TENTH DAY.

TUESDAY, *July 16, 10:00 o'Clock A. M.*

Convention called to order by the president.

Prayer by Chaplain Smith.

ROLL CALL. Present: Messrs. Ainslie, Allen, Andrews, Armstrong, Batten, Beane, Beatty, Bevan, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crook, Crutcher, Gray, Hagan, Hammell, Hampton, Hasbrouck, Hays, Heyburn, Hogan, Howe, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, Mayhew, McConnell, Melder, Myer, Morgan, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Savidge, Sinnott, Shoup, Standrod, Taylor, Underwood, Whitton, Wilson, Mr. President.

Excused: Messrs. Ballentine, Glidden, Harkness, McMahon, Moss, Stull, Vineyard.

Absent: Blake, Harris, Hendryx, Jewell, Pefley, Robbins, Steunenberg, Sweet, Woods.

Journal of yesterday read by secretary, and approved.

Mr. SHOUP. I believe there are some members of the convention present who have not taken the oath.

The CHAIR. Will the gentleman inform the chair who they are?

Mr. SHOUP. Mr. Anderson from Bingham and Mr. Heyburn from Shoshone.

The CHAIR. The delegates present who have not been sworn in as members of this convention, will please rise.

(Messrs. Heyburn and Anderson sworn).

The CHAIR. If there are no objections, the reading of the report of the Ways and Means committee will be dispensed with. Any corrections to be proposed?

Mr. AINSLIE. I believe I was here at roll-call, Mr. President. I am reported absent.

Mr. CLARK. I was in before the conclusion of roll-call. I would like to have the entry so made.

The CHAIR. If there are no further corrections, the journal will be considered as approved.

PRESENTATION OF PETITIONS AND MEMORIALS.

Mr. BEATTY. Mr. President, I will move to suspend the rules for the purpose of making a motion. I believe that this convention should hear the representatives of all causes, whether we believe in those causes or not. A lady is present who has a national reputation, and desires to address this convention. I believe her written communication is before the convention. I move you, therefore, that the rules be suspended for the purpose of making the motion that she be allowed to address this convention at such time as may be agreed upon. She is present this morning and I suppose would like to have some disposition made of her communication before the convention. It was passed over yesterday, I think, without objection offered and informally.

Mr. AINSLIE. Before that motion is put, I desire to offer an amendment in order not to delay members here in committee business, that when the convention adjourns today, it adjourn to meet at 8:00 o'clock tonight for the purpose of hearing the lady on this subject. (Seconded).

The CHAIR. It is not necessary to make any motion to suspend the rules, as I understand it. This petition was presented upon yesterday and sent up before the convention in the regular order of business on Petitions and Memorials.

Mr. BEATTY. Then I will withdraw that motion and Mrs. Duniway may be heard at the hour of 8:00 o'clock this evening, if that will suit her. I don't know whether that hour will suit her or not.

The CHAIR. It is moved and seconded that when this convention adjourns, it adjourn to meet at 8:00 o'clock this evening, for the purpose of affording Mrs. Duniway the opportunity of presenting before this convention the propositions which are contained in the petition presented by her on yesterday.

(Motion put and carried).

REPORTS OF STANDING COMMITTEES—SEAT OF GOVERNMENT, ETC.

SECRETARY reads as follows:

"To the President and Members of the Constitutional Convention: Your committee on Seat of Government, Public Institutions, Buildings and Grounds, respectfully submit the accompanying report. FRANK P. CAVANAH, *Chairman.*

The CHAIR. The report will lie upon the table to be printed. Any further reports from standing committees? Reports from select committees? Final readings? That exhausts the regular order of business for the day, gentlemen, so far as reports are concerned.

Mr. SHOUP. Mr. President, I move that the convention go into a committee of the Whole on the orders of the day. (Seconded by Gray). Motion put and carried.

The CHAIR. The gentleman from Custer, Mr. Shoup, will take chair.

Mr. SHOUP. Mr. President, I suggest that the first matter under consideration is the Bill of Rights, and I am chairman of that committee; I ask that some other member be called to the chair.

The CHAIR. The Vice-President, Mr. Reid.

Mr. REID. Mr. President, I ask to be excused. I have some amendments to offer for that bill and suggest the gentleman from Bingham until the first bill is disposed of and then I will relieve him.

COMMITTEE OF THE WHOLE.

Mr. MORGAN in the chair.

ART. I.—PREAMBLE AND BILL OF RIGHTS.

The CHAIR. Gentlemen, the convention is now in a committee of the Whole. What is your pleasure? The report of the committee on Preamble and Bill of Rights is in order. The secretary will read the first section.

SECTION 1.

SECRETARY reads Article I., Section 1. All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.

Mr. SHOUP. Mr. President, I think the preamble should be first read and considered.

SECRETARY reads Preamble as follows:

We, the people of the State of Idaho, grateful to Almighty God for our freedom, to secure its blessing and promote our common welfare, do establish this Constitution.

The CHAIR. The secretary suggests that under the rules, the Preamble is to be last read and last considered. What is the number of the rule?

Mr. WILSON. Rule 49.

The CHAIR. The chair holds that under the rule the Preamble should be last read and considered. Then what shall we do with the first section?

Mr. ALLEN. Mr. President, I move its adoption. (Seconded).

The CHAIR. Are you ready for the question, gentlemen? (Question put and adopted).

SECTION 2.

SECRETARY reads Section 2: All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the Legislature.

Mr. HARRIS. I move the adoption of Second Section. (Seconded). Motion put and carried).

SECTION 3.

SECRETARY reads Section 3: The State of Idaho is an inseparable part of the American Union, and the

Constitution of the United States is the supreme law of the land.

(It was moved and seconded that it be adopted. Carried).

