all those expenses are itemized. I am as much in favor of holding public officials to account as anyone; but I think there is a cheaper way to do that. It costs a good deal to publish those matters in newspapers, and if you publish the number and amount of every warrant, it is going to a thousand or two thousand dollars. I just ask to know what it is going to cost.

Mr. HAYS. We estimated that it would be about \$1,000 a year.

Mr. REID. Then I am opposed to it. I move to strike out the sentence in line 6, "The governor shall cause every such report to be, etc., as the legislature may require." (Seconded.)



Mr. HASBROUCK. I move to strike out the whole section, for the reason that it is of a legislative character and I don't think it is needed.

Motion seconded. Put to vote and carried.

Mr. McCONNELL. Mr. President, I move to strike out Section 12.

Mr. HEYBURN. I second it.

The CHAIR. The motion is out of order now. The secretary will please read the section.

#### SECTION 10.

Section 12 (10) was read.

Mr. McCONNELL. I move to strike out Section 12 (10). My object in making the motion is this: A great many of our officers now, treasurers of school districts or counties are interested in banks, either as stockholders or in some other way, and there are but few officers who are fixed to guard these moneys at their own homes. They are largely deposited in banks, and if they are shareholders in the bank they would be indirectly interested in having it. If it is adopted, you would have some difficulty in some localities in getting a treasurer. We had it urged here as a reason why the treasurer of the territory should receive so small a salary as was fixed in the report on salaries, that he would have a large amount of money on hand and derive a benefit from that. Now, you have a treasurer in this territory, he will doubtless be a citizen of Boise City; and if he is a man who can give bonds (and he will have to give bonds or he cannot be treasurer) there is a very large chance that he will be interested in one or the other of those banks. Under this provision he could not deposit the money in the bank; he will have to pile it up in a room here some place, or hire a man or half a dozen men to watch it with shot-guns. I think the money of the territory would be safer with these banks than it would in this building. I suppose the treasurer will have an office in the building, but if there is any provision made for taking care

of the funds safely out in a back street like this, I don't know it. I have had occasion quite recently to investigate the matter of burglar-proof safes, and I am told by manufacturers of safes that there is no such thing in existence today as a burglar-proof safe. With all the modern devices of safe-makers, they can get into any safe if they have a little time. You might employ a guard, as the state of Oregon does, and perhaps this state does, to guard the building; but they can't have more than two or three men, and the guard can be captured, and then they would have all night to work on the vault. I don't believe in having this provision in here that the treasurer cannot deposit the money with the bank if he happens to be a stockholder in the bank.

Mr. HAYS. I don't see anything in Section 12 (10) to prohibit the treasurer from depositing the money in the bank.

Mr. McCONNELL. If he is a stockholder in the bank?

Mr. HAYS. Well, he need not necessarily be the treasurer because he is a stockholder in the bank. We don't propose to make the bank the treasurer. That does not necessarily mean that he has got to be a stockholder in the bank, because he is the treasurer of the state. And even if he is a stockholder in the bank, he need not put it in his bank account. He need not mix it up with bank money. The money should be kept separate; the law requires him to keep it separate, and we want Mr. Treasurer to keep this money in the bank so that he won't have the handling of this money all the time for his own benefit.

Mr. MAYHEW. Do you mean it has to be placed in the bank as a special deposit so it cannot be drawn against?

Mr. HAYS. The treasurer can draw against it.

Mr. MAYHEW. The gentleman does not seem to understand. There are two kinds of deposits; a special deposit and a general deposit.



Mr. HAYS. Certainly.

Mr. McCONNELL. The chairman of the committee does not seem to understand me. I think it is more than likely that any gentleman who will be able to give a bond so large as the treasurer of this territory will have to give will be the owner of more or less bank stock. I think upon investigation you will find nearly every citizen of any considerable amount of wealth possesses some shares of stock in these banks. If this town does not, it is an exception to the towns in the territory. And having an interest in any one of those banks, or in all of them, he could not deposit the money in the bank under this law, because that bank is not going to hold that money in a sack in the vault, and be responsible to the treasurer and receive no benefit from the money. There isn't a bank in the country that would do it. They are accountable to the treasurer for that money; they give a certificate of deposit to the treasurer and are accountable to him for the money, and he as treasurer can draw his warrants against it at any time; but at the same time, if that treasurer owns one single share of stock in that bank, he is indirectly receiving a profit from that money, because the bank has a profit in handling that money and holding it, or it would not hold it. So I venture to say there is not a gentleman in this town who could give the bond as treasurer, who has not a share in some of these banks, one or more shares, because the responsible men of the town naturally try to get into the bank; even if they do not care about the investment, they get them in there to act as officers of the bank; they have to have a certain number of local officers in these banks, and that is one reason why I object to it, because I think the money is safer with a bank than it would be in the hands of an individual, but it would necessitate the man selling his shares of bank stock if he has any, before he could take the office of treasurer.

