

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

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

TWENTY-SIXTH DAY.

SATURDAY, *August 3, 1889.*

Convention called to order by the President.

President Claggett in the chair.

Prayer by Chaplain Smith.

Journal read and approved.¹

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

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

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

Presentation of petitions and memorials. None.

REPORTS OF STANDING COMMITTEES.

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

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

The SECRETARY. It has been presented.

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

The report was read by the secretary.

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

Reports of standing committees. None.

Reports of select committees. None.

Final readings. None.

The CHAIR. Gentlemen of the convention, this fin-

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

ishes the regular order of the business of the day. What is your pleasure?

COMPENSATION OF STENOGRAPHERS.

Mr. McCONNELL. Mr. President, as chairman of the committee on Finance, I desire to say that we have assurances from one of the banks that they will take the vouchers, including the per diem and mileage of the members, at a discount as proposed the other day, and I wish to say that we have two stenographers who have been assured \$10 per diem for their services. And I am in honor bound to see that one at least of these gentlemen gets that amount of money, because it was my telegram that brought him here; and my understanding is that the report of the committee on per diem and mileage has not been printed. I think it made allowance of \$10 per diem for the stenographers. By bringing this matter up and increasing that allowance, so that with the discount off, they will be allowed \$10 per day, it would relieve any embarrassment which this convention might be placed in. The convention will be in honor bound to pay these gentlemen, who came here for the purpose of performing certain services, the amount they agreed to pay them, and if their warrants after being discounted do not reach that amount, this convention or some of the individual members of it will be in honor bound to make up the deficiency. I would, therefore, move you that a committee, to which was referred this matter, take it under further consideration, and report to us this afternoon on any increase that may be necessary to relieve the convention of the embarrassing circumstances in which it is placed. (Seconded.)

The CHAIR. It is moved and seconded that the pay of the stenographers as fixed by this convention shall be sufficiently high, so that after deducting the necessary discounts it will amount to \$10 per day each, and that that proposition be referred to the committee on Ways and Means, with the request that they will make their report accordingly this afternoon. (Carried.)

Mr. HASBROUCK. As chairman of the committee on Ways and Means, I move that the special committee on Finance meet with the committee on Ways and Means to adjust this matter.

Mr. McCONNELL. It will not be necessary to place that in a motion, I guess, because we will meet with them at any time; say right here after we adjourn.

Mr. HASBROUCK. Very well.

LEAVE OF ABSENCE.

The CHAIR. On yesterday, Dr. Maxey, one of the members from Ada county, sent to the desk a note requesting to be excused until Tuesday, on account of sickness which compelled him to return home. Is there any objection to his leave of absence being granted until Tuesday? There is no objection and it will be so ordered.

MEMORIAL TO THE PEOPLE.

Mr. REID. Mr. President, there was a motion passed while you were out of the chair yesterday, to appoint a committee of ten, including yourself, to memorialize the people on the subject of the constitution. It was passed while you were out of the hall, and I was going to suggest that that committee be appointed as soon as possible after the Chair is ready.

The CHAIR. I was informed of it last night. I will appoint the committee on coming in the convention this afternoon.

Mr. REID. If the regular business is through, I call for the unfinished business of yesterday.

The CHAIR. The unfinished business of yesterday is the report of the committee on Counties and County Government.

ARTICLE XVIII, SECTION 6.

Mr. REID. We were on Section 6, and I now send forward the following substitute for Section 6.

Mr. HAYS. Mr. President, I move that the vote by which Section 3 of the article under consideration was adopted, be reconsidered.

Mr. REID. I make the point of order that the gentleman is out of order at this time. We are proceeding to consider a substitute to the section and a lot of amendments. When we complete the article, it will be in order to go back and reconsider any section desired.

Mr. McCONNELL. I think it would be in order after the section is passed.

Mr. REID. After the article is completed. We have passed two sections.

The CHAIR. I will call the attention of the convention to rule 39.

Mr. REID. Yes, I have just read it. A motion to reconsider must be made by a member voting on the losing side, etc. It requires it to be taken up section by section.

The CHAIR. The chair is of the opinion that the motion is not in order at this time. I will recognize the gentleman just as soon as the pending section is disposed of.

SECRETARY reads Mr. Reid's substitute for Section 6: "Section 6. The legislature, by general and uniform laws, shall provide for the election biennially in each of the several counties of the state, of county commissioners, a sheriff, county treasurer, who is ex-officio public administrator, probate judge, who is ex-officio county superintendent of public instruction, county assessor, who is ex-officio tax collector, a coroner and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers, for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The county commis-

sioners may employ such deputies and clerical assistants for the clerk of the district court, auditor and recorder and sheriff as may be necessary."

Mr. REID. I have incorporated into that every amendment except one, proposed. One amendment was proposed by yourself as to the eligibility of county officers. I would prefer to have the convention vote on that and I will ask to have it read.

SECRETARY reads: "No sheriff or county assessor shall be eligible to hold the term of office immediately succeeding the term for which he was elected."

Mr. REID. The only change I made in the section was in line 30, where I struck out "Clerk of the court who is ex-officio, county auditor," because it had been provided that the clerk should be elected four years in the Judiciary article, and in line 6, I inserted, "The clerk of the court shall be ex-officio auditor and recorder." Then I came down to the end of the section and added that the county commissioners may employ counsel. That does away with the necessity for employing county attorneys. It was interposed as an objection by some gentleman that in the counties frequently they need counsel when the district attorney would be away. This clothes them with the authority—I think they have it by law, but some gentlemen seemed to think they did not and that it had better be expressed in the letter of the law; it just authorizes them whenever it may be necessary, to employ counsel. That is a matter between them. Then it provides that they may employ such clerical assistance and deputies for the auditor, sheriff, recorder and clerk of the court as needful, which was put in to meet the case stated by the gentleman from Shoshone. There the sheriff has to have five deputies. In the next section, we provide for his salary. They have an immense amount of business up there, as was stated yesterday, the office of the auditor and recorder yielding \$18,000 in fees. So we provide that where there is a large county and a great deal of litigation the commissioners may, whenever in their discretion they think it is necessary for the efficient transaction of the

public business, employ this clerical assistance and pay them what they see fit. The legislature will provide the machinery. Now, there was another amendment proposed, to strike out "No other county offices," by Mr. Wilson. I am sorry he is out, because he says that authorizing the county commissioners to employ counsel when they deem it necessary meets his wishes. I would object to striking that out for this reason. Then they could restore county attorneys or any of the offices we have abolished or combined, if you leave it to the legislature to create new offices. We have struck out this, after consultation with the Judiciary committee, providing for combining the office of clerk, auditor and recorder. In large counties, one man cannot attend to it, but the commissioners can employ assistants. In the smaller counties, the two offices will realize enough fees to pay one officer, and save the salary to the taxpayers. That is the reason we combine them. We then combine the offices of probate judge and superintendent of public instruction. As has been stated and as every lawyer knows, the probate judge ought to be a man of intelligence, good sense, of high character and integrity to handle the estates of orphans and deceased persons. The same order of intelligence and executive ability that would qualify him to fulfill the duties of the office of probate judge will make him an efficient superintendent of the schools of the county, and he can go around and superintend them. There is but one objection I have heard urged, and it is that we ought to have a professor, a man peculiarly schooled who can go around and hold teachers' institutes. I have found in my experience—I had ten years' experience as county treasurer and recorder and clerk of schools, and I found that a man who possesses that peculiar talent to lecture on teaching rarely has that better talent of executive ability. But it will make the people select a better probate judge, a more intelligent man, which the attorneys and litigants will not object to; so we think by combining the offices and making the fees of his office pay him, we would get an efficient county government, and that this was the

best combination we could make. Now, as to the proposition to make them ineligible, I could not accept that amendment; I do not feel like cutting a man off from a second term. I think we could leave that to a vote of the convention.

The CHAIR. It only provides for two officers, sheriff and assessor.

Mr. REID. Ought it not apply to the treasurer as well?

Mr. MAYHEW. I don't think it ought to apply to the treasurer. It ought to apply to the sheriff's office and the assessor's office. That has been the law in Montana ever since the territory was first organized, and the magnificent local administration of the affairs of that territory generally has been due more to that limit put on it than anything else.

Mr. REID. I will ask that the amendment be read.

SECRETARY reads: "No sheriff or county assessor shall be eligible to re-election until the expiration of one full term after the close of the term for which he was elected."

The CHAIR. The question first is upon the adoption of the substitute reported by the committee. Are you ready for the question?

Mr. HEYBURN. Let us have it read. I would just inquire of the gentlemen of the committee whether or not the language of that would not allow the commissioners, in case they chose to be too stubborn, to appoint a deputy for sheriff against his protest; whether it does not vest the entire selection in the commissioners. I should have some doubt about the wisdom of that. The sheriff ought to be allowed to select his deputies, I think. I am afraid the language of that would place the power entirely in the hands of the commissioners to make an appointment against his protest, which I think is not right. The amendment meets with my approval except that.

Mr. REID. The gentleman is right about that. We say the county commissioners may employ such deputies and clerical assistants for the clerk of the district court,

auditor, recorder and sheriff as may be necessary. It lodges with them the power to employ the deputies. I take it though it is a discretion lodged with them. I don't think they would in any county appoint a man the sheriff would seriously object to; but as he says, if they chose to take the bit in their mouth I think they could do it.

Mr. MORGAN. The sheriff is responsible on his bond for the work of all his deputies, and certainly the commissioners ought not to have the power to appoint a man not selected by him, because he is responsible. Just so with the clerk of the district court. There should be a provision that they might employ upon the person being named by the officer.

Mr. MAYHEW. I move to strike out the word "sheriff." (Seconded.)

Mr. MAYHEW. Is this the substitute we are considering?

Mr. HEYBURN. Yes. That amendment won't do.

Mr. MAYHEW. So far as this amendment in the substitute is concerned, I don't approve of it at all. I don't think it is right or prudent or proper to vest in the county commissioners the power to conduct an office which is certainly more important than that of the county commissioners. The clerk and auditor and clerk of the court has a responsible office, and as has been said by Mr. Morgan, he gives his bond and is responsible for his own action and that of his deputies, whoever they may be, working under him. As he gives this bond and is solely responsible for it, I don't think the county commissioners or any other body of men or officers of the county would have authority to interfere with his office. That is to say, they should not have the power to appoint assistant clerks without his consent. It may be argued that it cannot be done without his consent. Let me illustrate.

Mr. MORGAN. If the gentleman will permit me a moment—

Mr. MAYHEW. Well, I propose to get through with my remarks on this point. There is no use attempting

to disguise the fact that in the different counties of our territory there may be a conflict between the recorder and the county commissioners in a political sense; for instance, if there should be a republican county clerk and recorder elected, and a majority of the county commissioners should be democratic, I don't believe that democratic board should so interfere with the republican recorder as to appoint as his assistants and deputies persons contrary to his wishes. But as the gentleman has said, they become bull-headed and strong-headed about this thing and that, and the first thing they would do would be to appoint some person contrary to the wishes of the clerk and the recorder. So it is with the sheriff. My idea about these offices is that they are all political offices, and when a man is elected to that position, let his politics be what they may, whether democratic or republican, it is his prerogative to say who his deputies shall be. If the county commissioners have a contrary view of politics, then there comes a clash, and if they are bull-headed and strong-headed, it will have a tendency to create that turmoil and dissatisfaction and dissension in the counties that will be almost impossible to reconcile. I therefore oppose that portion of the substitute that gives to the county commissioners the power to appoint anybody or employ anybody to assist those officers when they have been once elected by the votes and wishes of the people of the different counties. It certainly does not destroy or hold in balance or in check anything which might be extreme political views in those offices, but it is interfering with a prerogative and a right of the officers that have been elected by the votes and wishes of the people. Although my friend has a view of curtailing the expenses of the county and saving costs, and I am in favor of economizing as much as possible, yet I say this would make such a clash and discontent and dissatisfaction between the officers and county commissioners that it would be unsafe for us as a body to approve it. I think this whole matter should be left to the legislature, although I am rather getting off on this question of giving so much to the legislature;

but I think we are attempting in this particular to legislate in this article. I think it would be safer to go on and elect those officers as they should be, without giving power to the county commissioners to interfere with them.

Mr. McCONNELL. I desire to offer a substitute or amendment.

SECRETARY reads: "Provided that said employment shall be with the consent of the elected incumbents of said offices."

Strike out the word "employ" and substitute and insert "authorize the employment of." Morgan.

Mr. McCONNELL. I second the amendment offered by Mr. Morgan.

Mr. MAYHEW. Will that amendment leave it with the incumbent of the office to say who it will be?

Mr. MORGAN. Yes.

Mr. MAYHEW. If it meets that view I approve the amendment.

Moved and seconded that the substitute be amended by striking out the word "employ" and inserting the words "authorize the employment of."

Mr. REID. I move this substitute:

SECRETARY reads: Strike out all after the regular printed section, and add this: "The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their offices require; said deputies to receive such compensation as may be fixed by the county commissioners."

Mr. MAYHEW. That is in that very amendment; you are leaving it to the county commissioners to conduct all those offices.

Mr. REID. No sir, that authorizes them to appoint. It authorizes those officers to appoint such as they require, and then the commissioners fix the pay, but they cannot appoint. That covers the whole case and obviates the difficulties, and allows them to employ counsel also.

Just strike all out after the printed section that has been proposed, and insert that I say now.

Mr. MORGAN. I second the substitute.

Mr. BEATTY. Before that motion is put I desire to make a suggestion. The great objection I have, for one, to the new district attorney system, was leaving the counties without county attorneys. Now, this section as amended will leave it to the county commissioners to employ counsel whenever they please. In my opinion that will result in more expense than our present system. I think this section ought to be amended so as to leave the legislature to enact some general law upon this subject, and not leave it to the county commissioners to select whom they please and pay what they please. There is actually no limit here to the powers of the county commissioners. They can employ as many counsel as they please, and pay them what they please. We presume they will do their duty, but they do not always do it, and we are leaving too much to them. I would rather this section would be so amended as to leave it in the power of the legislature to enact a general law for the employment of county attorneys and throw some provision around it.

I offer the following amendment: Insert after the word "established" in line 6, the following words: "Except the office of county attorney," and make it read in this way: "No other county office shall be established except the office of county attorney, but the legislature, etc." That will leave it in the power of the legislature, if they deem it necessary, to establish a law for the election of county attorneys, and provide some law by which the county commissioners cannot vote any salary or compensation they please. I believe if you leave it in this way, that in the counties where we employ county attorneys—and they will have to be employed; they haven't a resident district attorney and cannot get along without some local advice—it will result in more expense to the county than the old system, if you include in it the expense of the district attorney's salary. And I hope that some latitude will be left to the legislature

to create this office. As for the rest of the section, I have no objection; but I think there ought to be some latitude left to the legislature to establish such offices as may be necessary to protect the people.

Mr. REID. I hope the amendment will not prevail. The district attorneys cost this territory now \$36,600. We have five district attorneys already provided for and have fixed their salaries at \$2,500. That makes \$7,500, which is a saving on that item of \$29,000 to the people. Gentlemen know as much about the system of county attorneys as I do. I know in one county we have a good district attorney, a faithful man and a good lawyer. He makes \$1,700 per year, and he gets \$1,450 from the county treasurer. I know the work he has to do, and I am satisfied they can get as good a lawyer as there is in the north to do the same work as he does for \$500.

Mr. MORGAN. And he gets mileage besides.

Mr. REID. Yes.

Mr. BEATTY. All that I desire is that this shall not be left absolutely to the county commissioners as this leaves it. They might employ a man at any price. I think if the legislature is ready to establish the office and throw around it the restrictions so that the county commissioners cannot go beyond a certain amount, and leave it so that it cannot be avoided—

Mr. REID. The legislature has fixed it and what have we got? An expense of \$40,000 for district attorneys. I will illustrate it by a little personal experience. I was county attorney in a county where there was \$3,000,000 of property, ten years, and employed under a provision of that sort, not as county attorney but counsel. They paid me for the ten years \$100 per year, and one year when I prosecuted a capital case, they paid me \$450 for that. It was the easiest made money I ever made. They gave me that as a salary. Perhaps four or five times a year the chairman of the board would come in and ask my construction of a law; it would take 15 minutes perhaps to find it for him. Whenever there was anything special, we made a special

contract. Now, if the commissioners have business judgment (and we presume we will elect the best business men we have, who are responsible taxpayers), they will exercise that business judgment in the employment of an attorney. We let them levy the taxes, and you have got to lodge discretion somewhere. If the county has an important suit or has important legal business, the commissioners ought to be allowed to go into the market and get the best legal talent; and if they do not have the business they do not have to have the counsel.