SECRETARY reads Section 4:

SECTION 4.[1] The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State; nor to permit any person, organization or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

It is moved and seconded that it be adopted. (Mr. Ainslie and Mr. King rise).

The CHAIR. I recognize Mr. King.

Mr. KING. Mr. President, I desire to amend that section. Not that I have anything against the words that I propose to strike out. I propose to amend by striking out all after the word "opinions" in the third line and to the word "crime" in the eighth line of the printed bill in the 4th section. My reason for doing it is that it seems to me the words I propose to strike out are utterly unnecessary. The first line asserts a principle that every man, I believe, in this territory agrees to, that "The exercise and enjoyment of religious faith and worship shall forever be guaranteed." I presume there is not a man in the territory of Idaho that would

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1—From a copy of the section as reported.

object to that. "And no person shall be denied any civil or political right——"

Mr. BEATTY. I rise to a point of order. The gentleman is speaking on a question that is not before the house.

Mr. MAYHEW. Well, I second the amendment in order that the gentleman may be heard.

The CHAIR. Proceed, Mr. King.

Mr. KING. The second thing in this is, "And no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions." That is a simple statement of fact that I do not suppose you could find a man within five thousand miles of here that would object to. "But the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations." Now, why that is put in I haven't any earthly conception. Does the granting to a man—guaranteeing to him his religious faith and worship and guaranteeing to him protection that he shall not be deprived of any of his political rights or privileges or capacity—is there anything in those rights that by any possible power of construction would lead a man to suppose that he could claim exemption from being put under oath or affirmation? If the clause read "that the liberty of conscience hereby secured should not be construed to dispense with oaths," then it might interfere with a man's religious faith, because we know that there are large bodies of men all over the world who have conscientious scruples about taking an oath, but they are perfectly willing to affirm. Secondly, a man could not under the exercise of the two clauses I have read, guaranteeing religious faith and that no man "shall be deprived of his civil or political rights, privileges or capacity on account of his religious opinion"—no man could claim to be exempt from taking an oath or affirming, one or the other. Then why put that in there? Of course, no man would expect, under the clause giving him freedom of worship, that he could claim exemption from taking an oath or an affirmation if he

be put before a jury, if he is brought up to testify as to whether he will support the constitution of the state or the United States, or any other necessary clause in the trial of a suit, and claim that he could neither be compelled to take an oath or affirmation because the state had guaranteed to him his religious freedom. I don't see any necessity for putting that clause in. I cannot conceive that it is possible that any man should have an intellect so obtuse as to claim under those guarantees for freedom of religious worship, the freedom or right to be exempt from either taking an oath or affirmation in the ordinary affairs of life. But yet, if you put that in, it would seem to hold to the idea that you might put in a clause relating to oaths and affirmations that would interfere with the rights that are guaranteed. Then it goes on with the disjunctive conjunction, if you will fill up the ellipsis, "but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the state." Why put that in? I cannot conceive. Simply because the state guarantees a man his right to religious liberty and that he shall never be deprived of any of his privileges as a citizen on account of his religious belief; to say that these clauses shall not be construed to prevent laws from being enacted to prevent men from the commission of crime! You might continue that clause indefinitely, almost, and say that these clauses shall not be construed to excuse acts of licentiousness, polygamous or other pernicious practices inconsistent with morality or the peace of the state. Is there anything in the first two sections there that by any possible construction, a man could claim a right to practice any of those things? Could any man possibly claim a right to act in a licentious or polygamous manner or any other pernicious manner inconsistent with morality or the peace of the state, simply because he had been allowed the right of freedom to worship God as he saw proper, and to guar-

antee to him his rights and liberties and privileges as a citizen that they should not be taken from him on account of his religious belief? Could a man under either of those clauses claim to have the right to act in a manner contrary to the natural and moral law of the country? Certainly not. It seems to me a jest. Then why insert these clauses in there? They add no force; they add no limit, as I can see, to the powers granted in the first two clauses. Then it seems to me unnecessary to put this in. It goes on then: This section shall not be construed so as to "permit any person, organization or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy or any other crime." We might insert any amount of crimes there; murder, treason, robbery and all that. Is there any person in the world that would claim exemption from punishment and the loss of his liberty, of his rights as a citizen on the ground that, though he had committed those acts, he had been granted religious liberty? Why, it is absurd to think any living man would claim exemption from these crimes. I cannot see that it is any use to put these clauses in. They have no force, no bearing, they assert no principle; they are not in accordance with the first and second clauses; have no connection with them that I can see. There is no reason to suppose any man would claim a right to do these acts simply because he had been guaranteed the right of freedom to worship. Then I say it is useless to put that in. Therefore I would strike it out. Now the next two clauses I am perfectly satisfied with: "No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship." Probably not a man in the house would dispute that, or in the state, but I can't see why it is necessary to put it in the constitution. Why, we are asserting principles, asserting something that has no bearing

upon this particular place that it seems to make an exception of.

(Question!).

The CHAIR. The gentleman will send his amendment to the secretary.

SECRETARY reads: I move to amend Section 4 by striking out all the words between the word "opinion" in the third line to "crime" in the 8th line.

CHAIR. Are you ready for the question? (Question, question). (Motion put and lost).

Mr. AINSLIE. I desire to offer an amendment to Section 4.

SECRETARY reads: To amend Section 4 by continuing after "worship" at the end of line 11, the following: Bigamy and polygamy is forever prohibited in the state and the legislative assembly shall provide by law for the punishment of such crimes. (Seconded).