Mr. WILSON. I would like to answer the statement of the gentleman last made, that no man in this town

could give bond as treasurer, who is not a stockholder in a bank. Mr. ——— gave a bond for \$100,000, and on that bond as sureties there was not a man who was a stockholder in any bank in this county.

The question was put by the chair. (Vote and lost.)

Moved and seconded that Section 12 (10) be adopted.

Put to vote and carried.

### SECTION 11.

Section 13 (11) read, and it is moved and seconded that it be adopted. Put to vote and carried.

### SECTION STRICKEN OUT.

Section 14 was read.

Mr. WILSON. Mr. President, I move Section 14 be stricken out.

Mr. BEATTY. I second the motion.

Mr. WILSON. I make the motion for the reason that I think it would impair the power of municipal corporations to borrow money. If nothing but the public property of the corporation was pledged as collateral for it to borrow, I don't think you could borrow any at all. I think all property ought to be pledged for anything you borrow.

Mr. AINSLIE. I don't see how you are going to take the property of a private individual of this city to pay the city's debts. You cannot go and take John Smith's property to pay the debts of Boise City. It is a very proper provision.

Mr. MORGAN. I would like to ask the chairman of the committee what it was intended to cover; what is the intention of it?

Mr. HAYS. It means just what it says, Judge Morgan.

Mr. MORGAN. I don't understand that it can be done, without any such provision as this, or ever is. I don't know but it was to prevent them levying taxes for the purposes of building sidewalks or improving streets or some such thing as that.



Mr. WILSON. You can take either horn of the dilemma. If the section is any good, which I don't think it is, I don't think you could sell the private property of an individual for a corporate debt; and if not, then it ought not to be there. If you take the other horn, that you impair the power of the municipal corporation to borrow money, it ought not to be there.

The question was put by the chair, and on the vote a division demanded. On the rising vote the result was: Yeas 14; Nays 15.

Mr. BEATTY. Mr. President, upon adoption of that, I would like to ask simply a question of the chairman of the committee. I presume private property shall not be taken or sold for the corporate debts of municipal corporations. I would like to know whether under that provision, if a tax is levied to pay corporate debts, whether in view of that, the property of any individual, or any property can be sold to pay the tax.

Mr. HAYS. Why, yes, I judge so.

Mr. BEATTY. Well, it says not; "Private property shall not be taken or sold for corporate debts of municipal corporations." You levy a tax to pay a corporate debt. The tax itself is not a corporate debt; you have to levy the tax to pay the debt, and then you have to sell the property under that tax, it strikes me.

Moved and seconded that Section 14 be adopted.

The vote was taken, and the chair being in doubt, required a rising vote, which resulted: Yeas 16; Nays 16.

The CHAIR. The chair votes—

Mr. MAYHEW. There is not a quorum present.

The CHAIR. We will take the vote over again. (Rising vote: Yeas 18; Nays 18.) The chair casts his vote in the negative, for the reason that he had very grave doubts as to whether there would not very serious difficulty arise. I am very strongly impressed with the idea that private property may be taken where the corporation does not meet its tax, and that the supreme court of the United States has so held; but if you put

it into the constitution that it may not be taken, it is a question whether you shall not have trouble in Washington.

Mr. BEATTY. Now, what becomes of the section?

The CHAIR. It is not adopted.

Mr. AINSLIE. I would like to have the yeas and nays on that proposition of adopting the section. I think some members voted twice.

Mr. PINKHAM. I think the gentleman from Boise voted on both sides of the question.

The CHAIR. The question is now about adopting the section.

Mr. BEATTY. Are we voting to adopt or strike out?

The CHAIR. That there may be no confusion about this matter, the chair will state that the motion to strike out was voted down. The vote now is upon the motion to adopt.

Roll call.