Mr. BEATTY. Suppose an important murder case has to be prosecuted before the committing magistrate?

Mr. REID. There is the district attorney who is already paid by the state to do that.

Mr. BEATTY. But he is off in some other county.

Mr. REID. Well, it is a preliminary examination, and they simply want somebody to look after the state's interest.

Mr. BEATTY. How much will it probably cost to get a good attorney to take a case of that kind?

Mr. REID. It might cost \$150 or \$200 or even \$300. But, gentlemen, say, what are you going to do about equity cases and criminal cases? I have not known yet in these counties of much important litigation of that kind; they don't have any. When I was counsel for the county I never looked after things of that sort; there was always somebody to prosecute. The friends of the murdered man or the coroner would do that. He always impanels the jury, and you will always find the magistrate's office looking after the state's witnesses, and the defendant was always bound over. I have seen this very system, and if it be necessary, the chairman of the board is always on hand, and upon application to him, when he sees public justice is about to fail, he can employ a man. But how often do we have these murders? Shall we go on and pay \$40,000 per year for the few murders committed? We have clothed the commissioners with power to get counsel, but it is just a saving of \$40,000 by adopting this district attorney system. Let me illustrate it. This is an important matter. In

the north there are two counties, Shoshone and Kootenai. The district attorney will reside in one of the counties. Suppose there is a murder committed. They telegraph him or telephone him; he will be right on the scene. Suppose they come to our county. There is Nez Perce, Latah and Idaho together. The district attorney will live in one of those counties. They are connected, except Idaho, by telephone and telegraph, but this is only one day's ride; they can have the district attorney even if the court is in session; in an emergency like that the judge would excuse him a day for it. And these districts down here will be so small that he will always be within reach. So that in a necessity of that sort you can always get at him. And you pay these district attorneys these large salaries, and, as the gentleman said, they usually fall upon the young men, and they have got to meet the best attorneys at the bar. You have a district attorney with a salary and an office of importance and honor, and all that, and you will always get a good attorney, because in the older states, I know the attorneys considered that the best office except the judge. A sort of stepping stone to go to congress, and other places of emolument, and the very best young men used to take the place. Well, it did not devolve usually on the young men, a young man had to be a very good lawyer to get that place, the people would not elect them, and the honor was considered something. You will always find you will get just as good talent and standing before the bar as you will to sit upon the bench and administer the law. Very frequently the district attorneys were much better lawyers than the judges, who tried the cases, and he would always have to measure lances with the best men at the bar. You have provided for this, you have five. The first thing you know you will have a district attorney in every county as well as a district attorney travelling with the judge around the district. I hope the amendment will not prevail.

Mr. BEATTY. Mr. President, I have but a word to reply. My object is not to increase but to diminish

the expense. The gentleman says that by this system of district attorneys we save so many thousand dollars. It is true in one sense you save, but you will have a provision by which in the end it will cost the people more. It is not marked out in the system of salaries, but it will eventually cost the people more. Now, let us see the working of it. The section provides that the county commissioners shall employ an attorney whenever needed. I suggested the instance of a murder case. If there is not a regular county attorney to look after that, what attorney is going to take hold of a single case for less than \$100 or \$200? Suppose you have three or four cases of that kind in a year in your county, where do you land? In having a regular county attorney he will work for less for the whole year than you can from time to time employ an attorney to take the single cases. And absolutely, you will require an attorney; you cannot get along without one, because the district attorney may be in a distant part of the district. Now, then, the county commissioners are going to employ some attorney to attend to some important case, pay him \$100 or \$200; next week another case comes along, and the county commissioners have got to employ an attorney again, and where will you land in the end? I say your expenses will be far more in the end that if you had a regular county attorney employed. I do not propose by this amendment to absolutely fix the fees of the county attorney. I simply put it in the constitution so that the legislature may, if they deem best, after awhile, make a law authorizing the selection or appointment of a county attorney. As it is, if you adopt this section as it is, the legislature is forever debarred from providing any law by which a county attorney can be elected or ever provided. You leave it then to the county commissioners to employ whom they please at any salary or at any fee, and I submit to any lawyer or to any practical man, if in the end the county will not have to pay out more by this fee system than it would by having an office established and a party elected and paid some small salary, which the legislature can fix.

Mr. PYEATT. Don't the county commissioners have that right now and exercise it?

Mr. BEATTY. Yes, they do, and that illustrates just the working of the law. When they do employ an additional attorney, often it costs \$400 or \$500 for a single case.

Mr. PYEATT. Would you be willing then in this case, provided we had county attorneys, to fix it so that the county commissioners should not pay a high salary?

Mr. BEATTY. Yes.

Mr. MORGAN. I think the gentleman is mistaken with reference to the expense of this matter. The result is just as Mr. Beatty stated in his question to the gentleman. In our district I know of my own knowledge, at the last term of court in the four counties of the district they had the county attorney elected under the present system, and paid him a salary. In our own county he gets \$2,500 a year and quite a large salary in Bear Lake county, and I think \$1,200 a year in Custer county, and I believe \$1,200 a year in Lemhi county, and in each one of those counties at its term of court the county commissioners employed additional attorneys to do their business, on account of the incompetency of the attorney who was elected by the county. As the system is now, they employ additional attorneys, and if you permit the legislature to do this thing again, the gentleman will come here and help draw a measure for county attorneys in each county. I don't wish to say anything against the attorneys elected, but it is a very common thing to elect men incompetent to fill the positions they occupy, and in my county, to my certain knowledge, they haven't an attorney who would take it who is fit for the position—two or three counties I know of. So that if you allow the commissioners to employ attorneys, they can employ them by the year, or for particular terms of court. And it will not be one-fourth of the expense it is under the present system, and I think these attorneys ought to be elected for the district, and then we can get a good attorney, who will accept it, because it will be a good office, and for any counties that are far away from the

residence of the district attorney, if they desire to employ counsel, they can do so, and the commissioners are generally shrewd, careful business men. They are elected to look after this business, and they will go to an attorney and make friends with him, and if he is not satisfied with those terms they will go to another, whether in their county or out of it.

Mr. BEATTY. You say there are some counties in which there are no responsible or proper representatives?

Mr. MORGAN. Well, I say then they can get them in another county. There will always be attorneys in attendance on court who can do the business, and they can make their own terms and selection, the same as a man does when he hires an attorney. If they have an important case requiring more ability than ordinary cases, they can select him accordingly. I would be in favor of the system as has been stated by the gentleman from Nez Perce. It will save \$30,000 a year to the territory if we adopt it. I have no question about it at all. And there is another matter that was not stated by the gentleman. These district attorneys get a very large amount of money in some counties on account of mileage. They are allowed mileage under the present law from the county seat, where the examination is held before a magistrate, for going there.

Mr. HAYS. For felonies?

Mr. MORGAN. Yes.

The CHAIR. The question is upon the amendment offered by the gentleman from Alturas, the amendment being to insert in line 6, after the word "established," the following: "except the office of county attorney."

Mr. MAYHEW. I understand there is to be no county attorney under our system? (Vote and lost.)

The CHAIR. The question is now upon the substitute offered by the gentleman from Nez Perce, the chairman of the committee. ("Question, question." Carried.)

The CHAIR. The secretary will now read the amendment sent up yesterday relating to sheriff and county assessor.

SECRETARY reads: No sheriff or county assessor

shall be eligible to re-election until the expiration of one full term after the close of the term for which he was elected.

Mr. REID. I second the motion.

Mr. MAYHEW. I hope that will not prevail. I think it will interfere with the office in our county. We have an old soldier in our county who is assessor, and has been for ninety odd years, and I hope they will continue him in there for life.

Mr. SHOUP. I think this amendment will keep the sheriff and assessor out of office for two terms the way it reads. The election will occur before the expiration of one full term.

The CHAIR. The chair is of the opinion that the objection is not well taken.

The question was put by the chair, and a division demanded. Rising vote: Yeas 36, Nays 11; and the amendment was adopted.

Mr. REID. I now move the adoption of the section as amended.

The CHAIR. The secretary will read the section as amended.

SECRETARY reads: Section 6. The legislature by general and uniform laws, shall provide for the election biennially in each of the several counties of the state, of county commissioners, a sheriff, county treasurer, who is ex-officio public administrator; probate judge, who is ex-officio county superintendent of public instruction; county assessor, who is ex-officio tax-collector; a coroner and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be paid to them, or officially come into their possession. The county commissioners may em-

ploy counsel when necessary. The sheriff, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies as the business of their offices may require, said deputies to receive such compensation as may be fixed by the county commissioners. No sheriff or county attorney shall be qualified to hold the term of office immediately succeeding the term for which he was elected.

Mr. HAMPTON. I desire to offer an amendment.

Mr. REID. I would like to insert in that section after "deputies" the words "and clerical assistance." I ask unanimous consent to insert those words.

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

Mr. PEFLEY. Mr. President, I desire to offer an amendment.

SECRETARY reads: I move to strike out in the sixth line the words "no other county offices shall be established but," and insert after the word "such" in line seven the words "other county." Hampton.

Mr. REID. It will then read: "The legislature by general and uniform laws shall provide for the election * * * of such other county, township and municipal officers." it just restores those things.

Mr. HAMPTON. I desire to state my reasons, Mr. Chairman. It seems to me it would be very shortsighted policy to—

Mr. HOWE. I call the gentleman to order. There is no second.

The CHAIR. I believe there was no second to the amendment.

Mr. MORGAN. I second it.

Mr. HAMPTON. This is to put it beyond the power of the legislature to establish any office it may see proper in the future. And I say it looks to me to be a very shortsighted policy. There may be developments of the resources and business in the counties and territory or in this new state that will require some new offices. I refer to the matter of irrigation, which is

fast becoming one of the most important subjects in the territory. The law as in force in Colorado and California provides for a water commissioner to regulate the matter of irrigation. And all men who know anything about irrigation by this time I think will recognize that an efficient system of irrigation requires that it be under the management and control and supervision of some officer. Under this section it seems to me that the legislature will be prohibited from adopting any system of irrigation, which would be according to the systems I mention in California. If the legislature is allowed in the future to establish new offices, this matter will be fully provided for. As it is, I do not see how it could be provided for. We might have counties that required a water commissioner; we might want a water commissioner for each county, and under this section it is not provided for, and it seems to me it would be a most important matter, and one which ought to be left to the legislature in the future if it should seem necessary.

“Question, question.”

Mr. REID. Just one word in reply to the gentleman. The legislature is empowered, as I take it, under the articles already established, to provide for an irrigation board. That will be a state board, with ramifications in different counties, and will not be a man elected by the people as commissioner of irrigation, but the legislature can provide for that by the system of irrigation established under the general law. If we restore this, you will find, gentlemen, that every office they may establish, the legislature will take it as an indication that you want it established, and will come up and establish every office they can possibly add. And I have found that the curse of this territory is too much county government, too many county officers and salaries and things of that kind; and that is what we are trying to strike out. We have framed a system of county government, which shall be uniform. If we find in the future we have let the bars down or put them up too tight, we have provided a very simple way to amend the con-

stitution and submit an amendment to the people; that is, two-thirds of the legislature can provide for the amendment and submit it to the people at the next general election. It will only take about twelve months to amend that constitution in that respect. I think we were a little too loose in framing that amendment, but a majority of the committee thought differently. Now, if you provide that they may establish any county office, what will be the result? Just the evil the gentleman speaks of. Some gentleman will think it is a good thing for him to be commissioner of irrigation, and another man will want to be commissioner of roads, and the first thing you know you will have fifteen or twenty county officials, and the taxpayers will have to foot the bill. In Nez Perce county we have 725 voters, and we have \$1,100,000 worth of property. There isn't a pauper on the county, there is nobody in jail, we are practically out of debt, and yet at this very moment I can produce the official figures to show you that we are paying \$9,500 to the county officials, and I can today hire the same men to do the work for \$2,500 or \$3,000, not to exceed \$5,000. That is the abuse we are striking at and hemming up. If we find we have made a mistake we can amend it very easily.

Mr. HAMPTON. I am opposed to the principle of the bill. You assume that the legislature has not sufficient judgment to deal with the matters the state is concerned in, and that you must prohibit them from legislating in regard to those matters, which they deem necessary. I am in favor of restricting expenses, I am in favor of economy; but I am not in favor of prohibiting the legislature from establishing such offices as the future may develop to be necessary to the wants of the people. I think the principle is wrong.

The question upon the adoption of the amendment was put by the chair. Vote and lost.

SECRETARY reads: Amendment offered by Mr. Pefley: Strike out all after the word "judge" in the fourth line to the word "new" in the fifth line.

The CHAIR. The effect of the amendment is to

take away from the probate judge the ex-officio character of superintendent of public instruction. Is there any second to the amendment? The chair hears no second. The question is upon the adoption of the section as amended.

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

SECRETARY reads: Move to strike out the words "who is ex-officio" in line 4.

The CHAIR. Is there any second to the amendment of the gentleman from Washington?

Mr. HARRIS. I will explain that it is to divide the office, and not have the probate judge ex-officio superintendent of public instruction.

The CHAIR. This is the same amendment which was offered by the gentleman from Ada. There is no second to the amendment offered by the gentleman from Washington.

Mr. PEFLEY. I second it.

"Question, question."

Mr. HARRIS. My amendment goes to this effect, that the probate judge shall not be ex-officio superintendent of schools, but that there shall be a separate officer. I do this in the interest of the schools. We are now laying the foundation of a state that we expect to be great in the future, but if we do not encourage the schools it will not be very great. I believe in a superintendent of public instruction in each and every county. I believe in the county board of education. I believe in having high qualifications for those persons who shall superintend all the educational affairs of the county. I want to see a thorough system of education in all the counties of the territory. I want to see teachers who are competent to guide and direct the footsteps of the children who attend the public schools, and when we are putting into this fundamental law of the land a provision that makes another officer superintendent of schools he has got to neglect the duties of one office or the other, and the chances are it will be to the neglect of the schools. I raise my voice now in defense of the school interests of the county, and assert that it is false

economy to take away from the children the taxes that have been paid for their education. There is no economy in it at all; it is a loss in the long run. I want to see the superintendent an independent superintendent of public instruction in every county, and I want to see him tolerably well paid, and then we will get good services.

Mr. PEFLEY. Mr. President, I am diametrically opposed to tailing the school superintendent on to the probate judge. I think that is one of the most important offices in any county, and there is more devolves on him in the future welfare of the rising generation than any other officer in the county. He should be a man chosen especially for his fitness in that position. He has more to do with the instruction in the elements of English education than any other man in the county. We have had some experience in that line in this county. We had that same combination once before, and it proved to be one of the most vicious and inexpedient combinations of dual offices ever in this county, from the fact that a man may be well qualified for probate judge and not have a single qualification for school superintendent. That has been our experience here, and if you fix it in this constitution so that we are tied up for all time to come, no matter how much injury it may work to us, we cannot alter it. It must stand. I am like my friend from Ada (MR. GRAY); I believe in leaving it to the legislature. I am satisfied from our own experience that it is all wrong to tail that on to another official. In fact, I am opposed to thus depriving the counties of their government and putting it on to the state. I believe the county should have an efficient county government as well as the state. It appears we have a ponderous state government already, and officials with great salaries, whereas our population could not make a decent county in any one of the large states, but yet they have all the great salaries attached and as many officials as they have there. I claim we want something in the counties, and for this particular office, at least, I contend it shall not be tailed on to another office.