Mr. AINSLIE. In reading this Bill of Rights over, I find nothing in here in regard to these two offenses except by implication in the preceding line of Section 4. Now this question of bigamy and polygamy has been an important question in the politics of this territory, and I believe the republican party have posed as the champions of domestic virtues and the great foe of bigamy and polygamy. In the report made by the committee, of which the majority are republicans, and the chairman is a republican, I fail to find any denunciation of these two heinous offenses. Now, sir, as the democratic party has been placed in the false position—the attempt has been made to place the democratic party in a false position in this territory as being the apologists and defenders of these polygamous practices of Mormonism, I desire to say I do not wish to leave that question to the fluctuations of legislative assemblies, the complexion of which may be changed every two years. I desire to plant in the organic law of the land, the constitution for the state of Idaho itself, the principle of opposition to these two offenses, and place the two political parties squarely upon that issue here today.

If the republicans are honest in their denunciations of bigamy and polygamy and they doubt the honesty of the democratic party as represented by this convention through their delegates upon this question, let that show, sir, upon the call of the roll or upon the vote taken in this committee and upon the call of the roll in the convention, as to whether the two parties are honest or not in their attempts to stamp out this twin relic of barbarism. Now, sir, I move that as an amendment to that section.

Mr. BEATTY. I am very glad indeed to find that my friend from Boise takes the position he does upon this question. I congratulate myself as chairman of the committee on Elections and Suffrage, that when the important question comes before that committee, as it will when the committee meets, that my friend here will not be in opposition to the strong position that the republicans of that committee will take upon that question. This amendment he now proposes to this section, will be in part as a duplication of what I know will be proposed and upheld before that committee on Elections. I will say, however, that I will not object to this amendment, for one, for I do not care how often that principle—that principle of bitter opposition to these crimes —shall appear in this constitution. I want the people of Idaho and the people of the world to know that the republican party and the democratic party, or, in other words, the loyal American people of the state of Idaho is opposed—are opposed to that crime. And therefore I say let it appear in this constitution, if my friend desires, in every section of the constitution, and he will not find this republican, for one, voting against it as often as it may come up. (Applause on the republican side).

Mr. SHOUP. I would like to hear that amendment read.

SECRETARY reads as follows: To amend section 4 by continuing after "worship" at the end of line 11, the following: "Bigamy and polygamy is forever pro-

nibited in the state and the legislative assembly shall provide by law for the punishment of such crimes."

Mr. REID. Mr. President, I suggest that the word "is" be stricken out and the word "are" put in, as an amendment to the amendment. They are two distinct crimes.

The CHAIR. Is the amendment accepted?

Mr. AINSLIE. I do not care anything about the construction of it so the sentiment is inserted.

The CHAIR. The chair will recognize the gentleman from Custer if he wishes to address the house.

Mr. SHOUP. I have no objections to that amendment if it cannot be in any way construed as imposing any restrictions upon the legislature in this matter. From the reading of it, I am not able to see that it will.

Mr. BEATTY. I will call for the reading of the section again, the amendatory portion.

SECRETARY reads: To amend Section 4, etc.

(Question! Question!). Question put and amendments is adopted.

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

Mr. HEYBURN. I desire to move an amendment to the section, with your permission, on Bill of Rights. Amend by inserting in the 4th line, after the word "with," the word "such," and after the word "affirmations," the words "as may be required to be done before exercising the right of franchise or acquiring any portion of the public lands as provided by this constitution or the laws of the state."

Mr. AINSLIE. I think that properly belongs to the committee on Suffrage. This is endeavoring to usurp the functions of another committee of which the gentleman from Alturas is the chairman, and I think the committees will be able to dispose of that matter and report it to the convention without incorporating it in another place where it has not been considered.

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

SECRETARY reads: To amend by inserting in the 4th line, etc.

Mr. HEYBURN. Mr. President, the object in offering that amendment is to reserve to the committee, to which the gentleman has referred, the powers that are vested in it and to reserve to this convention the power and authority to make such provision as it may see fit; to reserve to the legislature of this territory the power to provide for these oaths and affirmations. That is the primary cause of inserting it in this clause. It reads: "But the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness," etc. It simply defines the nature and character of oaths that shall not be excused by the special clause contained in the first three lines of this section, so that it will provide it shall not be construed to dispense with such oaths and affirmations as may hereafter be provided to be taken before exercising these two rights—the right of franchise, leaving it open to this convention and to that committee to take such action as they may deem proper and leave it also open to the legislature to take such action as it may deem proper in reference to these oaths.

Mr. BEATTY. I would like to hear the section read as proposed to be amended.

SECRETARY reads.

Mr. MAYHEW. Mr. President, I can't say that I am opposed particularly to the incorporating in this section of the amendment proposed by the member from Shoshone (MR. HEYBURN) provided it does not appear in any other article in this constitution. It strikes me, however, that the amendment is a good one and should appear in some part of the constitution, but my impression at present is it belongs to that portion of the constitution in relation to franchises and elections. I am not opposing the amendment, the principle to be incor-

porated, but I think it should come in that portion of the constitution. I do not want to be considered as opposing the principle enunciated by this amendment, but I think it belongs in another part of the constitution—to another article.

Mr. BEATTY. I am with the member from Shoshone who last addressed the committee. I do not oppose the principle, but I have this to suggest: That certainly will be provided for, at least we will attempt to have that provided for in the report of this committee to which reference has been made. Now the question in my mind is whether we had better encumber our constitution with too many qualifications. This constitution is to go before congress. It has to act upon it, and I do not, for one, want to get these matters repeated in section after section so that congress will think we are wild and may induce them to reject our work. Now the sentiment is all right and certainly every member here knows that they must be embodied in the provisions which will be reported by the committee on Suffrage and Elections. Now I believe as the gentleman from Shoshone (MR. MAYHEW.) I am in favor of the motion suggested—I think it will not interfere with any action that may be taken by that committee, but it certainly will result in a repetition of the same matter in the constitution. Now, there is another thing I am watching. I don't know what we propose to do, whether when we get through with this bill of rights we will then make a motion which will make it substantially a part of the constitution and cannot be changed by any subsequent act, or which will prevent us from afterwards proposing anything in conflict with it. I am inclined to think in going ahead now and adopting this without knowing what provisions will be reported by the other committee, we are somewhat at sea, but at all events, if we put this duplication in here, I don't want it in such shape that we cannot afterwards amend it so as to make it in harmony with the report of the committee on Elections, and I must say I doubt the propriety of putting it in

here, because it certainly ought to appear in the other report.