Yeas: Ainslie, Anderson, Batten, Bevan, Cavanah, Coston, Crutcher, Hays, Hogan, King, Kinport, Maxey, Mayhew, Melder, Parker, Reid, Sinnott, Vineyard, Whitton—19.

Nays: Allen, Armstrong, Beatty, Campbell, Chaney, Clark, Gray, Hampton, Harris, Hasbrouck, Heyburn, Jewell, Lewis, McConnell, Myer, Morgan, Pierce, Pinkham, Wilson, Mr. President—20.

And the motion to adopt the section is lost.

Moved and seconded that Section 14 be stricken out.

Mr. AINSLIE. I demand the yeas and nays. It is taken exactly from the Colorado constitution.<sup>1</sup>

Mr. BEATTY. Well, we know as much as Colorado, don't we?

Mr. MORGAN. I rise to a point of order, Mr. President. I think the vote refusing to adopt is equivalent to a vote to strike out. Nobody has offered any amendments.

Mr. AINSLIE. That is not a parliamentary rule

<sup>1</sup>—"Private property shall not be taken or sold for the payment of the corporate debt of municipal corporations." Colo. Const. (1876), Art 10, Sec. 14.



at all. If it is not adopted, it may be open for amendment.

Mr. MORGAN. Nobody has offered any amendment.

Mr. AINSLIE. Well, you make a motion to strike it out.

Mr. WILSON. A motion to strike out is not in order, because we have had the motion once.

Mr. REID. We have done some business with it since then, and it is in order again.

The CHAIR. Yes, the point of order is not well taken. The question is now upon striking it out.

Roll call.

Yeas: Allen, Armstrong, Beatty, Campbell, Chaney, Clark, Gray, Hampton, Harris, Hasbrouck, Heyburn, Jewell, Kinport, Lewis, Maxey, McConnell, Myer, Morgan, Pierce, Pinkham, Pyeatt, Sinnott, Wilson, Mr. President—24.

Nays: Ainslie, Anderson, Batten, Bevan, Cavanah, Coston, Crutcher, Hays, Hogan, King, Mayhew, Melder, Parker, Reid, Vineyard, Whitton—16.

The section was stricken out.

#### SECTION 12.

Section 15 (12) read, and it is moved and seconded that it be adopted. Carried.

#### SECTION 13.

Section 16 (13) read, and it is moved and seconded that it be adopted. Carried.

#### SECTION 14.

Section 17 (14) read, and it is moved and seconded that it be adopted. Carried.

#### SECTION 15.

Section 18 (15) read, and it is moved and seconded that it be adopted.

Mr. REID. I would like to inquire about that last line, "All moneys in the county treasury at the end of

each fiscal year not needed for current expenses." Would that exclude the school fund, special taxes, road taxes, or does that take all the money?

The CHAIR. If it is not needed for payment of current expenses.

Mr. REID. I shall oppose that last part of it. That would take the school fund, bridge fund, hospital fund and all the special funds.

The CHAIR. It reads: "All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund." If the gentleman will send up an amendment covering that point—

Mr. BEATTY. I move to strike out all after the word "fund" in line 9. (Seconded.)

Mr. HEYBURN. Mr. President, I want a little information on this subject. My memorandum shows that Section 4 of the bill (number 7) (Article VIII.) on Public Indebtedness, was stricken out. That is the section that by implication authorized the county to incur a debt not exceeding five per cent of the assessed value. Now, that section preceding that in that bill provides that "no county, city, town, township, board of education or school district, or other subdivision of the state, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year." Now, you provide in this Section 18 (15) that the legislature shall provide by law such a system of county finances as shall cause the business of the several counties to be conducted on a cash basis; putting these three things together, these three sections, there is no possible provision by which a county can incur indebtedness for any purpose, for the purpose of building public buildings, or any other necessary purpose. We have limited them; "Provided, they shall never incur any indebtedness exceeding the income for that year." We have stricken out the section allowing them to incur an indebtedness of five per cent of their assessed valu-



ation, and adopted the section preceding, being number 3 of Article VII. (VIII.), and now provide that from this time on they shall do business on a cash basis; and the natural result, the inevitable result, is that they could not create any indebtedness for the purpose of building any buildings, and they could not levy any tax for that purpose, because they cannot levy any tax under Section 3 of Article VII. (VIII.), exceeding the income and necessary expenses of that year.