Mr. REID. I will state to the gentleman that the objections urged by both the gentlemen were considered, and this question gave to the committee a great deal of trouble. We consulted with the judiciary committee, and those objections they have stated came up. We found this: I will read the salaries of the superintendents in eleven counties to see how they have been paid. Ada \$400; Alturas, \$800; Bingham \$500; Custer \$300; Kootenai \$400; Logan \$100; Nez Perce \$500; Oneida \$200; Owyhee \$400; Washington \$300. Now, in order to get first class talent you must pay more; you cannot get them for that salary. Any man knows that. It requires a man to be superintendent of public instruction of a good order of talent, and an educated man. He can make that much money at most any business. Now, we take the probate judges, and I will read you the salaries paid them in eleven counties: Ada \$600; Alturas \$1,000; Bear Lake \$200; Bingham \$900; Custer \$600; Kootenai \$600; Logan \$200; Nez Perce \$700; Oneida \$500; Owyhee \$500; Washington \$475. You want to get a good man for probate judge, and for them that is the salary in addition to fees; I don't know whether the superintendent of public instruction can get fees or not; if he does, they don't amount to much. By combining the two offices we can get first class men. Pay him the fees, and pay the minimum—and you can get good men for the salary. The probate judge is not busy all the time. His court is always open, and ought to be; but in these new counties there is not a great deal of business in the estates of deceased persons; there are not many estates to wind up, and he has a great deal of leisure. For visiting the schools, going around and looking after them, he can be allowed fees and commissions, whatever they fix on, the maximum and minimum being fixed in the next section; and by uniting the two offices we think we can get good men to fill both; one who has intelligence and integrity and executive ability enough to be probate judge, and it takes the same order of talent to be a superintendent of public instruction.

Mr. HARRIS. In reply to the gentleman from Nez Perce, we can find a person who has another occupation besides being simply school superintendent for that office. We can take the principal from the best school in the county, and he will have time during vacations to go around among the other schools.

Mr. REID. I will ask the gentleman right there, if we take the school teacher at the very time his school is in session, all the other schools are in session.

Mr. HARRIS. He can have it adjourned to meet that contingency, but he could not name a professor in his place. There is no need of having a big salary attached to it. There is some derision at the idea of raising a voice in favor of the schools, but I will always uphold the interests of education. It is not money thrown away if it does cost a little more to have an efficient school system, and I don't know how it can be done unless we have a superintendent at the head who has his heart in the matter and will work and will have good laws to back him, and then we will go forward. We are away in the background with our schools. I know plenty of counties where they have little boys and girls teaching schools. They could not begin to get certificates if they had to come down to the rigid examinations required by the California law. I would like to start off well while we are laying the foundation for our state. That is what I want to see, and I raise my voice in favor of having a separate officer to take charge of our schools.

Mr. MORGAN. I call the previous question on this amendment. (Seconded.)

The CHAIR. The previous question is demanded upon the amendment offered by Mr. Harris. The question is, shall the motion of the gentleman demanding the previous question be sustained? (Carried.)

The CHAIR. The previous question is ordered. The question now recurs upon the motion of the gentleman from Washington to strike out certain words.

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

SECRETARY reads: Move to strike out the words "who is ex-officio" in line 4.

Mr. HASBROUCK. It will be observed that that line—

The CHAIR. The chair informs the gentleman that we are operating under the previous question. The question is upon the adoption of the amendment offered by the gentleman from Washington. (Vote and lost.)

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

Mr. MAYHEW. I call for the reading of the section as amended.

The secretary reread the section as finally amended. Vote and carried. And Section 6 was adopted.

SECTION 7.

Section 7 was read.

Mr. REID. I will ask to divide that question, first on the sheriff, and move an amendment so that it will read, "sheriff, not more than \$4,000 and not less than \$1,000," and insert "one thousand" in the place of "fifteen hundred" in line 3. The minimum fees I have ascertained are higher than they are paying in some of the counties now, and that is the reason I do it. I submitted it to the committee, and they agreed with me to lower the minimum fee, and I move that "fifteen hundred" be stricken out in line 3, and the words "one thousand" inserted.

Mr. Morgan in the chair.

The question was stated by the chair.

Mr. HAMPTON. Since we have made the amendment we did in the other section this morning, I am opposed to this. I understand now the county commissioners may provide these officers, where there is a large amount of business, deputies, and pay them; and it seems to me in that view of the case, the maximum is too large and the minimum too small.

Mr. REID. If the gentleman will move to cut down the maximum. I will accept the amendment.

"Question, question." Vote and carried.

Mr. REID. I move now that line 5 be amended by striking out "fifteen hundred" and putting "five," so it shall read, "clerk of the district court, who is ex-officio auditor and recorder, not more than three thousand dollars and not less than five hundred dollars." (Seconded.)

Mr. MAYHEW. I desire to offer an amendment.

Mr. PARKER. I have an amendment.

SECRETARY reads: Substitute for Section 7. The legislature shall by law classify the several counties according to population, and shall grade the compensation of the officers within the respective classes according to population. Such law shall establish scales of fees to be charged and collected by such county and precinct officer as may be designated therein for services to be performed by them respectively; and where salaries are provided, the same shall be payable only out of the fees actually collected in cases where fees are prescribed. All fees, perquisites and emoluments above the amount of such salary shall be paid into the county treasury. (Seconded.)

Mr. REID. Before that is put, I would call attention to the fact that this substitute is virtually the same custom we have now. I hope it will not be adopted.

Mr. PARKER. I have introduced that substitute of mine, not with any expectation of getting it passed, but simply to invite the attention of the convention to the fact that the salaries as reported in the report of the committee are entirely too high for my county. It is reported in this article that the salary of the sheriff shall not be more than \$4,000 nor less than \$1,500. Now, today our sheriff has \$1,000, which is more than he is entitled to, because he has nothing whatever to do; we have not had a man in our jail for three years.

Mr. REID. Let me interrupt you. We have just cut down the sheriff's salary to \$1,000.

Mr. PARKER. Well, I am speaking to my amendment. Now, our climate is so infernally healthy that nobody ever dies there, and we have no need for a probate judge at all. And yet the salary of the probate

judge and ex-officio county superintendent of public instruction is "not more than \$2,000 and not less than \$1,000" which is \$500 a year more than we are paying in our county today, and that is \$500 too much, for he has nothing to do. The salary of county assessor is fixed at the minimum in my county, so also is that of auditor. We have no use for a county surveyor nor for a county coroner. Nobody ever suicides in our county, Mr. President; we are content with life as we are. Under the present law the county surveyor gets fees for what little work he does.

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

Mr. REID. I now ask for a vote on the amendment I sent up.

SECRETARY reads: In line 5 strike out "fifteen" and insert "five."

Mr. REID. That will say then, "auditor and recorder not more than \$3,000 and not less than \$500."

Mr. MAYHEW. I have an amendment to the same effect.

Mr. McCONNELL. I have an amendment also.

Mr. CAVANAH. I have sent up an amendment too.

The CHAIR. I hope each gentleman will address the chair, and I will then endeavor to recognize every gentleman so that the secretary may keep the amendments in regular order.

SECRETARY reads the amendments in the following order: Amend Section 7 by inserting after "dollars" in line 13, the words "forty cents one way." Cavanah.

Amend Section 7, line 2, by striking out the words "four thousand" and inserting the words "two thousand." McConnell.

In line 5 strike out "fifteen" and insert "five." Reid.

Mr. MAYHEW. Well, my amendment was sent up some time ago, and Mr. Reid immediately offered an amendment afterwards.

The CHAIR. The gentleman's amendment will be read and voted upon.

SECRETARY reads: Amend Section 7, line 2, by

striking out the words "four thousand" and insert the words "two thousand." McConnell.

Amend Section 7 by inserting the words "and constables" after the word "fees" in line 13. Pinkham.

Amend by striking out the word "three" in line 4 and inserting the word "four." Mayhew. (That is all.)

Mr. SHOUP. I second the last amendment.

Mr. MAYHEW. I desire to say this: I see by this section that the fees provided by the section, "sheriff not more than \$4,000 and not less than \$1,500. Clerk of the district court who is ex-officio auditor and recorder, not more than \$3,000 and not less than \$1,500." It cannot be disputed, Mr. President, by anyone, I presume to say in this convention, according to my opinion, that the office of clerk of the district court, and ex-officio auditor and recorder is one of the most important offices there is in the gift of the people in any county. I regard the office as being thought of more importance than that of sheriff, and the labor which the office of the recorder and clerk of the court has to perform is more arduous and of greater responsibility than that of sheriff. And for this reason. The clerk and recorder has that character of duties to perform which involve the great interests of the people of the county. Now, mark you, he is not only clerk of the district court, whose duties there to a great extent require his attention, and when it comes to being auditor and recorder his duties in that office are absolutely greater than those of sheriff, but he is required to be there constantly at his office, either himself or his deputies, for which he has to be responsible. So far as the transfer of property is concerned, the recording of deeds, mortgages, liens, and many other official duties, which he has to perform, he has the welfare of the county in his hands, and greater responsibilities than those of the sheriff. The sheriff's is a ministerial office simply, and is at the command of the courts of the different counties, district, probate and justice of the peace, and he can only arrest those parties for which a warrant is placed in his hands to serve, or serve summons and subpoenas that may be directed from

the different courts of the county. That is the duty of the sheriff, and I cannot think that the sheriff's office has so much importance as to give him \$1,000 a year more than that of recorder. So far as I am concerned individually, I am opposed to this system altogether; but as it seems to be the disposition of this convention to adopt this system as reported by the committee that have in charge this article of the constitution, I don't propose to interpose my objections to the report farther than in relation to the salary of the offices. I say if members of the convention will reflect a single moment they will see at once that the recorder and auditor of the county is such a responsible officer, and one who has enough command of the interests of the people of his county in their business transactions so far as recording instruments and taking care of their real property and personal property, that it makes it equal to that of sheriff. And I am therefore opposed to making that office less in grade than that of sheriff. These offices in the general view of the people are regarded according to their fees or salary, but if you will reflect a single moment you will see that the responsibilities of the clerk and recorder are greater than those of the sheriff; and for that reason it is an office on an equal footing with that of sheriff, and should be made equal in the way of salary. I hope my amendment will prevail. I think absolutely without any exaggeration or any argument on my part, farther than I have stated already, the office of recorder should have \$4,000. You say the sheriff shall have \$4,000 and why not the recorder, when his duties are equal in responsibility to those of the sheriff. That is my idea in offering this amendment; it is not for the purpose of delay or anything of the kind. Furthermore, I desire to say, if my time has not expired, that while we are taking into consideration these offices, I believe the best system is to grade these offices according to their duties and responsibilities; and when you place upon their hands such responsibilities you should pay them equal to the labor they perform. I see nothing in this section that struck

me as placing these offices upon an equal footing, and I think there should be, from the fact of their equal responsibility.

Mr. McCONNELL. The duties we require of the auditor and clerk of the court will be merely clerical duties. Now, the question for this convention to consider is, why should an officer who goes to his office at half past seven or eight or nine o'clock in the morning and performs clerical work during the day, receive double the salary of another gentleman who goes to the office and assumes equal duties and responsibilities. I will venture to say there is not a clerk in a mercantile establishment in this territory that receives the salary this article provides for the auditor. The section already adopted provides that they shall have deputies, and those deputies shall be paid by the counties. These gentlemen of course assume charge of the office; the auditor goes there at a certain hour in the morning and performs a certain number of hours work. What work he cannot perform during those hours will be performed by deputies employed and paid by the county. I will venture to say I have as good clerks as there are in any auditor's office or any district court in this county, and the highest salary I pay any one of them is \$150 a month, and I venture to say they perform more hours' labor, and their responsibilities are just as great. And when we go home to the people they will inquire about these things, and inquire why we provided such salaries may be charged. We see already the work of the Washington territory convention being scrutinized. I hold in my hand an article written by the reporter from Walla Walla, which shows the views among the farmers. (Reading from the *Oregonian*).

"Walla Walla, July 31. A canvass by your correspondent among the farmers during the past few days failed to find a single one favorable to the new constitution thus far made. A majority of the business men talked with also object. As matters now stand, the constitution promises to be voted down when submitted. The objection seems to be not only on account of the evident increased taxation, but a belief that in general the con-

vention is exceeding its powers and endeavoring to assume legislative functions.

“The prohibitionists, suffragists and religionists will surely oppose the document. The general belief is that too much time is taken to formulate the same, and too many buncombe speeches being made.”

I do not see any reason why an auditor or recorder should have \$4,000 a year, when a clerk performs longer hours' service and can be employed for \$1,800 a year, and I will venture to say I can get the same work performed as effectively for \$1,200 per annum, as I am paying \$1,800 for. And the time will soon come when this matter of high salaries will have to be passed upon by the people, and the people will have to work for lower wages. Why, we are barely making a living in the convention.

Mr. GRAY. In answer to Mr. Mayhew, I will say I think his position is not a sound one. He is putting the importance of the recorder's office equal to that of the sheriff. It perhaps needs a man of equal ability, but it requires a different man. I will state one thing that he forgets: The expenses that the sheriff has to incur. In the performance of his duties he has to keep from one to probably three horses for that service. He has to be out in the country, he has to pay travelling expenses, and instead of being at home where he can go to bed at bed time and get up at the proper time in the morning and have his regular meals at home, he has to be travelling about, and in fact, there is a great deal of disagreeable duty that devolves upon the sheriff's office. Probably he may often see times when he would be willing to be out of the place for all the salary of the year. But the county forces him to take those chances, and he has to take chances, I might say, of his life. There are still more disagreeable duties connected with the sheriff's office. If there is an execution under the law he has to perform it; and with all the criminal business connected with the sheriff's office, it is more or less disagreeable. He has to have charge of all the bad men during the time they remain in the county jail; he has

to arrest them and take all other chances, and in the night time as in the day time. He has to go into all those disagreeable places, and travel perhaps in the mountains for that purpose, and when the gentleman from Shoshone compares these two offices, he fails to see the reponsibility, the danger, and I may say, the disagreeable portion of that particular office. And as I have said before the expense attending it is a great deal. He has to have horses, and those expenses are not reimbursed; they will come out of his salary. I think the comparison is not correct. As it has been stated by the gentleman from Latah, the duties of recorder, are largely, if not all, clerical. He has to take care of the records, it is true; he has to make the records, and for a competent man that is not so very hard to do, both the records of the courts and of the recorder's office. Now, I understand from this bill you are not depriving the recorder from taking fees. Am I correct in this?

Mr. REID. The recorder takes the fees up to the maximum, and then the fees are paid into the county treasury. If the business is so great he cannot transact it, we have provided that he may employ additional clerical assistance.

Mr. GRAY. And all that is paid outside of his salary.

Mr. REID. Yes.

Mr. GRAY. But he gets no fees?

Mr. REID. That is the way he is paid.

Mr. GRAY. And he is not paid over this amount?

Mr. REID. No, when it reaches that amount he pays it into the county treasury.

Mr. GRAY. Well, I will agree this far with the gentleman from Latah, that I think \$3,000 a year will employ a good man when he is to no more expense than he is ordinarily. I am not in favor of cutting down the sheriff.

The question on the motion to strike out "three" in line 4 and insert the word "four" was put by the chair. Vote and lost.

SECRETARY reads the next amendment: Amend

Section 7 by striking out the word "fifteen" and insert "five." (Carried.)

SECRETARY reads the next amendment: Insert after "dollars" in line 13 the words "forty cents one way."

Mr. CAVANAHA. I will withdraw that and offer this in lieu of it.

SECRETARY reads: Strike out all after "law" in line 12 to the word "and" in line 13; strike out the words "not to exceed \$500."

Mr. CAVANAHA. There is no provision made in the bill for mileage. There is no doubt \$500 a year is not high enough for those large counties. In our county \$200 is ample, but some of the members have to travel a long ways. Their mileage is considerable. And it is not doing justice to the commissioners that live a long ways from the county seat. It is supposed they are elected from different parts of the county, and I don't think that one who is unfortunately away from the county seat should be compelled to bear the expense of travelling from the county seat.

Mr. BEATTY. I thought a motion had been made to take up these offices and dispose of them in regular order. I make a motion now that we consider these offices class by class so as not to get our amendments mixed.

The CHAIR. The chair is of the opinion that that does not take precedence of the present motion, which is to amend this section.

Mr. REID. We can by unanimous consent, and as suggested by the gentleman from Alturas, we will make more rapid progress.