Mr. SWEET. I hope the amendment offered by the gentleman from Shoshone will be adopted. I don't think it is in place in this section, or, rather, I did not think it ought to have any place in this section until the amendment offered by the gentleman from Boise was adopted. But I do think that since the first amendment has been adopted, the second amendment is necessary, and I think further, in continuing the thought advanced by the gentleman from Alturas, that if we attempt to make political records instead of a constitution, that we will very likely wind up with a constitution that we will have to call upon the Supreme Court to interpret, the first thing we do, and we will be likely to so mix this question up between suffrage and constitutional provisions that the first act passed by the legislature adding an additional qualification for suffrage will be found to be unconstitutional by the Supreme Court. I think it will be the duty of the legislature to prescribe the punishments and penalties for polygamy and bigamy and unlawful cohabitation and all that stuff, and I am in favor of inserting such a clause in the constitution in some place (if it should be necessary) as will enable them to do so. But when it comes to having this matter involved in every section, nearly, of the constitution, then I think we are absolutely endangering our ability to take care of it through the legislature. And I propose and insist that this convention guard against the privilege of the legislature to treat this question in every way, shape or form in which it may be presented from time to time after we have become a state and it becomes the duty of the legislature to meet it. I do not know, Mr. Chairman, that the two amendments, the one suggested by the gentleman from Boise and the other by the gentleman from Shoshone, will be likely to result in any such danger, but certainly it has gone far enough in the matter, and I do not think there will be any doubt about the understanding of the

sentiment and opposition of this convention on the question of polygamy when the clause relating to the right of suffrage is presented. I therefore think the less we encumber the matter by leaving the legislature to worry in the premises, the better it will be for us. But as I said before, since the first amendment has gone in, I think it essential there in order that it may be clearly understood that the amendment proposed by the gentleman from Shoshone go in also and I therefore hope that it may be adopted.

Mr. HEYBURN. Before taking a vote on this, inasmuch as some gentlemen seem to have misapprehended the meaning of the mover of this amendment, I desire to call your attention to the first and second lines in this section that is proposed to be amended, which reads: "The exercise and enjoyment of religious faith and worship shall forever be guaranteed." Now I am not addressing myself to any party or the members of any party; but I am addressing myself to every member of this convention who is opposed to the institution of polygamy and bigamy as it is embodied in the Mormon church, and the object of offering this amendment grows out of the fact that one of the arguments that have taken place in the Supreme Court of this territory[1] and elsewhere against the validity of the test oaths that all people have been required to take, is that it is a violation of these principles and would be a violation of these two first lines of Section 4, and in order that it may never be said in argument in the court hereafter, or elsewhere, that the makers of this constitution did not intend to except that institution out of the provisions of those two first lines of Section 4, I hope that this convention will put it in such language that there will be no uncertainty about it, and for that purpose I move this amendment, so that it shall read, first, that these things shall be guaranteed to all people—that the enjoyment of relig-

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[1]—See Innis *v.* Bolton, 2 Ida. 442.
Wooley *v.* Watkins, 2 Ida. 590.

ious faith and worship shall forever be guaranteed, and then let this convention state in the constitution that it was never contemplated that these things come within the scope of religious faith and worship, or the enjoyment of religious faith and worship, by stating so on the face of the constitution itself and excepting these institutions from out of the operation of the grace of this clause, so that if, as the gentleman from Alturas would seem to indicate, we were encroaching upon the functions of another department of the constitution, this does not provide that any test oath or any other oath or affirmation shall ever be required. It simply leaves it open for this constitution in express terms to require, if it is deemed wise, and leaves it open for the legislature of the state, if this constitution shall endow it with the power, to provide and protect itself against this institution. And it seems to me that it is in entire harmony with the sentiments that are expressed by both the gentleman from Boise and the gentleman from Alturas and the gentleman from Latah, that we shall express our principles upon this question in no uncertain terms, but so certain that it will not be a case for the Supreme Court or any other court to interpret the constitution as to what we mean when we say "religious liberty," and the right to worship God as man pleases shall be one of the fundamental rights of every citizen, so that it will not be a question for interpretation, but a question of the plain letter of the statute, and with those omitted, there will always be that argument to be met that Section 4 of your constitution guarantees us a right that the section that afterwards prescribes the suffrage of the citizen denies us, and the constitution on its face is inconsistent. It is against that evil that we desire to protect ourselves by this amendment.

Mr. HAGAN. The amendment goes to that portion of that section which originally is aimed at this proposition—that the liberty of conscience shall never be so construed as to dispense with oath or affirmation in relation to certain pernicious practices mentioned in

the section. Now the amendment is wider. If the clerk will read this amendment again. The amendment does not propose to confine this oath to the subject the section itself did.

SECRETARY reads: "Amend by inserting in the fourth line after the word "with," the word "such," and after the word "affirmations," the words, "as may be required to be done before exercising the right of franchise or acquiring any portion of the public lands as provided in the constitution or by the laws of the state."