Mr. AINSLIE. Without a vote of two-thirds of the qualified electors.

Mr. HEYBURN. I am coming to that. Whenever they want to incur any expenses over the income, they would have to submit it to the people and obtain a two-thirds vote of the qualified electors of the county; and counties only have elections every two years, so that if public buildings were burned down immediately after an election, there is no provision made for such a contingency; they would either have to have a special election, for which no provision is made by law, or wait until the general election two years afterwards to submit this matter.

Mr. AINSLIE. To vote at an election to be called for that purpose.

Mr. HEYBURN. If you called an election for that purpose, you would have the expenses of the election, you would have to wait until you submitted the matter to the people to provide a temporary shelter for your office. It seems to me that we have tied the county down pretty tight in that section. If Section 4 had been left in, it would have made ample provision, because they could then incur an indebtedness.

Mr. REID. If the gentleman will allow me to interrupt him, it provides that they shall not exceed the levy which is made, but in making the levy they can take those expenses into consideration and levy enough to meet them.

Mr. HEYBURN. I am speaking of a case where a calamity occurs after levy is made. I think if we put Section 4 back into that act and allow them to incur

that indebtedness, there will be no difficulty about the matter.

Mr. WILSON. I moved to have Section 4 stricken out for the reasons stated at that time, and would regret to see it reinstated. I don't think the objection the gentleman from Shoshone makes is well taken. I think the counties could create indebtedness greater than he refers to. I read Section 3 of the article he refers to: "No county, city, town, township, board of education, or school district, or other subdivision in the state, shall incur any indebtedness or liability in any manner or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund," etc. That, as I take it, would make the necessary provision. Counties could contract indebtedness for public buildings, provided they made provision at that time for the payment of the interest on the debt, and for a sinking fund to pay the principal as it fell due, not exceeding twenty years.

Mr. REID. I will withdraw the objections I had to this last section. "All moneys not needed for current expenses" limits that. It is, all money not needed for current expenses must go into the sinking fund.

Mr. GRAY. I would ask for information, if this prevents in any manner the issuance of county warrants?

Mr. HEYBURN. Yes.

Mr. AINSLIE. This bill provides that no money shall be drawn from the treasury except on warrants.

Mr. GRAY. Can they issue warrants if the fund is exhausted? It is much more convenient for a county to have the privilege of drawing warrants for any ordinary expenses. If it does not prohibit that, I have no objections to the section.

Mr. AINSLIE. I call the attention of the gentle-



man from Ada to Section 3 in Article VII. (VIII.), of this bill passed, that "No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness or liability in any manner or for any purpose, exceeding in that year the income and revenue provided for it for such year." That is, they cannot incur any indebtedness outside the amount of the revenues collected for that year. If they could, they could run the county in debt without limit.

Mr. GRAY. Then I understand the county cannot issue warrants unless there is money in the treasury to pay them. If that is the case, I oppose the amendment.

The CHAIR. For the information of the gentleman from Ada, it seems to me there is nothing in this section at all that prevents the issuance of warrants. It provides that the legislature shall provide such a system of county finance as will enable the business of the county to be conducted in a cash basis. That for the purpose of paying up your outstanding warrants they are required to provide a special fund, and after that old warrants are paid out of that fund, and new warrants may be issued; but that system of finance must be provided by the legislature to enable warrants being taken up that year by the money coming into the treasury.

Mr. HAMPTON. It seems to me the last two lines "All moneys in the county treasury at the end of each fiscal year, not needed for current expenses" are transferred to the redemption fund, are inconsistent. The fiscal year ends in January, and we do not have any more taxes collected until fall. We have all the moneys turned over in January to this redemption fund; you leave no money to pay current expenses for the year from January until November or December. I don't think I am in favor of striking it out if it can be made consistent with the rest of the section.

The CHAIR. If there is no money there, the section will be inoperative; but there may be coming in from licenses, there may be some money left in the treasury

at the end of the fiscal year, and there may be plenty of money coming in from licenses along to carry the county government on. That is a matter to be left to the provisions of the legislature.

It is moved and seconded that the section be adopted. To that an amendment is offered by the gentleman from Alturas, Mr. Beatty, to strike out all after the word "fund" in the ninth line.