Mr. CAVANAHA. I am willing though.

The CHAIR. If there are no objections made. Unanimous consent is given to take up each office. The next one is probate judge.

Mr. REID. I offer this amendment to line 6.

SECRETARY reads: In line 6 strike out "one thousand" and insert "five hundred."

The question was stated by the chair.

Mr. HAMPTON. Are we precluded from offering amendments as to sheriff or clerk now?

Mr. REID. I thought we had disposed of those.

Mr. HAMPTON. If that is the object, I object to it.

The CHAIR. I think we had better proceed, Mr. Reid.

Mr. REID. Well, I did not want to cut off any debate.

The CHAIR. The chair does not propose to do so either. We will permit the gentleman to offer his amendment after we get through with this section.

The question upon striking out "one thousand" and inserting "five hundred" was stated by the chair. Vote and carried.

Mr. REID. I offer the following amendment to line 8: strike out "one thousand" and insert "five hundred." I will state the reason I am moving to strike out these minimum amounts. In looking over the salaries I am putting the maximum amount so they will cover the amounts now being paid. I notice some counties do not pay higher than \$600 to the assessor.

Mr. SHOUP. Wouldn't it be just as well to strike out the minimum altogether?

Mr. REID. No, in some counties possibly it may fall below that. It may be such it will not pay at all. That was the reason suggested to the committee. Some gentleman came in and stated, "If you do away with the salary system altogether, you could not get an officer to do even the little business there is to be done. In this county the office is really productive. But we fix the minimum so it would barely support the office.

The question upon striking out "one thousand" and inserting "five hundred" in line 8 was put and carried.

Mr. REID. I now move the following amendment in line 9: Strike out "four" and insert "three."

Mr. MAYHEW. That is in relation to treasurer, is it not? I hope that motion will not prevail, for this reason. The treasurer of the different counties is a responsible officer; he has to give large bonds, and I do not care how small the county may be, if he is

responsible and performs his duties faithfully he should be paid for it. I think \$400 is enough. He holds this political office, and it makes no difference what his business may be which he is engaged in, he is required to sacrifice that business all the time to perform the duties of the office. He may be engaged in business involving a considerable amount, and then on account of his official duties he must sacrifice his personal engagements and his business. And so in consideration of that fact I think he should have \$400 a year. This thing of saying that if a man does not want this office he need not seek it, does not meet the question. The people in the different counties of this territory will seek and endeavor to nominate, in both political parties, men for that office that are the most responsible; not responsible pecuniarily only, but responsible in various ways, the most honest and careful men in the county. The treasurer of our county a year ago, when I had occasion to call his attention to some matters of public administration, said to me, "My business is such that I have got to sacrifice a great deal of it to attend to the business as public administrator." It takes a man from his business. He cannot deputize anyone to do it, but he must seek the business and attend to it as public administrator as well as treasurer. And I say, that unless a man will seek that office for the mere honor that is in it, we will not get a person who is capable; but that is not always the case. A man may be surrounded by affluence and be a wealthy man; and yet not for that reason alone be qualified for office; yet, the wealthy man can attend to the business of this office, because he has no other particular business, or he can hire some person to attend to his own business. I say it should not be stricken down to \$300.

Mr. HEYBURN. That is the minimum.

Mr. MAYHEW. Very well, I am opposed to the minimum. I think it ought to be not less than \$400 a year.

Mr. REID. The reason we put it at that, the county treasurers' salaries are as full as I could get them.

Mr. MAYHEW. Where does Shoshone come in?

Mr. REID. No member of your delegation knew what it was.

Mr. SHOUP. The treasurer of Custer county gets \$700 a year and gives a bond for \$22,000.

Mr. GRAY. Whatever he gets as administrator is fees, and that is an addition to what the salary is at the present time as read there. Now I understand that is to be taken into account in the salary.

Mr. REID. That is it.

Mr. GRAY. Then I should certainly agree that it should not be cut down.

Mr. REID. It does not cut the salary down. We found we were putting the minimum higher than we are paying them now, and that is the reason we cut them down. The reason of the purpose now of cutting it down from \$400 to \$300 is that here are two or three counties only paying \$300. In counties where the officer is public administrator the commissions as treasurer run it up higher than that; he can go to \$1,000. We thought \$1,000 was enough for the treasurer in any county. That is all you pay the state treasurer, and he will have to give \$100,000 or \$200,000 bond. So we put the maximum at \$1,000 and the minimum at \$300. If the money he handles does not amount to \$300 you must make it up; if it amounts to more than that you can go as high as \$1,000, but when it gets to that the excess goes into the treasury.

Mr. MAYHEW. I do not desire to prolong this debate or speak at any length, but I have to say this in addition to what I have already said. We had last fall rather a warm political discussion and quite a contest for county offices. The republican candidate who ran for county treasurer in our county was successfully elected. Now, on account of the fees we got a good man; just as good a man as lives on God's green earth, I think, was the republican candidate. He saw that the fees of the office were so low that he would not qualify for \$400. The former treasurer only got \$400 a year, and I know from what business I had with that gentle-

man that it would not pay him to take the office. I know that he was engaged in business elsewhere, and in order to take charge of an estate involving a small amount of money, he had to sacrifice his business and travel a long distance. I sent for him myself, and the expenses of that treasurer were \$30 or \$40. He had to come home and go back again, and the fees and the amount of business he did would not amount to \$15, and still he sacrificed thirty or forty dollars. Now, Mr. President, I don't believe in such economy as my friend from Nez Perce advocates here. I say that you get men in office that are inefficient to perform their duties; yet the gentleman seemed to argue that because the people in North Carolina, a cheap state (laughter), surrounded as they are by a different class of people from what we are in this country—men in this country have an idea that their services are worth more than they are in the states, and they are correct—were satisfied to pay their officers a mere pittance, we should do the same here. What they do in the states I know nothing about; I left the states in my infancy, and have been reared in these different territories. I say the highest priced man for office is the best, although I do not desire to be extravagant in this or any other measure; but I do say that \$300 is too small for any respectable man who is responsible to accept that position. I don't care what they do in my own native state, New Jersey, the greatest old state in this Union (laughter). What are you laughing about? *The greatest state in this Union!* Has always adhered to the constitution and produced such a gallant troupe of soldiers; and I have one in my own view from that state, who has done more for the preservation of the Union than any other, although I am travelling out of the question. But I say, Mr. Chairman, coming back to the question, let us have officers in the different departments of the county who are capable and efficient to perform their duties, and let us pay them for their responsibility. The small pittance of \$400! What does the gentleman do? I am satisfied in travelling around in these political circles of the county you will spend over

\$400 for that office, and nobody can have it but a responsible man. There are men seeking the office because there is money in it which they can speculate on, but if we make this officer responsible and pay him for it, he will not try to get even, otherwise than the salary which is given by the law. If you put the office out for nothing, there are plenty of men in the territory who will take it, take it without a cent. Why? Because they believe that during the two or three months they have the money in their hands they can speculate on it and make something out of it. An honest man won't do that. And I will say, to be just to the main party—I desire to be just to the party who opposes me in politics—that I think there are plenty of men in both parties, who are not just to themselves or the party or the people either.

Mr. BATTEN. We have spent about half an hour discussing what is nothing more or less than a cheese-paring proposition. I am in favor of economy, but niggardliness I am opposed to, and I think this mere drop of \$100 is rather a cheese-paring idea, on the idea of niggardliness.

Mr. HOWE. I move the previous question.

Mr. BATTEN. I second the motion.

Mr. REID. I hope the gentleman will withdraw that amendment. These are important matters, just as important as fixing the state salaries. One gentleman in discussing it made a fling at North Carolina, and another made a fling at the niggardliness of the committee.

Mr. BATTEN. No fling at the committee.

Mr. REID. Well, a gentleman is supposed to mean the force of his words. The treasurer is getting \$300 in Logan county. Is it niggardliness? The treasurer of Oneida gets \$300. We wanted to fix the limit so that those two counties would not have to pay more than they pay now. So far as North Carolina is concerned, there are fifty North Carolina men, if you put this salary higher than a thousand dollars, that won't vote on this constitution. They are good honest grangers and ranchers, developing Idaho, and adding to its taxes.

Here is a North Carolinian, of the board of county commissioners, that gets up and speaks in the interest of economy. Why do we do it, gentlemen? I will tell you. The district attorney of our county and some other gentleman there are preparing a pamphlet to circulate in Virginia and North Carolina to try to get those people out here to help develop this country. And when we go there and tell them, as I have to write letters to them every week, that their taxes are going to be three and four dollars on a hundred dollars worth of property, and you will have these enormous county governments to support, they will go right where the farmers are making this trouble, as my friend read here about Washington territory, and you won't get a single settler from that country. They do live under cheap government, and they cannot understand these prices; and if you want to drive away immigration and keep people from locating here, keep on piling up your taxes, and have your expensive government, but not only that. The gentleman says you have got to answer to the people for this; and if you go before them and show that you have fixed it so that your county treasurer shall have more than your state treasurer, more than you are paying them now, those men in Owyhee will say "If we get into the Union we will have to pay our treasurer a hundred dollars more," and the men of Idaho county will say that, and they will say that if this is to cost more than that, we had better stay under territorial government. It was not niggardly, nor because we want to be so cheap and stingy about it, but for the best interests of the territory, and to meet a demand, that we had all these minimum figures put in, and then gentlemen came to us and told us we had the minimum rates higher than they were before.

Mr. MAYHEW. Mr. President—

The CHAIR. The previous question has been demanded.

Mr. MAYHEW. Just a moment.

The CHAIR. By unanimous consent the gentleman can proceed.

Mr. MAYHEW. I am glad the gentleman says he and some other gentlemen have gone into the writing of pamphlets to get immigrants out to this country, or people to come here. I hope he will be one of the members of that committee. I would like to say something in behalf of my own native state, New Jersey. I think the people from New Jersey are as good as they are from North Carolina or Virginia or anywhere else.

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

Mr. MAYHEW. The gentleman doesn't understand what the point of order is; I am replying to the gentleman.

Mr. BEANE. Yes, I think I do understand the point of order.

Mr. MAYHEW. I don't desire to become personal, but I do desire to say this, to disregard any state in this Union, and let us perform a duty here according to the circumstances and our surroundings. I care nothing about Virginia or Pennsylvania or New Jersey; we are Idaho people. (Applause.) Let us become a state without being guarded by anybody or any particular section. I say the people of this territory are high minded, honorable men—those who seek for office, at least it has been my observation—throughout this territory, and I don't want any innovations made upon their prices and desires. I don't care where the man comes from, whether North Carolina, Virginia, Pennsylvania or New Jersey. When a man comes to live in the West as long as I have, and many of the men who compose this convention, he is not in favor of cheap labor. We are all opposed to cheap labor. I don't care what the class of people may be, whether negroes or Chinamen; we are opposed to cheap labor, and I believe in paying for the performance of those duties those men who have those offices, letting them get a legitimate living out of their office. If they are not entirely engaged in that business, put it at such a figure that if they have to sacrifice their private business they get paid for it. That is my idea about this thing, and I think I have spoken

to the point; notwithstanding my friend Beane thinks I was out of order.

The CHAIR. The question is, shall the main question be now put? (Carried.)

The CHAIR. The question is now upon the amendment of the gentleman from Nez Perce. (Carried.)

Mr. REID. I offer the following amendment.

SECRETARY reads: In lines 10 and 11 strike out the words "not less than two hundred."

Mr. REID. It strikes out the minimum. This office will be paid by fees, and it provides that whenever the coroner gets as high as \$1,500 the excess shall go into the county treasury, and if he gets no business, he won't get any pay. The same way with the county surveyor. I find there are no salaries paid those officers, and I strike those words out so it leaves the maximum, which they can get.

Mr. MAYHEW. This is in relation to coroner and surveyor. Now, I say, for a coroner to get \$1,500 and not less than \$200—what does the coroner have to do? In the event the sheriff is interested in a law suit, or in the issuing of a writ, then the coroner has got to serve those papers, where the sheriff is incapacitated for doing so. The coroner has to do what? If anybody is found dead or drowned or killed, where there is no person at all present, then it is his duty to call a coroner's jury to ascertain how that man came to his death. And again, the coroner should be a physician; he may have the supervision of the health of the county, and the legal person according to the law passed by the legislature to regulate hospitals and pest houses and things of that kind; that is all of his duty. I don't know what the county commissioners may do in different counties, but I say for the coroners in our county it is far in excess of their necessary duty, and I hope this amendment will be for the coroner not to exceed \$250 anyhow.

Mr. REID. I will accept that, but there might possibly sometimes a murder be committed, which the coroner would have to investigate perhaps a week or two. Take that Cronin murder in Chicago. Looking

at that emergency that possibly the coroner might be engaged sometimes two or three weeks at a time, we put this limit. If the convention think that limit is too high, cut it down. I think one gentleman remarked to me that the coroner in his county would perhaps run as high as \$1,000. Others informed me that one investigation sometimes costs \$150 or \$200. But if this is too high, and some gentlemen, who are familiar with these matters will indicate it, I am sure the committee will have no objections to cutting it down, and cutting the minimum out altogether.

Mr. HEYBURN. I think our coroner's office last year probably amounted to \$1,200 or \$1,500, paid in civil cases where the sheriff was not competent to act. I think the gentleman from Shoshone has a wrong idea of the working of this matter. He speaks of the county commissioners allowing the coroner so much. The county commissioners cannot allow him anything under this provision with the amendment suggested by the gentleman having the bill in charge, because he only gets fees, and if he does not make any fees he does not get anything. He cannot get paid for anything he does not perform services for under this bill, and the commissioners cannot allow him a cent out of the treasury. It is fair to presume that if he performs services, which the law says he shall perform for so much, he might get the fees. I know in one case last year in which our coroner was unfortunately crippled and laid up for months, and it doubtless cost him a great many dollars, while serving papers. In one of the mountain trails his horse fell off with him, and he was seriously injured. He was called for and set out about evening, and travelled all night in the mountains to perform this service, the sheriff not being competent to perform those duties. His duties are pretty expensive and perilous sometimes.

Mr. GRAY. You say that your coroner receives so much. He gets that for his service as sheriff, does he not?

Mr. HEYBURN. Yes.

Mr. GRAY. It is not his duties as a coroner. When

he acts as sheriff in the event the sheriff is disabled, or he takes the office, he is paid the same as a sheriff.

Mr. HEYBURN. Yes; but what fund would that come from? It certainly should not come out of the sheriff's salary.

Mr. GRAY. It would come out of the county.

Mr. HEYBURN. The next section provides that they shall receive no pay from any source, except the fees.

Mr. GRAY. These fees have all got to be fixed by the legislature; and in the event of fixing the fees by the legislature, if they fix a fee for the sheriff, would not that be a fee for the coroner?

Mr. HEYBURN. All I want is that he shall receive that fee, but not that there shall be maximum fees.

Mr. GRAY. At the present time when he performs the duties of sheriff he receives the same compensation.

Mr. HEYBURN. But it is provided so the sheriff shall not receive any compensation above the maximum. Now, suppose the first six months of the year he runs to the maximum; in the last six months there would be no credit from which the coroner could draw.

Mr. GRAY. While he is acting as sheriff he gets the fees of the sheriff; and when he is acting as coroner he gets the fees of the coroner.

Mr. HEYBURN. If he gets the fees of the sheriff, and the sheriff has already exhausted the maximum fees of \$4,000, where would the coroner come in?

Mr. GRAY. The county must pay him this fee.

Mr. HEYBURN. But the next section says it shall not.

The CHAIR. The question is upon the amendment offered by the gentleman from Nez Perce. (Carried.)

Mr. REID. I was going to offer an amendment after the words "five hundred dollars" in line 13, so as to read that the county commissioners receive "such per diem as may be prescribed by law, not exceeding five hundred dollars in the aggregate;" but I understand some other gentleman wants to offer an amendment that

would cover that, and I am willing to accept the amendment offered by the gentleman from Alturas (MR. PINKHAM) to include "and constables" after "justices of the peace," and I will not offer that until I hear what these gentlemen propose.

SECRETARY reads: Strike out all after "law" in in line 12 to the word "and" in line 13.