Mr. HAGAN. We have nothing to do with the disposal of the public lands of the United States, nor can our constitution or our statutes impose upon the subject or citizen any unnecessary oaths or affirmations in the entry of public lands, nor does this section propose to deal with that subject. Now, as was remarked by the gentleman from Alturas, there is a report which is bound to come before this convention that will cover this field so far as elections are concerned. I know of no report that will come here concerning the disposition of public lands, because we are limited by the constitution of the United States as to that subject. I do not believe in the amendment for the reason that it is not in harmony with the section itself and does not strike where it should. The oaths or affirmations provided for in that section refer, as the context shows, to the excusing of acts of licentiousness, or justifying polygamous or other pernicious practices inconsistent with morality and the peace and safety of the state. These are the oaths and affirmations spoken of in this section, and I think, with all due deference to the vote of the convention, as a lawyer, that all of that is entirely unnecessary because no court, no lawyer or no constitution as ever construed —in fact, the Supreme Court of the United States has decided that the liberty of conscience would not excuse a person from taking oaths or affirmations required by law to prevent just such crimes as are provided for in

that section. In the case of People vs. Reynolds,[1] liberty of conscience was set up and the Supreme Court of the United States decided upon it. I think if it is here as a declaration of our principles, it may well stand; as a lawyer drawing a constitution I would say it is entirely unnecessary to have it there at all; I voted to retain it there, but I say the amendment does not apply, in my opinion, to the subject to which consideration is had in the section itself. I therefore think it should be rejected. And I think it ought to be rejected on the other ground stated by the gentleman from Alturas, that if we are here to reiterate and repeat in every article of this constitution something that we must anticipate in another section, we certainly will have after a while an incongruous and inconsistent mass of stuff clear through it. So far as election is concerned and suffrage is concerned, there is a competent committee that will report here in due time upon that subject in this convention and the convention will declare its principles upon this subject. I therefore hope the amendment will not prevail.

Mr. HEYBURN. As a matter of correction, drawing the attention to the point in reference to public lands, I did not suppose for a moment we would ever have any control of the public lands of the United States, but it is to be hoped that this state will possess the public school lands, the university lands and a large body of other lands such as may be donated to it, and it was looking to the protection of those lands that the amendment embodying that principle was made.

Mr. HAGAN. I will ask the gentleman if there is any committee on this subject that will report here upon the public lands of the territory or the state.

The CHAIR. There is such a committee.

Mr. AINSLIE. There is one view I think has escaped the attention of the gentleman from Shoshone, if you read carefully the section where it is proposed to make this interlineation or amendment on the question of

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[1]—98 U. S. 145, 25 L, 244, affirming 7 Utah 319.

"liberty of conscience as hereby secured shall not be construed to dispense," etc. Now the original text of the report is "dispense with oaths or affirmations" which covers every case where oath or affirmation might be required by the legislature, such as verification of pleadings in civil actions, or the oath of a witness in court or his affirmation in court. Now to restrict it in terms as proposed by the gentleman from Shoshone, that it shall not be intended to dispense with such oaths and affirmations as shall be required to be taken before exercising the right of franchise and public lands, would put it in a restrictive sense and deny the right of the legislature to provide for oaths and affirmations of witnesses in court or in verification of pleadings. Now the report by the gentleman from Custer County would leave it open for the legislature to provide for all of these oaths and affirmations wherever they thought it necessary. It is controlled in its scope and actions by necessity. The language used by the gentleman from Shoshone, it seems to me, would confine it exclusively to oaths provided by the legislature in the exercise of the right of suffrage and public lands.

Mr. BEATTY. Mr. President, I want to refer to one other matter, and that is the difficulty the state of Nevada[1] got into and also the state of Wisconsin.[2] There is a decision from each of those states upon this question. The constitution attempted to prescribe, or did prescribe, the qualifications for its electors. The result was when Nevada attempted to pass a law recently to prevent Mormons from voting, they found it was construed to be in conflict with the constitution and the law was held invalid. Now I don't want to be understood to say that the amendment which the gentleman from Shoshone

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[1]—See Whitney *v.* Findley, 20 Nev. 198, construing Sec. 7, Art 2, Nevada Const.

[2]—State *v.* Williams, 5 Wis., 308, construing Sec. 8, Art. 13, Wisconsin Const., and State v. Baker, 38 Wis., 86; both cited in the Nevada case.

brought in here as they come, with little chance for deliberation and final consideration, I fear we may proposes will have that effect. These amendments being adopt something that will operate in that restrictive form to which the gentleman from Boise has referred, and which I know has so disastrously operated in the case of Nevada as well as in Wisconsin. And if I did not think this matter would be fully provided for in the committee on Elections and Suffrage, I certainly would be in favor of introducing it here. But it certainly will be provided for in that committee, and I will say in stronger terms than these—in as strong terms as can be framed by the use of the English language. I must deprecate the idea of putting too many duplications in this constitution, unless the convention will finally give the committee on Revision the power of eliminating these duplications so as to have it appear harmonious. I don't know that it will have that power, but if it has that power, our actions here would not be regarded as final and the committee will eliminate these duplications thus proposed. We can correct them. But I hope we will not by amendments put on here in a hurry tie ourselves up so that the legislature cannot from time to time add additional qualifications for suffrage so as to meet the schemes of the Mormon church. We know how they operate, and it is in the intention of the committee to which I have referred, when they make their report, to leave the legislature alone in the future to meet these questions. I have been trying to convince myself that the member from Shoshone, the mover of this amendment, is right, but I am unable yet to convince myself. I am always ready to change my opinion when I am convinced that I am wrong in my first opinion, and if I can be convinced by the gentleman's eloquence or that of any other gentleman who has taken the position he has here, I would be glad to change, but I am now of the opinion that this amendment should not be made.