Mr. BEATTY. Mr. President, on that question to strike out, I make it because I think that had better be left to the legislature. I know how often it becomes necessary to change the rule upon that question, and from time to time different provisions have been made in the legislature for disposing of the surplus funds. Sometimes they want to go one way, and sometimes another, and I think it is better that it be left to the legislature, instead of pinning them down at the end of the fiscal year to transfer all funds that may be left on hand into some other fund. It ties it up in such a way that it leaves no latitude whatever. As the county commissioners may need them, or require them, I would say.

Mr. AINSLIE. I think that is a very important provision there. The moneys in the county treasury at the end of the fiscal year, not needed for current expenses shall be transferred. It simply prevents the county commissioners from squandering that money on some unnecessary purpose. Better sustain it. Then at some time, maybe at the time they make their levy for county purposes, their revenue may run over their estimate of current expenses, besides having an additional redemption fund itself. If it does run over a few hundred dollars, or two or three thousand dollars, I think it is nothing more than proper that it should be devoted to clearing up old debts and stopping interest than to be squandered or used for some new purpose. I think it is the life of the bill.

Mr. GRAY. I have just comprehended the explanation made by the president in regard to levying a special tax. My idea is, I like the idea of changing these



funds, when there is more money accumulated in a fund than necessary therefor. I will not support the amendment of the gentleman from Alturas. If there should be for some reason a large amount of money in the fund to be used for some other fund, let the county commissioners have some discretion. Let them see whether it will pay expenses, and then transfer. But it seems this section contemplates that in the event the indebtedness should exceed what had been contemplated by the board in their levy, then it would be necessary for them to make a separate and distinct levy, and they have got to go through with some method of perhaps assessing and collecting as they did in the original levy made at the commencement of the year. I cannot see anything wrong in allowing the board of county commissioners to issue warrants when necessary, and to be provided for out of some future year's levy. If they cannot get their money, they want their interest. But this has got to be a special tax; it cannot come in the general levy of the next year. I think it might work a hardship.

Mr. HEYBURN. Mr. President, I like the object of that section. I like the result of it, as far as putting the counties on a cash basis is concerned. But I am led to look at the result as applied to the existing condition of affairs. I find that taking a county with \$65,000 in warrants outstanding, if they assess the limit of ten mills, one per cent, every year it would prolong the payment of that debt over seven years, and the interest account—the additional interest account involved in prolonging that debt—under the rate of interest those warrants are bearing, would be \$25,000. That is to say, that a debt of \$65,000 now, by the time it was paid, would be a debt of \$100,000; that is, it would take \$100,000 to pay it, so that it would take ten years to clear up that much debt. It might be that that is the least of the evils, but it is a great evil. It may be that is the only way of curing it, but it is not satisfactory to my mind. If a county could go on a cash basis, and instead of issuing warrants or rather—of course it

would issue warrants—suppose there was a fund in the treasury to pay them, which of course the first two lines of the section provides in substance, because it provides that it shall be done on a cash basis, I take it that would not authorize the issuance of any warrants unless there was a fund to pay the warrants. And if the parties holding this indebtedness would be satisfied, leaving it to bear the rate of interest, which is paid, say taking ten years in which to pay it, it is a pretty good investment, I admit that, but the county is paying pretty dearly for the use of that money. The county is paying in the end pretty near 33 1-3 per cent for that money. I suppose probably it is the best measure that can be provided. It is a pretty hard situation to cover.

The CHAIR. The question is upon the adoption of the amendment offered by Mr. Beatty to strike out all after the word “funds” in line 9 of the section.

Put to vote and lost.

Mr. AINSLIE. I move to adopt the section as amended.

The SECRETARY. There is a substitute here by Mr. Parker.

The CHAIR. The secretary will read it.

SECRETARY reads Section 18 (15). No county, city, town, township, school district or other subdivision shall contract any debt unless authorized and limited by law, and no scrip certificate or other evidence of debt whatever shall be issued by them, except in accordance with the provisions of such law.

The CHAIR. There is no second to the substitute. The question is on the adoption of the section. (Put to vote and carried).

#### SECTION 16.

Section 19 (16) read, and it is moved and seconded that it be adopted. Carried.

The CHAIR. What is your pleasure with this bill?

#### SECTION 2.

Mr. HAYS. By unanimous consent I would ask to



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

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

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

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

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

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

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

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

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

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

## TWENTY-FIFTH DAY.

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

Convention called to order by the president.

Prayer by Chaplain Smith.

Roll call:

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

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