Mr. CAVANAHA. That just leaves it to the legislature. There is no provision for per diem there, and in some counties it is not high enough. In some counties they hire and pay \$600.

Mr. REID. He would have to put in "such per diem and mileage" and then strike the other out.

Mr. CAVANAHA. Leave it to the legislature.

Mr. REID. Insert "and mileage" after the word "per diem," but leave it to the legislature to fix the amount.

Mr. CAVANAHA. I will accept that amendment.

Mr. REID. The only question is, shall we leave this to the legislature to fix up the amount to be paid the commissioners or shall we fix a limit?

Mr. GRAY. It would be manifestly unjust to leave it as it is now. Suppose there is a county commissioner living at the county seat; he boards at home, gets \$500, and the man that has to come forty miles loses all his time travelling there, and probably has to board at the hotel. Certainly if it remains as it is now, there should be mileage besides the \$500.

The CHAIR. The question is upon the adoption of the amendment suggested by the gentleman from Elmore to strike out the words "not to exceed five hundred dollars" in lines 12 and 13 and insert the words "and mileage" after "per diem" in line 12. (Carried.)

Mr. REID. I will accept the amendment of the gentleman from Alturas (MR. PINKHAM), and insert after "justices of the peace" the words "and constables." I think there are no other amendments to be offered, and I now move the adoption of the section as amended.

Mr. SHOUP. I ask the gentleman, having the bill

in charge, if it will not be necessary to mention constable in Section 6, which refers to the officers?

Mr. REID. No sir, if the gentleman will notice, it says, "The legislature may provide for township, precinct and municipal offices." Constable is a precinct or township office.

Mr. SHOUP. But it also says the officers provided for in Section 7.

The CHAIR. I understand the words "and constables" are inserted by unanimous consent after the word "peace" in the thirteenth line.

Mr. BEATTY. If I did not misunderstand this section as it now stands, and the bill together, it is now left so that officers shall be entitled to the maximum fees prescribed if the fees prescribed by the legislature shall amount to that. Now, I desire to suggest in that connection, that if it is left in that way, the legislature may prescribe such fees as to make these maximums in every county in the territory. The result is going to be that at every session of the legislature the officers from all over the territory will be here working upon the legislature to increase their fees. Let us see what it will amount to. Provided we can get the legislature to raise these fees in the county, the offices of sheriff, clerk, probate judge, assessor, treasurer, coroner and surveyor, taking the maximum fees it would amount to \$15,500. Now, if we put no further limit on this, it leaves it in that way, that the legislature may so increase the fees as that in any county in this territory the fees may amount to the sum of \$15,500 for those different officers. The sheriff's maximum is \$4,000; the clerk is \$3,000; probate judge \$2,000; assessor \$3,000; treasurer \$1,000; coroner \$1,500; surveyor \$1,000. That amounts to the whole sum of \$15,500. Now, I do not say that any legislature will go so far as to make the fees so high that it will amount to that; but you leave this loophole open, that at every session all the officers in this territory will be here by themselves or proxy to increase the rates of fees; and the result is going to be that every man that has litigation or anything to do

with county business will have to pay enormous fees. Then when it gets to the maximum, of course that balance goes to the county treasury. In other words you are so fixing it that people who have business and litigation in any one of these counties have got to pay enormous fees, and a surplus goes back into the county treasury. Now, Mr. President, I think one provision of our present law should be incorporated in this, and if that is incorporated, I would be willing to vote for the section as it stands, and that is to leave it to the county commissioners to fix the amount of these salaries or fees between these maximum and minimum amounts. Then the result will be that the county officers will have no motive—

Mr. AINSLIE. I move we take a recess until two o'clock. (Carried.)

AFTERNOON SESSION.

Convention called to order by the president.

The CHAIR. The unfinished business before the convention is the further consideration of the article on Counties and County Organization.

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

Mr. HEYBURN. I have an amendment.

SECRETARY reads: Amend Section 7 by inserting in line 3 after the word "dollars" where such word occurs the second time, the words "together with such mileage as may be prescribed by law." (Seconded.)

Mr. HEYBURN. The object of that amendment is this: There is no provision made, and I think under the section as it stands none could be made, for the payment of mileage in civil cases or any other class of cases for service of process. The entire amount that is allowed to the sheriff as the maximum by this article, in our county would be absorbed in the expenses of travel incident to the service of process. The expense of the sheriff's office in our county runs over \$3,600 a year incident to that particular service; and unless he is allowed mileage in addition to the fees allowed, the sheriff would be in debt at the end of the year

and would not have his board. The sheriff must necessarily be away from home nearly all the time. Sometimes when he starts out to serve process, civil or criminal, it is necessary for him to hire and change his horses three or four times. Our county is about one hundred and twenty miles in length, and if it is necessary for the sheriff to travel the length of that county his expenses will amount to a very considerable sum of money. When he is away from home he has to pay out in cash for his meals, his lodging and the keep of his horse. Those expenses are not provided for by this article as it now stands.

Mr. REID. I accept the amendment. The intention of the committee was to give the sheriff his salary net, and this mileage will not come out of the taxpayers, but only those who have business with the sheriff's office, as the fees do. But as the gentleman says, the committee overlooked the mileage business as to the sheriff. It would take nearly all his salary to cover the expenses, and it was intended to give him that for his work, and I will accept the amendment.

The secretary rereads Section 7 for the information of the convention.

The question upon the adoption of the amendment offered by the gentleman from Shoshone, which was accepted by the chairman of the committee, was put by the chair.

Mr. HAMPTON. I do not know whether the gentleman contemplated that this mileage should cover the criminal business also.

Mr. REID. I will explain that. The sheriff will receive fees in criminal cases as in civil cases. Where a defendant is convicted and is solvent of course it carries costs and he will have them to pay. Where he is insolvent, both fees and mileage come out of the county. That is the practice where the officers are paid by fees. ("Question, question.")

The question was put by the chair. Carried.

The CHAIR. The question now recurs upon the motion to adopt the section as amended. (Carried.)

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

ARTICLE VII.—FINANCE AND REVENUE.

SECRETARY reads: "Mr. President: Your committee on Engrossed Articles of the constitution have had under consideration the article on Revenue and Finance, and find the same correctly engrossed. Hasbrouck, Chairman."

The CHAIR. The question is upon the final passage of the article just reported. The secretary will read the article.

SECRETARY reads the engrossed article referred to.

Moved and seconded that the article be adopted.

Roll call.

Yeas: Ainslie, Allen, Anderson, Armstrong, Batten, Beane, Beatty, Bevan, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Glidden, Gray, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, King, Lamoreaux, Lewis, Mayhew, Melder, Myer, Morgan, Moss, Parker, Pefley, Pierce, Pinkham, Pyeatt, Reid, Robbins, Savidge, Sinnott, Shoup, Steunenberg, Stull, Sweet, Taylor, Underwood, Vineyard, Whitton, Mr. President—51.

Nays: None.

The article was adopted and referred to the committee on Revision and Enrollment.

COMPENSATION OF STENOGRAPHERS.

Mr. HASBROUCK. Mr. President, your committee on Ways and Means desire to report.

SECRETARY reads: "Your committee on Ways and Means have had under consideration the matter of fixing compensation of the stenographers of this convention referred to them by the convention, and recommend they be allowed \$15 per day for the number of days the convention has been in session, and if their services are required after the convention, that they shall not be allowed to exceed \$10 per day after said adjournment."

Moved and seconded that the same be adopted.
Carried.

SECTION 6, ARTICLE XVIII.—COUNTY ORGANIZATION.

The CHAIR. Before proceeding to the pending order of business, I wish to call the attention of the convention to the fact that Mr. Shoup pointed out some objections to the amendment which was adopted to Section 6 with regard to non-eligibility of assessor and sheriff. I did not catch the objection at the time it was made, but on adjourning I found the objection was well taken, that the way it is now they are made ineligible in reality four years instead of two years, and I therefore ask unanimous consent that the following may be substituted: "No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected."

Mr. REID. I ask unanimous consent that that be substituted in the place of the other.

The CHAIR. If there are no objections it will be made.

The CHAIR. This morning, while another motion was pending, the gentleman from Owyhee arose for the purpose of moving the reconsideration of some question that came up on yesterday.

Mr. HAYS. If it is in order now I renew my motion.

Mr. REID. I thought it was understood that we would complete the article, and then go back and reconsider.

The CHAIR. If that is satisfactory we can do so.

Mr. HAYS. Yes.

SECTION 7.

Mr. REID. I now move that Section 7 as amended be adopted. (Carried.)

The CHAIR. The chair is informed that there was an amendment pending offered by Mr. Ainslie which was not passed on, to Section 7.

Mr. AINSLIE. My amendment was to strike out "fifteen" in line 10 and insert "five." It is not very

material, except \$1,500 for coroner I thought was too high, and by putting it at \$500 I thought it would look a little better for the people. (Seconded.)

Mr. REID. I will add as an amendment to move in line 11 to strike out "one thousand" and insert "five hundred" also. (Seconded.)

The question was put by the chair to amend Section 7 by striking out "fifteen" in line 10 and inserting "five" in lieu thereof. (Carried.)

The CHAIR. It is also moved and seconded that line 7 of Section 7 be amended by striking out the words "one thousand" and inserting "five hundred" in lieu thereof. ("Question, question.")

Mr. MORGAN. Is it intended by the chairman to limit the fees of county surveyor to \$500?

Mr. REID. Yes.

Mr. MORGAN. I do not see how you can get a county surveyor at any such a price.

Mr. REID. I will withdraw the amendment if there is objection to it.

Mr. MAYHEW. I object.

The CHAIR. The amendment is withdrawn.

Mr. MAYHEW. I object to that amendment being withdrawn. I am in favor of \$500.

The CHAIR. The gentleman withdrew the amendment.

Mr. MAYHEW. Can a member withdraw an amendment without the sanction of his second to the motion?

The CHAIR. The question is then with regard to the adoption of the amendment offered by the gentleman from Nez Perce and seconded by the gentleman from Shoshone, to strike out the words "one thousand" in line 11 and insert "five hundred."

"Question, question."

Mr. MORGAN. I am opposed to that amendment. A good instrument for a county surveyor would cost him \$300 at the least calculation. We cannot always be forced to elect a man who has an instrument already, and it seems to me this amount is altogether too low. I do not think we can get a county surveyor that will do

the work for \$1,000, and as I understand it he is only to receive that amount, and it strikes me that as all he obtains from the people over and above this amount must be paid over to the county treasury, it is certainly too low now. That is simply a maximum, and the conclusion will be that he cannot go above this amount. I move that the word "one thousand" be stricken out and "fifteen hundred" be inserted. (Seconded.)

Mr. GRAY. I am in favor of the original motion. I would like to ask the gentleman what benefit we derive from that office?

Mr. MORGAN. From county surveyor?

Mr. GRAY. Yes; if there is the least contest at all another surveyor is brought on the ground, and there is no more in the action of the county surveyor than any other surveyor. My opinion has been that in this county they have, if anything, been a detriment, under a pretext of being an officer. If I have any surveying to do I will go and employ my surveyor and get such a one as I think is competent, not such a one as the people may see fit to elect.

Mr. MORGAN. I will say, Mr. President, that is good argument in favor of not having any at all; but it does not seem to me to amount to anything if you are going to have one. If you are going to have a surveyor he ought to have something for his services. This money is paid to the surveyor by the people who employ him. The moment his salary gets to \$1,000, according to that section, he must turn the balance into the treasury. I say he cannot provide the proper instruments and do the work for any such sum of money. And as the county does not have to pay, the people can employ some one else if they see fit to; but there are various matters which will be provided for by law in contest cases over lines where the survey of the county surveyor will determine the question, and it requires a man of considerable skill in his business. People should select such a man, and he ought to be permitted to earn \$1,500 a year if the people see fit to employ him and pay him.

Mr. GRAY. If he performs services that we were

bound by, I would say yes, but when he performs nothing but what can be refuted by any man that can come, a more competent man, why should he be paid? Some of these county surveyors ought not to have any instruments, because they don't know what to do with them when they have them. They cannot set stakes even, to say nothing about reading an instrument; and the first thing is to go and change the government corners and say they are not straight. What difference does it make to them whether they are or not? If the government established them, we have got to go by them, and that is the difficulty with these men elected to that office. I have yet to see in Idaho territory one of those officers that has been any benefit to the people or the territory.

Mr. MORGAN. We do not elect such men in our county.

Mr. VINEYARD. I have sent up a motion to strike out in line 11 the words "county surveyor."

SECRETARY reads: Strike out in line 11 the words "county surveyor."

Mr. VINEYARD. I am convinced by the argument that the office is not worth anything.

Mr. REID. I hope that motion will not prevail, for this reason.

The CHAIR. The motion as it stands now by the gentleman from Alturas will embrace all of line 11, and "dollars" in line 12.

Mr. VINEYARD. I will accept that amendment.

Mr. REID. I know we are apt to get impatient and strike out things we ought not to. I hope the convention will be patient and we will proceed understandingly in the matter. You gentlemen are familiar with the fact that we have to lay out roads and have controversies about roads; that is all county business. Frequently in capital cases surveys have to be made.

Mr. MORGAN. Determine the line between counties also.

Mr. REID. Yes, and all that. Now, if you fix the fees in the bill you keep down exorbitant charges by private surveyors, and have a man to do things that will

take official action. Of course, in private controversies to which my friend alluded, private rights in civil suits, we generally have our own surveyors; but the necessity for a county surveyor, and the reason we fix his fees, is that sometimes there is official business to be done, such as laying out of roads, settling controversies between the public and municipalities as well as individuals, and there is hardly a constitution in the states that does not provide for county surveyor. And because the gentleman is a little impatient about the progress of this section I don't think we ought to proceed hurriedly. Since the gentleman from Bingham has made his argument I am satisfied \$500 is too small and I shall vote for \$1,500, because it will not come out of the taxpayers' pockets, but only those people that have business, except on this official business, and then the fees would be regulated by law. If he has no business he has no pay, because we struck out the minimum fee. But I think he is a useful and necessary officer.

Mr. BEATTY. I desire to ask the gentleman a question. Having struck out the minimum fee, what would be the construction as to what the county shall allow him?

Mr. REID. The legislature will fix his fee for official business, and having struck that out, we only fix the maximum.

Mr. BEATTY. Then the question would be, suppose there are no fees, would the county allow him anything?

Mr. REID. Not a cent. We fix it, beyond which they cannot go. Suppose a county has a great deal of surveying during the year, running it to three or four thousand dollars? He cannot draw more than \$1,000 the way it is. I think the gentleman is right about \$1,500. The committee could not take in every phase of the subject. A good surveyor has to have good instruments and travel around. The mileage has been one of the greatest abuses. I had a witness to come sixty miles last court and attend six days, and had to pay \$45 mileage, and the litigant was a poor man and had to sell his

horse to pay the mileage of that witness, and the witness was necessary to the winning of his case.

Mr. VINEYARD. I am satisfied from the arguments here upon this office that it is a supernumerary office simply. That so far as the duties of the office are concerned in making surveys in which the county is interested, or roads or county lines, the county commissioners representing that county would have authority and a perfect right, in settling lines and laying out roads, to employ a competent surveyor, and oftentimes can get a much more competent man than would generally be elected to that office. Outside of that office, private affairs, private surveys that are required, there is never any application to the county surveyor to do anything. It is a supernumerary office, pure and simple.

Mr. BATTEN. I rise to a point of order. Was not this section adopted, and are not all of these amendments now being introduced out of order?

The CHAIR. Not except this whole discussion would be out of order, but it is proceeding upon unanimous consent, upon the motion of the chairman of the committee, supporting the original amendment. It is moved and seconded that the words "one thousand" in line 11 be stricken out and the words "five hundred" be inserted in lieu thereof. To that an amendment is offered to strike out "one thousand" and insert "fifteen hundred." To that a substitute is offered to strike out all of line 11, and the word "dollars" in line 12. The question comes first upon the adoption of the substitute. (Lost.)

The CHAIR. The question recurs upon the amendment to the amendment offered by the gentleman from Bingham to strike out the words "one thousand" and insert "fifteen hundred." (Lost.)