Mr MAYHEW. I desire to call the attention of the convention to one fact. I don't believe the committee

on Revision would have any right to eliminate any of those amendments from any one article. I don't believe it belongs to them to amend a section or strike out any amendment offered by this committee in a section. I think they have not the power to do so. While I don't desire to discuss this matter any further, after weighing the arguments of the gentleman, I am inclined to think that this amendment is not correct, that it should not appear in this article, that it belongs to the committee on Election and Suffrage to provide that and not in this part of the constitution.

The CHAIR. The question is on the amendment of the gentleman from Shoshone. (Vote). Motion is lost.

Mr. CLARK. Mr. President, I move to insert in line 9, after the word "denomination," the words "or pay tithes," so the section will read, "No person shall be required to attend or support any ministry or place of worship, religious sect or denomination or pay tithes against his consent. (Seconded).

Mr. SHOUP. I don't understand how any one can be compelled to pay any tithes by law.

Mr. CLARK. Mr. President, the question is a pertinent one. If the gentleman lived in a Mormon settlement and the water right was held by the church and he did not pay tithes and his water right was cut off, he would find a mighty strong compulsion to pay his tithes. This guarding clause is to be inserted in the constitution of Utah where there are one hundred thousand Mormons. It is absolutely necessary to protect these men who live in this settlement and would like to be free from its control. This provision prohibits the compulsory payment of money to support religious denominations. The tithe often is not only to support religious denominations, but it is also to support a board of emigration and a large number of other expenses connected with the same. The claim may be made, therefore, that it is hardly a religious contribution, and yet it is a contribution as strictly enforced in certain settlements as

any other tax is enforced, and in a way that men find it very difficult to escape.

The CHAIR. Are you ready for the question? Will the secretary read the amendment?

SECRETARY reads: Insert after the word "denomination" in line 9, the words, "or pay tithes."

MEMBER. How would the section read?

SECRETARY reads: No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent. (Vote). Motion carried.

The CHAIR. The motion is on the adoption of the section as amended. Are you ready for the question? (Question, question). Carried without a dissenting vote.

SECRETARY reads Section 5:

SECTION 5.

"SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law."

The CHAIR. It is moved and seconded that the section be adopted. (Carried).

SECRETARY reads Section 6:

SECTION 6.

"SEC. 6. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The CHAIR. It is moved and seconded that the section be adopted. (Carried).

SECRETARY reads Section 7:

SECTION 7.

Mr. REID. I offer the following amendment:

SECRETARY reads: "In Section 7, line 1, insert after the word "but," "by consent of the parties."

Mr. REID. Mr. President, it will read "but by consent of the parties in civil actions, three-fourths of the jury may render a verdict" I recognize the fact, Mr. President, that we are disposed to put in innovations. We are making departures from some of the old precedents in one or two instances. I think that parties ought not to be compelled to consent to a verdict of three-fourths. I take it under the statute that they can consent to a majority verdict, a verdict of three-fourths, but the object of this amendment is to prevent the legislature from enacting a statute which will make it compulsory. I know in civil actions, by stipulation, you can agree to almost anything. This reads "in civil actions," etc. Now if the legislature follow that up by a statute making it compulsory upon the parties to accept a verdict of three-fourths, then I am opposed to it. I think it ought to be put in there "by consent of the parties." They can then provide by statute, if they wish, that where parties agree to it, three-fourths of the jury may render a verdict. If three-fourths can render a verdict, why not just have the jury of nine and save the expense connected with the other three and let the ver dict be unanimous? With a great deal of hesitancy I think we ought to depart from the old precedents. If parties choose to do so, let them consent, but we have tried this jury system a number of years. It has been handed down to us through two centuries, and I believe about the only innovation that has been made in it, the number has been cut down to twelve, whereas it was originally twenty-two or twenty-three, and it has proven to be one of the best of human systems we can adopt and I think we ought to hesitate how we depart from it. By inserting these words, parties by consent may do it, but it will also prohibit the legislature from making it compulsory. This is the object with which the amendment is offered.

Mr. SHOUP. Mr. Chairman, I would ask the mover of this amendment how that consent is to be expressed.

Mr. REID. They can consent in open court or by

stipulation. The legislature can provide the machinery. I would strike out the whole, but I think it can be so amended so as to reach the same thing. I want to prevent the legislature from making it compulsory that we shall accept a verdict of three-fourths. We can do that now under the statute in civil cases. We cannot in criminal cases, and it is well that the committee put in a proviso that you may waive jury trial in certain criminal cases. But I want to fix the constitution so the legislature cannot make it compulsory on civil suitors to accept a verdict of three-fourths. I will say, sir, in answer to the chairman of the committee, that I suggest that it leave the machinery for the legislature. They can regulate it by any statute, and I say this consent may be expressed in open court or by stipulation.

Mr. CLAGGETT. The amendment offered by the gentleman from Nez Perce (MR. REID) covers one of the most important propositions that this convention will ever be called to pass upon, and that is the question of the jury system. I take issue entirely with the gentleman when he says he proposes to leave this question to the legislature. If the amendment which he has offered is adopted, the legislature has no function to perform in connection with this matter. No one can waive the old common law rule of unanimous verdict except the parties to the action themselves, and that is a waiver that need never be expected as long as the attorney for the plaintiff or defendant, as the case may be, considers that he has a bad case to try. It is an axiom in the legal profession that whenever you have no right, demand a trial by jury, and stand upon a verdict of twelve, for the reason that where you have no case, you have a chance at least to secure some one or two persons to hang the jury. The section which we are now considering makes it a part of the organic law of the state that the verdict of three-fourths of the jury may stand as the verdict of the whole. In other words, that nine out of the twelve may bring in a verdict. So far as this particular provision is concerned, it is no in-

novation in this western country. It was put in the constitution of Nevada in 1864.[1] At that time it was an innovation, and it was fought with all the influence of the legal profession in spite of the absolute necessity for the insertion of this provision in the constitution. Nevertheless, the necessity for such a provision was so patent, so evident, that it was placed there, and adopted by the people of the state; and any one who should now undertake to say that in civil cases in that state (or wherever it has been tried) the verdict should be of the entire 12 would be laughed at as being entirely behind the times. Since then it has been adopted by the state of California[2] as we find it in this section; it has been adopted now by the convention in Montana,[3] it is incorporated in the proposed constitution of Dakota,[4] and I may say, generally that ever since the ice was once broken with regard to this old abuse of the jury system, it has practically been incorporated in the constitution of every state which has had occasion to call a convention, since it was first put in the Nevada constitution.

I take this position, Mr. Chairman, and I speak from observation and pretty long practice in that regard. Whenever a case is tried to a jury, and the jury retires to deliberate upon its verdict, it is either one of those cases concerning which there is practically no dispute and upon which a jury of twelve or a jury of fifty would equally and promptly agree, or else it is a case concerning which there is a decided difference of opinion. And I state it to be a fact, and I think every practicing attorney will bear me out in the statement, that in all cases where there is a radical difference of opinion in the jury box after retirement, and where notwithstanding those

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1—Art. 1, Sec. 3.

2—Art. 1, Sec. 7, Const. 1879.

3—Art. 3, Sec. 23, Const. 1889 (provides two-thirds may render a verdict.)

4—Art. 6, Sec. 6, Const. 1889, So. Dakota (the legislature may provide.)

differences, a unanimous verdict is finally rendered, the verdict of the twelve is less apt to be right than the verdict of the nine out of the twelve; for the simple reason that wherever there is a controversy of that kind in the jury box the verdict is inevitably the result of a compromise which gives neither the plaintiff nor the defendant what he is entitled to as a matter of law. We are here engaged in the work of making a constitution which we can recommend to our constituents on account of the economy which it will bring to pass in the administration of our county governments, among other things. And yet, in civil cases where large sums of money and valuable property are involved, it is almost an absolute certainty that you will have from one to two jurors upon the jury who have been bought to hang it, on the one side or the other; or, if they have not been bought, they are influenced by personal or private considerations of such a character as practically disqualifies them to sit as jurors, if the facts had been known at the time they were impaneled. The consequence of this is, as it was in Nevada in 1864, (when in Storey county there were four thousand cases on the calendar, and where although they had been litigated by trial by jury for five years, they had never succeeded except in a single instance in obtaining a verdict in an important mining case) namely, hung jury after hung jury, the hanging generally being done by one or two men who were there for a purpose and that purpose not one which the law contemplates or authorizes. And so here in this state, if we become a state, you will find that without this provision in the constitution making it obligatory, our county treasuries will be subject to charge after charge of useless and unnecessary trials where the simple application of this provision will prevent the whole thing and secure that which a subsequent clause of this Bill of Rights declares shall be the fundamental right of the citizens, a right not only to a fair trial and an impartial one, but a speedy determination of the controversies which he has occasion to bring into court. I can-

not conceive how there can be any possibility of dispute about or objection to this provision as it stands, with regard to civil actions. I propose when this matter is disposed of, and before we leave this section, to bring up a much more radical proposition than is embraced here; that is, to apply the same rule (except substituting five-sixths instead of three-fourths) in all criminal actions except where the death penalty is imposed by law. And I say to this convention now, that you may hunt the statute books of the states and territories of this Union, and you will find that taken as a body the legislation of the state and territories embodies more principles of equity and fair dealing and equality as between man and man, and between corporation and corporation, than can be found in the legislation of any of the civilized countries upon the face of the earth outside of these United States. The troubles of which the people complain are not about legislation; the difficulties that arise in the administration of the law do not as a rule arise upon your statute books. The total failure of so many state and territorial governments to answer the purposes for which governments are created, is due not to the bad legislation upon your statute books, but to the fact that you cannot enforce the laws which you have. In other words, they break down in their execution, and until you reform the tribunals that administer the law, and do away with those abuses which have grown up under the changed conditions and circumstances of society and everything of that kind as we find it today, you may pile up statute on top of statute until you have the finest code of laws in theory that it is possible to enact, and still you will have the same old clamor going up from the masses of the people as to why its laws are not properly administered and properly enforced. We must go to the root of the evil. The legislative bodies are all right; the trouble lies with the judiciary and the jury box, and those old matters which time-honored tradition has brought down, and which we have outlived. There is a demand from all parts of the coun-

try that these abuses shall be cut off from these ancient tribunals, and they should be left free to flourish in their old vigor and in all of their old usefulness.

Mr. HEYBURN. Mr. Chairman, I desire to send up a substitute for the amendment offered by the gentleman from Nez Perce.

SECRETARY reads substitute for the amendment of Mr. Reid: To amend Section 7 by striking out all after the word "inviolate" in the first line.

Mr. REID. I will accept the substitute in place of mine. It effects the same purpose.

CHAIRMAN. So that the section will read how, Mr. Secretary?

SECRETARY. The section will then read "Section 7. The right of trial by jury shall remain inviolate."

Mr. REID. I withdraw my amendment and accept the gentleman's substitute; it says the same thing.