The CHAIR. The question now recurs on the original amendment to strike out the words "one thousand" and insert "five hundred." (Vote.) The chair is in doubt. (Rising vote.) The result of the rising vote is Yeas 19; Nays 24, and the motion is lost. The question now recurs upon the adoption of the section as amended. (Carried.)

SECTION 8.

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

Mr. REID. I move that the adoption of that section be followed by a section to be numbered Section 9.

SECTION 9.

SECRETARY reads: Section 9. The neglect or refusal of any officer named in this article to account for and pay into the county treasury any money received as fees or compensation in excess of the maximum amount allowed to such officer according to the provisions of this article, within forty days after the receipt of the same shall be a felony, and the grade of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense."

Moved and seconded that the same be adopted.

Mr. REID. The section was drawn by my friend from Shoshone (MR. HEYBURN), and as suggested by him, I think it is a very pertinent one. It provides that when officers reach this excess—you notice in Section 6 they shall be strictly accountable for these fees—this section simply provides that when they get to that excess they shall within forty days pay it to the county treasury, and if not, it will be considered a crime such as embezzlement of public moneys, to be punished as such.

Mr. MORGAN. I want to say one word. It is still introducing criminal statutes into the constitution, and I do not think it belongs here. I think we ought to leave it to the legislature, and I was only informed this afternoon, I believe by Mr. Hasbrouck, that this constitution will be about ten times as long as the constitution of California, and I think that some of these things ought to be left to the legislature. That is one of the criminal statutes that ought to be enacted and will no doubt be, by the legislature, to enforce all the provisions of the constitution with reference to these limitations which are imposed, and I am opposed to the insertion of this section.

Mr. HEYBURN. Mr. President, the object of drawing and offering it—I admit it is in the nature of legislation—was only to complete a subject that we are considering. If no part of this article were in here and the legislature were left to deal with it, of course they would make a provision of this kind; but there is no use in providing that these officers shall be paid in fees, and that they shall account for the excess to the public treasury, unless you do in some act make some provision, because this amounts to an act of legislation—the whole article. You must make some provision to compel them to do it; otherwise it would probably pass by the legislature; but we have undertaken to deal with the subject, now let us deal with it thoroughly or let it alone.

Mr. GRAY. All I have to say is, what was said by the gentleman from Bingham. I am opposed to putting the criminal practice code in the constitution, and while Mr. Hasbrouck has said that it would be larger than the statutes of California, I would not wonder if it was larger than the Bible. (Laughter.) I do think it is as much out of place as anything could be. If we are to be allowed only to lay a broad basis for the legislature to act upon, I think we are doing that, if not stretching it a little; for that certainly is a provision that should be in the criminal practice code, and there is no doubt but what the legislature in the future, as they have in the past, would take into consideration all these things that might be criminal. I would hardly know how to handle it when you get there. Suppose you enter an indictment under it, how would you do it? It would not be really under the criminal practice code; that would have to be The State against somebody. But where it comes under a provision of the statute, we understand exactly what the punishment shall be, how the indictment shall be drawn; but when it comes to this, suppose the legislature should not exactly conform to this punishment, or to whatever might be deemed the crime, or what the crime is said to be here. Then there is certainly a conflict; and I do think, and I will submit if it does not seem that we have statutes enough; we

have them now in our statutes that would cover that very offense; and I doubt whether the legislature would see fit to take it up. There will be no need to do it if we take it up.

Mr. MAYHEW. I move that Section 8 be stricken out.

Mr. HEYBURN. It has been adopted.

Mr. MAYHEW. I mean Section 9.

Mr. REID. That has not been adopted; it has been proposed for the section. Now, just one word in reference to the argument of my friend from Ada. I do not believe our constitution is subject to the criticism he makes. I picked up the *Spokane Falls Review*, a very able paper, really a branch of the *Oregonian*, and which has been watching the proceedings of the six conventions very closely, and it recommends to the territory of Washington to take the articles we have adopted as models of terseness and brevity, and I will throw this challenge to the gentleman, that he may take the articles passed at their final reading by this convention and compare them with every constitution in this Union, and he will find that for brevity and terseness they will compare favorably with any. I believe they are shorter. It is true, we have had our differences, but out of those differences and disputations and discussions we are getting a model of a short constitution, and while it is going to be a long one, it is not longer than the others. But as to this question in point, I admit all this is matter of legislation, but here is what we are trying to do: We are taking a radical departure in this county government system, and the gentleman will find in these nine sections, that they are shorter than any article on municipal or county government in any of the constitutions. What have we done? We have been leaving this to the legislature, and in one article have said that the legislature shall provide a uniform system of county government, and stop there; but we have changed that and fixed it so they shall provide this system of uniformity in a certain way. How? Striking down the salary system and going to the system of fees. Then

what? We have provided not all the machinery, because it will take two or three pages of statutes on county government to carry into effect these general principles, but we have wound up here now—and I thought the suggestion was a good one, and it will call attention to the constitution when you put it before the people—you have provided this system, that your officers shall be paid by these fees, and when they come to a certain amount then they shall go to the people. Then if they do not turn those excess fees over it is a crime for which they can be disfranchised, cannot be allowed to vote, because it will amount to a felony, being the embezzlement of public money for which the legislature may disfranchise them. And I say, while it may be put in the constitution, the legislature may not do it. But it is left to them. I presume they will; I think the legislature that meets here after we have adopted this constitution will come in, and by calling attention to these fees, they will readily adopt it. I know they will if the people will look to their interests. Now, if they find this section properly prohibits these officers from taking the excess fees collected by them, there will be a statute adopted under which you can draw indictments. Of course you could not draw an indictment under this section, but it is put in the constitution defining it as a crime, and the legislature will provide the machinery so that the district attorney can draw the indictment. It will not burden it much, and it is very apt to come in here and call attention of officers and the people to it, and make them more readily accept it, if we have thrown every safeguard around this new system, in the constitution. If it does not work well, there is no one who will be more ready than I to join in with the people and demand that we change it by an amendment to the constitution.

Mr. SWEET. Mr. President, I do not think there is any forcible objection alleged by the gentleman from Ada. It is a fact our indictments usually read “contrary to the form of the statute in such case made and provided,” but I think hereafter our indictments will read “contrary to the constitution in such case made and pro-

vided," and that being the case, I do not think there is any force in the objection urged by the gentleman from Ada. Furthermore, it does seem to me, Mr. President, as if it would be an outrage to send the constitution out to the people without anything in it on the subject of embezzlement. It seems to me there is probably no more important subject to be treated by the law-makers of this state than embezzlement. You can steal nothing of a more serious nature than money that I know of, and to send a constitution out to the people of the state without drawing it as providing for the treatment of embezzlement, it seems to me would defeat the constitution itself; and the sole objection that the indictment should read "against the constitution in such case made and provided," should, it seems to me, be no objection.

Mr. GRAY. Why don't you put all the embezzlements in; embezzlement of any fund?

Mr. SWEET. I have been contending, Mr. Gray, all the time that the criminal code ought to be in here.

Mr. SHOUP. I am a little surprised to hear the gentleman from Bingham make the assertion he did a minute ago that our constitution would be ten times longer than the constitution of California. The truth is, I am satisfied it is not nearly as long, nor will be nearly as long.

Mr. MORGAN. I stated that I was informed that such would be the fact.

Mr. SHOUP. Very well, I will say this, that I have just looked at the constitution of his own state, that of Illinois, and I think our constitution will be a little more than half as long as that.

Mr. MORGAN. I am not a champion of the state of Illinois.

The CHAIR. The question is upon the adoption of the additional section. (Vote: division demanded. Rising vote, Yeas 40; Nays 3.)

Mr. REID. I ask that Section 9 be numbered Section 10.

The CHAIR. There being no objection, the number will be changed accordingly.

SECTION 10.

Section 10 read, and it is moved and seconded that Section 10 be adopted.

Mr. CLARK. I sent up a substitute.

SECRETARY reads: Substitute for Section 10: The board of county commissioners shall consist of five members. The probate judge shall be ex-officio chairman of the board. He shall vote only when there is a tie, and shall receive no compensation as such commissioner. Each county shall be divided into two districts at the first general election after the adoption of this constitution, and there shall be elected one commissioner for two years and one for four years from each district.

Mr. CLARK. I offer this substitute at the request of a gentleman who has held the office of county commissioner, and several other offices in this county, and has given the matter a great deal of attention. As it is somewhat new, I trust the convention will look into the matter a little closely before voting it down, simply as an innovation. The gentleman who placed the amendment in my hands made this statement, that by making the probate judge, who is an officer not overburdened with duty, the chairman of the board, people would always have at the court house and at the county seat a permanent officer to whom they could bring commissioner business. He thought this would be very desirable and as he would receive no extra compensation the cost would be nothing extra. He further stated that the board of county commissioners at present is only three, and it frequently was a hindrance to business from the fact that it was not always practicable for the members to be present for the transaction of business at the county seat. But the larger number, four, would always insure that more perfect consideration of public business, and he thought the county would be more carefully represented in the management of its public affairs. Perhaps objection might arise, that it creates one more commissioner to be paid; but as the commissioner fees are the smallest thing in the county, it would not aggre-

gate in the entire territory a sum that the people would find made any material increase to their burden.

“Question, question.”

The CHAIR. I would like to call the attention of the convention to a matter which strikes my mind now. There are four commissioners, but only two are provided for.

Mr. CLARK. The intention was to make it two in each district. It says one for two years and one for four years in each district; and as there are two districts, that would make four men.

The CHAIR. It is moved and seconded that the section sent up by the gentleman from Ada as a substitute be adopted as Section 10 in the printed bill.

Vote and lost.

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

SECRETARY reads: Amend Section 10 by striking out the word “six” in line two, and insert in place thereof the word “two,” and strike all of the remainder of the section after the word “years” in line two out.

Mr. McCONNELL. Mr. President, my object in offering this amendment is this: the county commissioners, especially in the agricultural districts, are made up largely from the farming classes, and very frequently it occurs that a gentleman is chosen for county commissioner on account of his success in the management of his home affairs, and his conservatism, and after he is tried in the board of county commissioners he proves unequal to the task imposed upon him. I think every gentleman of the convention will bear me out in saying that there are too many instances of that kind on record in the management of our county affairs in the territory, and if such be the case, under the provisions offered we have that kind of a gentleman dealing with our affairs six years instead of two. If the board of county commissioners give satisfaction during the first two years of their office, it is easy to nominate and elect them again; but I think before electing any gentleman a term of six years we ought to know something about

his ability to manage the finances of the county. I think six years is too long a term to take a man on trial.

Mr. HASBROUCK. I hope the amendment will not prevail. The facts are not borne out as the gentleman states them so far as I have observed. Where they are elected for only two years, it takes them about two years to get acquainted with the business. They are generally elected from the body of the county, and they are not as a rule business men, and it takes them about their whole term to find out what the business is they have to conduct. I propose that they have this long term, and every two years there is only one elected, so there will be two holding over that do know something about the business and finances of the county. And I believe it is much the better way. The other way has been tried and it has proved just as I state, that those officers do not really find out what their duties are until they are put out of office, and a new set of officers put in. And it does not follow either that they are re-elected but the reverse is the case generally.

Mr. McCONNELL. I think his argument is in support of my proposition. If there is any gentleman elected county commissioner who requires two years to learn the duties of the office, he has no business in the office. And the reason, very largely, why they are not re-elected is because they have shown that they are not fit to fill the position. We have in our county one commissioner who is now serving his second term because he showed that he had ability to fill that position, and any gentleman who is on the board of county commissioners in our county, or I think in any other county in this state, who has shown proficiency in the work he has undertaken, can be nominated and re-elected without regard to the politics of the county. There is one position in which I believe party lines are not drawn, because it is an office in which every man in the county is interested, and I would far prefer to see every member of the board of county commissioners elected only two years, and then we can find out whether it does

take him two years to learn his duty. If it requires him two years, I do not want him any longer.

Mr. HEYBURN. And in a new country, Mr. President, where men know each other very slightly, they are apt to make grave mistakes, sometimes, in the election of these officers. We have been unfortunate enough to do so in our county. If we had elected our members for two years only, it would have been better. We have had to come down to Boise City to hold our meetings in order to accomodate one gentleman who has now three years served, but we do not suppose that will occur very often; but in new countries like ours those officers should not be chosen for a longer term than two years. As the gentleman has said, if we find a particularly good officer we can re-elect him without any difficulty.

Mr. AINSLIE. I believe the amendment proposed is right in line with democratic and republican principles. I do not see why a county commissioner should be elected six years any more than sheriff and recorder and probate judge or any other officer. The duties of the other county officers outside of the county commissioners are as difficult to learn and to discharge as the duties of county commissioner, and still you elect a sheriff two years, and then prohibit him from running again under the provision of this article. Also assessor. You don't allow him to serve a second term consecutively. I think two years is long enough, and I propose to stick to that rule.

The CHAIR. As there are two propositions involved, I will put them separately.

Mr. REID. If the first one is adopted, the last one goes out, so you can put it together.

The CHAIR. That is correct.

The question was put and the amendment adopted.

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

SECTION 11.

Section 11 read, and it is moved and seconded that it be adopted. Carried.

SECTION 3.

Mr. HAYS. Mr. President, I move that the vote by which Section 3 of this article was adopted be reconsidered. (Seconded. Rising vote, yeas 27; nays 22, and the motion to reconsider is carried).

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

Mr. HEYBURN. Mr. President, I move that Section 3 be stricken out. (Seconded).

Mr. WHITTON. Mr. President, I send up a substitute.

SECRETARY reads: No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off voting on the proposition at a general election, shall vote in favor of such division. Reid.

“No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off petition the legislature in favor of such division.” Whitton.

Mr. REID. I will explain the substitute I offered.

Mr. HEYBURN. I raise the point of order, that if the first question is on the motion to strike out, if it is struck out those will not be necessary.

Mr. REID. I will address my remarks to the motion to strike out. I claim my five minutes.

The CHAIR. I think the rule provides that all substitutes “shall be taken up in the order in which they are offered.” The motion to strike out should come last.

Mr. SHOUP. I think you will find that is the rule.

Mr. HEYBURN. I think it is, and if it is stricken out, there will be nothing to substitute.

Mr. REID. I will address my remarks to the motion to strike out. I am opposed to the motion to strike out for the reason that if it is stricken out it leaves nothing on that subject. If nothing is left in there at all, it then relegates these division suits to the legislature, what the committee intended. Now, I have offered the substitute I have proposed, which provides for the case that the gentleman spoke of yesterday. He said there was a large

country there called Camas Prairie that wanted to be put into Alturas county. That was the objection. Now, this lets that Camas Prairie country vote whether they will go or not. And it allows any section that proposes to be cut off from any county to vote on that subject. Now, gentlemen, is it right to prohibit a county from moving its county seat when a new county is to be made, without the vote of the people, but to say that you may come to the legislature and cut off a slice of the county without the people having a say-so on it? All my substitute provides is simply this, that when you propose to cut off a piece from a county, two-thirds of the voters there shall say that they want to go. For instance, suppose as has been said by the gentleman from Alturas, that he wants Camas Prairie and Ketchum, and Bellevue I believe is in that strip, and they want to cut off Camas Prairie and attach it to Alturas county. They complain that Alturas would have no voice in it, that Logan county would out-vote them. Now, ought you to cut off that strip without that strip wanting to go to Alturas? Is it right and fair to them to force them to come up to the legislature and force them to lobby and spend money by sending men here to look after the fight that will be precipitated upon them? Then you are doing that strip of country the same injustice that Alturas county is complaining of now. I will apply it to my own county. Suppose there is a strip up there on the other side of the river that really belongs to Latah; and so far as I am concerned I think it ought to go there—I don't mean the Potlatch country, but that piece next to Genesee; a line ought to be run there with the reservation, unless that reservation is opened up. I believe we have had it added to Latah county for school purposes. Now, if the people want to go to Latah county, although I live in the other part of the county, and although it will weaken us that much, I am willing they should go, although I think it ought not be in the power of the legislature to attach them to Latah unless the people say so. I don't think you ought to place it so that they will be obliged to come here and lobby for it. When you want to move a county

seat, let the people say so; when you want to divide a county, let the people say so. If that is what these gentlemen want, to straighten their county lines, and take a slip off of Logan county including the town of Bellevue, then I say a majority of those people ought to vote that they are willing to go; if not, you perpetrate upon them the same injustice that the gentleman from Alturas complains of now; and I merely allude to that for illustration. I am satisfied now of the gentleman's law. No part of a county ought to be cut off without it; you ought not to cut off a part of Nez Perce or Latah or Shoshone or Idaho or any other particular county, unless the people to be cut off vote that they are willing to go. Men settle in a county with reference to the county seat, and with reference to the center of the state. There they make their improvements. Now, what do you propose? You propose to say to those people, "We will go up to the legislature, and because we have more friends there than you have, we will put you in, whether you want to go or not." My amendment simply provides that two-thirds of the people living in the territory to be annexed to a new county, shall vote to go, and if they vote to go, let them go. And if they vote against it, you cannot legislate them in against their consent.

The CHAIR. I have to say that the chair was in error with regard to the question yesterday. I examined the rule and find it is different. The first question is upon the motion to strike out Section 3. Are you ready for the question?

"Question, question."

Question was put by the chair and vote taken. The chair being in doubt, a rising vote was required, which resulted yeas 21, nays 26, and the amendment was lost.

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

The CHAIR. The secretary will call the roll.

The secretary proceeded to call the roll.

Mr. MAYHEW. I desire to explain my vote on this question. On yesterday I was in favor of striking the section out, and on principle I am in favor of striking it out today, but I desire to say this. The amendment

that is proposed by my friend from Nez Perce strikes me as meeting or should meet, to my way of thinking, with the approbation of this convention. I think by adopting the amendment as proposed by Mr. Reid, the chairman of the committee, it will be a fair submission of this matter, and better than to strike it out. I therefore in consideration of the amendment as offered by Mr. Reid, am compelled to vote no.

Mr. McCONNELL. My reasons for voting against this motion to strike out are the same as given by my friend Mayhew from Shoshone. I vote no.

Mr. MORGAN. I am in favor of the substitute offered by these gentlemen respectively. I will take either one of them in preference to that section, and I therefore vote Yea.

Mr. SWEET. Mr. President, if Mr. Reid's amendment has left it to the majority of the people to say where they desire to locate themselves, I would vote no. Inasmuch as I consider a two-thirds vote on any proposition equivalent to no vote, I vote yea.

Roll call:

Yeas: Allen, Anderson, Batten, Beatty, Bevan, Crutcher, Glidden, Hammell, Hays, Heyburn, Myer, Morgan, Moss, Pierce, Pinkham, Savidge, Sinnott, Shoup, Steunenberg, Stull, Sweet, Underwood, Vineyard, Mr. President—24.

Nays: Ainslie, Armstrong, Beane, Blake, Campbell, Cavanah, Chaney, Clark, Coston. Gray, Hampton, Harkness, Hasbrouck, Hogan, Howe, Jewell, Kinport, Lamoreaux. Mayhew, McConnell, Melder, Parker, Pefley, Pyeatt, Reid, Robbins, Taylor, Whitton—28.

The CHAIR. The motion to strike out is lost. The question recurs on the substitute offered by the gentleman from Logan.

Mr. WHITTON. I desire to withdraw my substitute.

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

SECRETARY reads: No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division.

Mr. McCONNELL. I move to amend by striking out the words "two-thirds" and substitute in their place the following, "a majority." (Seconded).

Mr. MAYHEW. Am I in order now, Mr. President?

The CHAIR. The gentleman is in order.

Mr. MAYHEW. Thank you. Mr. Chairman, I am in favor of the expression of parties on matters on which they are voting. For instance, if there is a proposition to strike off certain portions of a county, I believe the persons who live within that portion proposed to be stricken off should have a voice, and a strong one, too, before they should be stricken off. I think a two-thirds majority is right, although in some instances it is contrary to our general republican principles to interfere with the majority of the voters, but I say in these county affairs I should be in favor of a two-thirds majority of the people saying whether any section or portion of the territory within a county should be stricken off. On yesterday I was in favor of striking out this section, and I still in principle am in favor of it. But when the proposition has come up by way of amendment as proposed by the gentleman from Nez Perce, I will say it meets with my approbation, more than any other proposition that has been made before this convention. I say a two-thirds majority of the county should be adopted. Two-thirds of the voters in the county; not that it should be two-thirds of the majority, but two-thirds of the voters in the county. Now, you know, Mr. President, as well as anybody knows, (and I presume to say, gentlemen, that the president knows more than anybody on that subject so far as the division of counties and removal of county seats are concerned; I am satisfied no one understands this question as thoroughly as the president does himself), that the people ought to decide; and I say I am opposed to interfering with the county lines and the county seats of any county in this territory unless by a two-thirds majority of the voters or the petitioners asking that the county seat shall be disturbed. I am in favor altogether of the proposition as made by the gentleman from Nez Perce

county, and I think it should be adopted. I think it is equitable and fair, notwithstanding it is somewhat against the general principle of our republican form of government; but we must be arbitrary in many of these things, or we will never get rid of this vexing question as to the changing of county lines and changing county seats.

The CHAIR. An amendment is offered to the substitute of the gentleman from Nez Perce to strike out the words "two-thirds" and insert the word "majority."

Mr. SWEET. It is my candid opinion that a principle is being placed in the constitution here in the organic fundamental law established, that has no place in the constitution at all, and which if inserted here as a principle is to sacrifice to a county seat fight, in which two-thirds of the people of this territory are not interested at all. That is the first thing in connection with it. The second principle that is violated by this section is, that the majority shall not rule. Now, sir, if there is any reason why a majority of the people should not rule in a matter of dividing a county, when it is submitted to the people who ask to be attached to some other county, any reason why a majority should not rule in that case as well as on any other public question, I would like to have somebody give the reason for it. So far as Judge Mayhew is concerned, he carries this question into the removal of county seats. Perhaps that is another proposition. That is disturbing county property, and a county may have a good deal of money invested in county buildings and the county seat, and perhaps there ought to be more consideration given to it, because it would be an expense to the county. But this matter under consideration is to be decided purely and solely by the people affected by the same. And I say that a majority ought to rule, not only in that case, but in every other case, and there is no reason, in the first place, why that Section 3 should be in this constitution at all, except that it is sacrificing, as I said before, a fundamental principle to a county seat fight, in which three-fourths of the people are not interested at all,

and then secondly, it is sacrificing another principle to the same object, and for the same purpose, and that is, that the majority shall not rule.

Mr. HEYBURN. I send up an amendment.

SECRETARY reads: Amend the substitute as follows: "*Provided*, That this section shall not apply to the creation of new counties." (Seconded).

Mr. HEYBURN. Mr. President, my object in introducing this amendment is that I saw, or thought I saw, in some of the remarks, an impression that gentlemen might have that this would allow a county to vote itself into two new counties or into a greater number, if they saw fit. I think this section is not intended to touch that question, but in looking at the language of it I saw it would be very easy to so interpret it. It says no county shall be divided except on certain conditions; if one-half of the county or a large portion of the county sees fit to vote itself away from another portion, they might do it under that language, unless there is some restriction, and I think probably we had better guard against that. It is only intended to apply to the taking of a piece of one county and annexing it to another.

Mr. REID. If the substitute is adopted I will accept the gentleman's amendment. I would like to read the provision in the Colorado constitution.¹ The statement has been made that it is not in constitutions. "Section 3. No part of the territory of any county shall be stricken off and added to an adjoining county without first submitting the question to the qualified voters of the county from which the territory is proposed to be stricken off; nor unless a majority of all the qualified voters of said county voting on the question shall vote therefor." That was just like it was in the original article; we had the whole county vote on it, whether they would let this part go, but I modified that so as to meet the demands, and I think it is a fair and equitable rule, to allow the people stricken off to determine. And why we put in two-thirds of the voters was, because in

¹—Art. 14, Sec. 3, Colo. Const., 1876.

a matter so important as cutting up a county, you might get one majority, and that one majority might not be composed at all of the people who really own the property and pay the taxes, and would be affected by it; but by making it two-thirds of the voters you are sure to get in the men who will have to bear the financial burden that will necessarily accrue from the division of the county. It was contended, like the removal of a county seat, that these matters should not be on wheels, to be determined on a mere pretext or all at once, but put it at a general election; and that is the only reason for relegating this to the people who are to be affected by it, and to have a good majority in favor of it.

Mr. VINEYARD. The argument used by Mr. Reid, that it might be carried by one majority, and therefore ought not to go by as slim a margin as that, has no application in a democratic form of government, where the maxim is that the majority rules. Four times the president of the United States has been elected by one majority. And yet, according to the argument of my friend from Nez Perce, it would not count. A proposition is involved, as it is here in a county seat or change of a county. And as has been stated by my friend from Latah, Mr. Sweet, the argument that you are voting against the hasty removal of county seats where a large amount of county property is situated, these things ought to be in a measure permanent and fixed, and unless for good cause shown, it never ought to be removed from that point to some other point in the county. But here is a proposition to amend Section 3 and in its effect it does not remedy the evil complained of all the time by the supporters of the motion to strike out this section. It remedies no evil at all in the counties affected by it. Why? I can illustrate. There might be a case where the one particular section of country affected by the change might be in favor of it, there might be a little strip somewhere else that might be against it, some local fight or otherwise. Some consideration or other that turns them the other way. If the two-thirds majority is to obtain, the people, the

great majority, the overwhelming majority, but less than two-thirds, would be entirely defeated by a fictitious minority, and justly defeated, and that section of the country would be tied up for all time to come, and is tied up by this Section 3 without any remedy, and without any relief whatever. What I had contended for here is that this is legislation in the constitution. I do not care what is in the Colorado constitution on this subject. The Colorado constitution, which the gentleman read, does not go to the extent which he states, and which this amendment or substitute proposes. It says a majority, a majority of the county. I say it does not remedy the evil. I venture to say there is not a constitution in the United States that has as radical a section in it as this one now proposed. I know there is some feeling involved in this contention, and I am not responsible for it, I plead for people who are downtrodden, and perhaps ask relief and cannot get it. Why? Because of fictitious opposition somewhere; I don't know where to locate it. I don't know who is responsible for it. I regret that these things are so, but if that section is left in here as it is now, the result of it will be that you will antagonize a large portion of the intelligent people of this territory, not only in Alturas county, but elsewhere in other counties of this territory. You undertake to bind down by iron rule, by a rule that is fixed like that of a tyrant, and cannot ever be changed in your fundamental law. The thing is ridiculous and preposterous upon its face. A thing that is so vital to the local interest of our district and localities, to be affected by it, it smacks, gentlemen of the convention, of tyranny of the very worst cast, if you allow that to be put in and put it in in that shape. No remedy, absolutely powerless, lying at the feet of powers that know no redress and no relief. That is the position this thing will be left in if that section goes in without any amendment to relieve us against those things—that two-thirds. I raised this cry on yesterday; and even on the proposition of yesterday when this question was under debate, there was nothing, even then it was simply proposed to rush

this thing through, and it was put through. I stated then in my little talk, that the section of county to be affected would have no voice. Today the chairman of the committee proposes—what? To say that those affected by the change, if they can carry it by a three-fourths vote, then the legislature may entertain a proposition to change that county line. Driven at last to admit some portion of the argument advanced yesterday, he deals out to us now a three-quarters majority, which is no relief at all under the circumstances. It simply shows, gentlemen of the convention, the spirit which actuates this whole business.

Mr. SHOUP. I desire to offer an amendment. I will say in regard to this amendment, I have not the substitute before me, and I do not know just where it should be inserted, but I would like to have it somewhere in the substitute.

SECRETARY reads: Substitute. No county shall be divided unless two-thirds of the qualified electors of the territory proposed to be cut off voting on the proposition at a general election, shall vote in favor of such division. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed.

Mr. REID. I will accept the amendment to the substitute; also the other amendment of the gentleman if it is adopted. Now, just a word. When the gentleman states that I have any feeling in this matter, he is mistaken about it. I have no feeling whatever; I am doing just exactly what Mr. Beatty said yesterday, if it was left in that fix so that the entire county could vote, then this line could never be straightened. Now——

Mr. SWEET. Allow me to ask you a question. Was not that clause inserted in the constitution to regulate the affairs of Alturas county?

Mr. REID. Not at all; it was inserted without reference to Alturas county. One week after this committee made up its report—and we did not know anything about Alturas county, never thought of it, it never occurred in the committee room—someone came,

I forget what gentleman it was, and asked what regulation we had on that subject, I told him we had adopted it from the constitution of California,¹ or Colorado, just about in substance that clause, and followed the Montana² constitution and the California constitution, and others, on that subject, so there should be uniform rules for the removal of court houses and the division of counties and the location of the counties, that the people themselves might adjust them without having any trouble with the legislature. Alturas county never crossed my mind, and I doubt if it crossed the mind of any gentleman in the committee. One week afterwards something was said about it, propositions were made from both contending factions that we should alter this report. I called them before the committee, and we said we had nothing to do with local law; this was general law applicable to the whole territory, and should go in there, so that it should be kept out of the legislature. And yesterday when it was charged that we were perpetrating an outrage—I had not intended to open my mouth about it at all—but when it was charged that we were perpetrating an outrage, I rose and defended the committee. I have no feeling in the matter whatever, but in the spirit of compromise and conservatism I proposed this very language, because the gentleman yesterday said that if they were left in this way the county of Logan, which was next to them, would never vote for them to have the territory they wanted; that the Camas Prairie country there wanted to come to Alturas. Now, I have submitted a proposition so that if Camas Prairie and Bellevue or any other section lying contiguous to Alturas wants to go to it, it can go. Now, this amendment proposed by the gentleman from Custer, Mr. Shoup, that no man can vote unless he has been there ninety days, will not obviate the difficulty, because they might fill up the territory with residents of the county ten days before, and carry it. If there is any territory that

¹—Art. 11, Sec. 2, Cal. Const. 1879.

²—Art. 16, Sec. 2, Montana Const. 1889.

wants to go out, all right. If the convention thinks it should not be by a two-thirds vote, put it a majority. And the gentlemen seem to complain of that. If they think a majority ought to decide this question of cutting off a county, very well; but I merely proposed it in the spirit of compromise. I think something of the sort ought to go in the constitution. I don't think every time this legislature meets down here, with these counties constantly filling up with people, and every new town springing up and thinking it ought to have the court house—I don't think the legislature should be crowded with that sort of business; especially when we are only going to have sixty days sessions, and biennial ones at that. I think the legislature ought to pass general laws, not special laws. We ought to have uniform laws. We have declared that the legislature shall not pass special laws on many special subjects; and the people in the division of a county ought to say when that county shall be cut up; it is a right they have, but they ought to vote on it, and we have provided that if any section says it wants to go to Alturas county or Nez Perce county, they must do so by a substantial majority. It is going to affect our own county to have a piece taken from it; it will affect us who live in Lewiston, because it cuts off a strip of the best agricultural country right next to us, the Potlatch country. But naturally it belongs to Latah, the people already trade at Genesee. The last legislature passed an act that we might go to Latah to school, but if those people want to separate from Nez Perce and go to Latah, it is right and fair that they should go. Now, I have no feeling in this matter. The fact is, my sympathies are all with Alturas county. The city of Hailey was the one I first visited in this territory, and I think it is one of the most beautiful cities in the territory, and I am sorry they are in the condition they are, but a general law ought to go into this constitution. Instead of being against them, I had proposed a compromise which it seems to me is just to them and just to the territory that is to be annexed. I say, gentlemen, if that terri-

tory that they want to annex to Alturas does not want to go, they ought not to be made to go by a special act of the legislature. If they do want to go they ought to have means to say so, either by a majority of two-thirds or whatever the convention may choose to put it. I have no feeling in the matter at all.

Mr. HASBROUCK. I was a member of this committee of which the gentleman from Nez Perce is chairman, and I do not wish to make any extensive talk on this matter and delay the convention, but I wish to say that every statement he has made is correct. And further, that it was as harmonious a committee as there was. Everything was done unanimously, and this matter was not heard of in that committee.

Mr. BEATTY. Mr. President, I am in behalf of the citizens of Hailey very much obliged to my friend from Nez Perce for the sympathy he has expressed for them. But, Mr. Chairman, we need something more than sympathy. They need that the laws as embodied in this constitution be such that in the future they may have some actual relief, and not mere sympathy. I wish to add but few words to what has been said. Alturas county has been referred to. I did not intend to open my mouth in this discussion; I intended to leave it to this convention to do what they pleased in the matter without saying a word. But the gentleman has plausibly placed this before the convention as something exceedingly fair. It may be fair as to his county; it may be fair as to some other county, as to requiring two-thirds of the people who desire to be attached to some other county to so express themselves. But, now since Alturas county has been referred to, allow me a few words of explanation as to the situation there, and I will be brief. The line between Alturas and Logan counties as now drawn is three miles and a half or four miles south of Hailey, the county seat. Bellevue lies just one mile south of the county line, or a fraction, a little more or a little less. Bellevue proposes to be the county seat of the new county of Logan, and undoubtedly will be when the people come to vote upon it, because the majority of the people live

there and near there, near enough to make that the county seat. Then you have two county seats within four or four and a half miles of each other. That, now, is the kind of legislation you propose to place upon the people and fix it for all time to come. The gentleman says it is perfectly fair to leave it two-thirds of the district to be cut off. Why, gentlemen, if Alturas county is to get any relief at all, it must be by extending her line southward, and she cannot go south a mile until she gets to Bellevue. Now, how can we make a jog in there and cut a little strip out of Camas Prairie and leave Bellevue out? If we extend the line at all, we have to take in the town of Bellevue. Very well. Now, when you come to do that, Bellevue will always have votes enough to more than control the rest of the population in that district. Their votes are far more than the votes of Camas Prairie. The result is, by your two-thirds system, we get no relief whatever; it simply, so far as we are concerned, is of no earthly benefit. I would just as soon the section would remain in the original form as to have this substitute with the two-thirds majority. The truth is, Bellevue has more than a majority, and can always control that, and with this act passed we have no relief, and we have no interest in the matter one way or the other, because they will always have a majority of the votes to control it. Now, you say that is fair. Well, gentlemen, if this had been proposed years ago, perhaps it might have been fair. We are now in a different situation. As you all know, I think there is not a man here that does not understand the condition we are in. We are left without any relief with this law in the constitution. With it out of the constitution the legislature might possibly at its next session, when it comes to look into our situation, grant us some relief from what I know will be bankruptcy unless we have some relief; and when I use the word bankruptcy I am not drawing upon fiction; I am drawing upon facts, what I have before me, and which are true and correct, and you will find out before a year expires that that county will be without the means to pay its debts or

meet the burdens already upon it. All I ask thus far is that this should be left out of the constitution, and if we can show the legislature that it is just that that part of the territory taken from us should be returned to us, leave us to battle with the legislature on that question, and not debar us forever from any relief. For I claim that either this section as it is amended, or the substitute proposed by the gentleman from Nez Perce, comes so far from being a relief that I would rather leave the section as it stands than to adopt the substitute the gentleman proposes, because that requires a two-thirds vote of the people to be cut off, and as a matter of course Bellevue will always control the vote there.

Mr. SHOUP. As a delegate in this convention I suppose we are going to frame a constitution for the state of Idaho. Now, the gentleman who has just addressed you, and myself, stand in this position. A vote has been taken on whether Section 3 shall be stricken out or not. It has been decided that the section shall not be stricken out. Now, a substitute is offered which gives relief to all the rest of the territory, I believe, except his own particular case; but as long as he cannot be relieved, he gives us the inference that he is going to vote against the relief of any of the rest of the territory.

Mr. BEATTY. I beg the gentleman's pardon; I make no such assertion. I simply say that what you propose is of no benefit to us, and I would as soon have the section as it stood originally.

Mr. SHOUP. The gentleman has said he would rather see the section remain as it is than to have the substitute adopted.

Mr. BEATTY. With the two-thirds, I would.

Mr. SHOUP. But there is an amendment offered to reduce it to a majority, and Mr. Reid said he was willing to accept it.

Mr. REID. I want the convention to vote on it.

Mr. SHOUP. But I think the gentleman from Alturas ought to be fair about this. It cannot make his county any worse off than it is if this substitute is adopted.

Mr. BEATTY. That I grant; it cannot be made any worse than it is.

Mr. SHOUP. Now, as he did not get the relief he expected, (I voted to strike out the section myself) he should not vote so as to cut off all the rest of the territory.

Mr. GRAY. I have a few words to say in this matter. I think, as has been properly said by some of the gentlemen that preceded me, that we came here to make a constitution for Idaho. We are not here to legislate especially for any particular wrong, but we are here to legislate for the entire state, if it is admitted under our constitution. And as to what has been done to Alturas county, I say if it is wrong, it is wrong; but we are not here at this time to redress those wrongs. We are here to pass general laws, to make a general constitution to cover it all. I will ask the gentleman from Alturas, had this been the law one year ago or two years ago, then would he have opposed it? Would the proposition as it is made by the gentleman from Nez Perce have been opposed by him then; because under such a law his territory that he claims——

Mr. BEATTY. I am not asking that you legislate at all upon this question. I am simply asking that it be left to the legislature.

Mr. GRAY. I understand the gentleman's position, and then I want to say to all those that were in the legislature last winter, do you want such a recurrence of affairs to be thrown into the legislature again? I might say for two legislatures. In fact, it really controlled the legislature of this territory, that very section of country that he claims has been taken from him. Now, I say for that one reason, as I stated yesterday, and which I will say no more about, it would be a recurrence if it is permitted to go in that manner. Now, as to the two-thirds majority matter, I will suppose that the people of a little section of country that lies along on the side of the county, for some reason or other want to take themselves from one county to another. By their two-thirds majority vote they may be able so

to do, and if they do it by two-thirds, I am willing. The injury to the county may be considerable; it is a matter of quite a good deal of importance, and I think it should certainly be at least a two-thirds vote. The rest of the county is not protected in any manner, the property of the county is taken, and I think it should be guarded; and had the gentleman from Custer been guarded in that matter a year ago, it would not have won.

Now, here is where the difficulty lies. Often a little feeling will arise, and there might be a strip of country which was advantageous to the county, yet the people for some local reason became dissatisfied with the management of the county, and they say, "we want to leave, and we will take a majority on that and leave." Now, I say it should be two-thirds. The gentleman from Latah, Mr. Sweet, said that we will put it in the removal of a county seat. That strip of country may contain buildings that belong to the county which are valuable.

Mr. BEATTY. I would like to ask the gentleman a question. I do not understand from that substitute that even a petition of two-thirds of the citizens, or a majority of the citizens make an absolute division. It is wholly left to the legislature to judge whether or not it is proper to make the division after that petition is presented.

Mr. GRAY. That is not my understanding. My understanding is that it has to be submitted to the vote of the people, and if two-thirds of them vote it, they go.

Mr. REID. That is it.

Mr. GRAY. It is left to the people. Now, here, the two-thirds, as the gentleman from Alturas, Mr. Vineyard, says, that is two-thirds of the number voting. I cannot see really any difference in it. Local matters are so apt to control the legislature and control the elections of the people, that I think upon matters of that importance it should be two-thirds, and I should have voted for that had there been a convention two years ago. But, as I say, I believe we came here to pass laws for the territory, or for the state—to make a constitu-

tion for the state—not to redress wrongs claimed to have been done to Alturas county. As the people are honest and mean to do right, they can do so. That section of country that has been cut off, the gentleman says, if it went back again, Bellevue is going to control it. I do not know as much about the geographical position of the county as the gentleman does, but it seemed they could form county commissioner districts and appoint one of them in Bellevue, one in Hailey and one in Ketchum, and I cannot see but what they can draw a line perhaps that would make the county boundary and leave Bellevue out, and take in Camas Prairie.

Mr. CHANEY. I move the previous question. (Seconded).

The CHAIR. The previous question is called, and the question is, shall the motion of the gentleman be now put? (Vote and carried).

The CHAIR. The question now recurs upon the substitute offered by the gentleman from Nez Perce with the amendment.

Mr. REID. There is an amendment proposed to the substitute first.

The CHAIR. The chair was going to say that the vote would be taken on the amendment, the last amendment being voted on first according to the rule. The secretary will report the substitute and then the amendment in order.

SECRETARY reads the substitute; then reads Mr. Heyburn's amendment providing that the section shall not apply to the creation of new counties; also Mr. Shoup's amendment that no person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed.

Mr. REID. Both of those are accepted and are a part of the substitute. To that there is another amendment.

The CHAIR. Yes, to strike out "two-thirds" and insert "majority." That is the only amendment then pending to the substitute.

Mr. McCONNELL. The amendment was that the

words "two-thirds" be stricken out and "majority" inserted in its place.

The CHAIR. The question is on the amendment to the substitute to strike out the words "two-thirds" and insert the word "majority." (Vote). The chair is in doubt. (Rising vote; yeas, 27, nays 22). The amendment is carried.

Mr. AINSLIE. I call for the yeas and nays on this amendment.

Roll call:

Yeas: Allen, Batten, Beatty, Bevan, Blake, Campbell, Chaney, Crutcher, Glidden, Hammell, Hampton, Hays, Heyburn, King, Lamoreaux, Lewis, McConnell, Myer, Moss, Pierce, Pinkham, Robbins, Shoup, Steunenberg, Stull, Sweet, Underwood, Vineyard, Mr. President—29.

Nays: Ainslie, Anderson, Armstrong, Beane, Cavanah, Clark, Coston, Gray, Harkness, Hasbrouck, Hogan, Howe, Jewell, Mayhew, Melder, Morgan, Parker, Pefley, Pyeatt, Reid, Sinnott, Taylor, Whitton—23.

The amendment was adopted.

The CHAIR. The question now recurs upon the adoption of the substitute as amended for Section 3. (Carried).

Mr. AINSLIE. I have an amendment to the substitute as adopted.

SECRETARY reads: To amend by adding the following: "When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Mr. REID. I will accept the amendment; it is a very proper one.

Mr. BEATTY. I have no objections to the amendment, but if the gentleman will examine the laws we now have¹ he will see that they provide abundantly for that very thing, and as fully as can be provided, and we propose to continue those laws in existence. I think the amendment is entirely unnecessary; not that I have

¹—Sec. 3605, Rev. Stat. 1887.

any objections to it, for that is just what we have already.

Mr. REID. There are such provisions in half a dozen constitutions. I think it has been decided in the courts anyway, but to put it beyond all doubt I think it should be put in here. It is in the statutes of Idaho territory, but we are not incorporating them.

The amendment was re-read by the secretary.

Mr. VINEYARD. The legislature would no doubt make such a provision in its laws on that subject. To say that one portion of the territory of a county could get from paying its just proportion of the debt, so far as that particular locality was concerned, would impair the obligation of a contract to some extent. You have got it on your statute books already, as the gentleman says. I think it is purely legislation.

Mr. AINSLIE. It looks to me like they want one-half the clause in, and the other half out. It is equity, if it is not law. But it won't be the law of the state unless they put it in the constitution. I admit it is in the statute law of the territory, and ought to be in the constitution, as we have provided in Section 3, how a county can be divided. If it can be divided by a majority vote, suppose either portion of the county is deeply in debt, and the part of the county that is wanting to go has no funded or bonded indebtedness. If they go over to a new county—you will find sections of different counties that are deeply in debt, nearly every county, or two-thirds of them will want to go off to neighboring counties that do not owe such a big debt, and then they won't be responsible for a single dollar of the indebtedness they are dodging by going to another county. For instance, take the gentleman's county, Alturas. Suppose a part of that county wanted to be tacked on to Lemhi or Custer. Without this provision in there, they would not be responsible for the indebtedness. The legislature may or may not pass such a law; but you have provided how the counties shall be divided, and I propose they shall comply with the condition subsequent by assuming

their ratable proportions of debt. It is no more than fair and honorable.

Mr. McCONNELL. I would like to offer an amendment to that amendment. It is this: *Provided*, They shall not be held liable for any portion of the indebtedness of the county to which they are to be attached, contracted prior to said change. (Seconded).

Mr. McCONNELL. The proposition is, under this amendment, to hold that section of country which is to be detached from one county for their pro rata share of the indebtedness of the county from which they are to be detached, and place them in such a position that they will be obliged to pay a share of the indebtedness belonging to the county to which they are attached, the new county; so they will have the indebtedness of both counties, standing their pro rata share of the indebtedness of both counties at the date when they are attached. We might as well not have any substitute, because there is no section of people that want to pay the debts of two counties or assist in paying them.

Mr. REID. The gentleman would like perhaps to have the country lying between the Indian reservation and Genesee to go to Latah county, and if she goes, she has got to help pay our court house bonds; and if she stays, she might have to help pay some of Latah county's school district indebtedness.

Mr. McCONNELL. That is right. It is proper for that strip of country which the legislature in its wisdom last winter say fit to attach to Latah for educational purposes, to pay its pro rata of the school fund in that district; but it would not be right, if they want to come to Latah and be a part of Latah county, that they should be obliged to help pay the debts of both counties. We have been acting in this matter in a spirit of fairness. Those people may propose to remain with Nez Perce; I don't know. The people of Camas Prairie may propose to remain with the people to which they belong now; but should they conclude to go to Alturas, they would not want to pay the indebtedness of Alturas county.

Mr. REID. I hope the amendment will not be adopted. Suppose the county of Ada should take a strip from Boise county. Under this amendment the people in that strip taken from Boise would not be responsible for any of the old indebtedness of Ada county; and when the assessor goes over this strip that comes from Boise every year to levy taxes, he would have to skip those people. Now, when they come over here, they come with their eyes wide open. It is right and just that they shall not shirk any of the burden for which they have the benefit. And I announce as a principle of law that which has been decided repeatedly by the courts—and I know this is the fact, because I looked into the matter when we divided Nez Perce county—that no part of a county can shirk the old debts. That has been decided and settled, so we are merely enacting what is already common law. But suppose they go to a new county; they cannot shirk the old burden thereby, and you cannot legislate them out of it. I say the amendment is unfair, and will produce confusion. If they go to a new county they ought to assume any debts or taxes levied to pay the existing debt.

The CHAIR. The question is upon the amendment to the amendment offered by the gentleman from Latah, that any portion of a county being cut off shall not be required to pay any part of the debt of the county to which it is attached. (Vote and lost).

The CHAIR. The question recurs upon the amendment of the gentleman from Boise.

Mr. SHOUP. Let us have that read.

The amendment was read by the secretary.

Mr. SHOUP. Mr. President, I think the county to which this territory is attached should pay that indebtedness, not the people. They are getting those people into the county, and then if they have to pay the indebtedness, the entire county should pay it instead of the section stricken off.

Rising vote; yeas 27, nays 8, and the amendment was adopted.

Mr. REID. I now move the adoption of the substitute as amended. (Carried).

Mr. REID. I now move the adoption of the article as amended. (Carried).

Mr. REID. I now move that the article be referred to the committee on Engrossment, and that its final reading be set for nine o'clock Monday morning.

Carried, and the article was so referred.

Mr. MAYHEW. I would ask if there is anything on the secretary's desk or the chair's desk to be taken up this evening?

The CHAIR. The chair is of the opinion that there is nothing to be done.

Mr. CAVANAH. I move we adjourn until nine o'clock Monday morning.

COMMITTEE ON MEMORIAL.

Mr. REID. Before we adjourn I will ask the chair if the committee on Memorial was announced.

The CHAIR. The committee which was provided for by the resolution on the convention on yesterday, the chair will announce as follows: Pinkham of Alturas, Hays of Owyhee, McConnell of Latah, Armstrong of Logan, Ainslie of Boise, Reid of Nez Perce, Taylor of Bingham, Clark of Ada and Cavanah of Elmore.

Mr. VINEYARD. Before the convention adjourns I would like to have—I understand the report on Apportionment has been printed—I would like to have that report distributed so that the members can see it between now and Monday morning.

The CHAIR. That is ordered to be done, and the votes also ordered to be printed in connection with the bill.

Mr. VINEYARD. I understand the report is printed and I would like to have it distributed.

The CHAIR. We will suspend proceedings until the pages distribute it.

The motion was thereupon renewed to adjourn until nine o'clock Monday morning. Carried.