Mr. HEYBURN. Mr. Chairman, the object in offering this amendment is to strike out that which, with the exception that the gentleman (Mr. CLAGGETT) has specified, of Nevada and California, and perhaps some other jurisdictions of which I am not advised, is an innovation upon the jury system of this country. Mr. Chairman, I cannot agree with the gentleman in regard to the wisdom of changing entirely the system that is as old as government itself, that no man shall be deprived of his rights, of his liberty or his life, except by a unanimous verdict of a jury of his fellow citizens who have no interest other than to see that justice is done him. This principle has been deemed so important that at one time the demand that man should be protected by right of trial by jury revolutionized the civilized world. The question is in a manner sprung upon this convention this morning, and I suppose that other gentlemen like myself have scarcely had time to collect their thoughts in fit form for expression upon this matter. It is only since I entered this chamber that I knew of the existence of such a provision or such a report; that was not the fault of the convention, but my own, having

been absent; but I cannot see this old institution of trial by jury swept away without entering my solemn protest against it. It is the strong arm of the law that stands between the weak and the strong, between rich and poor, between oppressed and oppressor. Recognizing the principles that the gentleman from Shoshone has invoked, of economy and speedy justice, it may result in economy and speedy injustice to the man who is not able to buy a jury, if juries are ever bought. I do not believe myself that juries are a merchantable article; I believe that there is a principle, an element of safety in the conservative American jury that is just as reliable as that which we vest in the legislature or in the judiciary. I believe that juries can be selected from the body of the whole community that are just as trustworthy as the judges that sit upon the bench, or the gentlemen who sit in the legislative hall and make the laws. I agree with the gentleman that the fault is more in the administration of the laws than in the making of them; that is true in a limited sense, but admitting the truth of it, it is still not necessary for us to say that less than a unanimous verdict shall deprive any man of either his liberty or his personal rights. We cannot afford in the interest of economy nor in the interest of speedy justice—or of speedy trial, more properly speaking—to lessen by one hair's breadth the safeguard, the assurance every man has that his property or his rights will not be taken away from him, unless it is clear, beyond a reasonable doubt that they do not belong to him, and that that reasonable doubt is to be determined by a unanimous verdict.

I therefore move, Mr. Chairman, that all of that section after the word "inviolate" which provides that less than a unanimous verdict of a jury shall be received in any case, either civil or criminal, be stricken out.

Mr. CLAGGETT. I would like to be indulged in another word, Mr. Chairman. When this discussion first opened, it was with an amendment offered by the gentleman from Nez Perce (MR. REID), under the specious

claim that the whole matter was to be left to the legislature. We now have a substitute for the amendment, which has been offered by the gentleman from Shoshone, Mr. Heyburn, namely that the question of unanimity of the verdict of the jury in all cases shall be preserved as a matter of constitutional law, which the legislature itself cannot hereafter change. That is the proposition that is now before this convention. I have heard, Mr. Chairman, for years, all of that same talk about trial by jury. I have seen all of these same old, ancient stick-in-the-bark legal propositions and sacrifices of substantial justice to mere legal technicality. I have seen the members of the legal profession, who ought to be the leaders in all matters of practical reform, not only in the creation, but in the execution of the laws, fighting step by step and stage by stage, every effort to change or modify any one of these ancient traditions, hoary with time, it is true, but which still, under changed conditions, now defeat the ends of justice, until at last there has come to be a widespread conviction throughout the United States that the legal profession itself, very largely by its failure to meet these changed conditions, constitutes one of the things that needs the greatest reformation. (Applause). I know very well that in the argument I am making in behalf of good government and substantial justice, that we can rely but little upon my brethren of the profession upon this floor; not because they do not desire equally with the rest to do that which will be most beneficial to the community, but because they are so completely tied down by precedent, that they are incapable of rising above it as a general proposition. When I am thus speaking, I speak generally and not particularly, and consequently we need not expect much, so far as this matter is concerned, from the legal profession. We have had this matter up in the judiciary committee day after day; it has been in session five or six days, and has prevented the action of

that committee to a considerable extent from being ready for report.

Now let us go back. What was trial by petit jury at common law? I am not now talking about the common law as it was perverted after the Norman conquest; I am going back to the very roots of the common law as it was established by the ancient customs of our Saxon forefathers, and before the principles and ideas of the law which were brought in by the Norman Conquest had perverted to any degree whatever the English jurisprudence. What was the old common law practice with regard to trial by jury? Not only was it true with reference to the grand jury, but it was also the law with reference to the petit jury, that the jury should consist of twenty-three persons drawn from the vicinage and consisting originally of the witnesses in the case, supplemented where necessary by additional members, and that a verdict of the majority was the verdict of the jury. That is the common law as it was known to the customs of our Saxon forefathers; and this thing of a unanimous verdict is itself a perversion of the old common law and came historically around in the following way. As time went on, it was found that the cases multiplied in the court so that instead of having a case now and then, the courts were constantly in session with large calendars and multiplied controversies. It was found that a jury of twenty-three was too large and too expensive and it was cut down to sixteen, and afterwards to twelve, as a mere matter of economy. In the meantime the phrase, "It takes twelve men to make a verdict," in other words, that it takes a majority to make a verdict, had gone into the law books, had been announced time and time again by judicial utterances from the bench. So that when the jury was finally cut down to twelve we had a complete perversion and prostitution of the principles of the old common law, by the substitution of a unanimous verdict for the verdict of a majority. These old ancestors of ours, Mr. Chairman, no matter what their barbarisms may have been,

laid down the axiom by which today your courts are administered wherever the common law of England prevails in Great Britain, in the United States, or in the English-speaking colonies of Great Britain throughout the world. And every year that I have lived, from the time I became acquainted with these customs which we now call our laws, I have been more and more profoundly impressed with the wisdom of those old savages, if you choose to call them so, for we have scarcely made a change in those customs; and the changes we have made have largely operated to defeat public justice.

We are seeking here, at least I am, for one, to recover back to the people the real merits of a trial by jury. No one advocates or upholds that institution more strongly than myself. But we have certain abuses connected with it, one of which is the unanimous verdict which time and experience has shown to operate to defeat the ends of justice. I propose to eliminate that which tends to defeat the ends of justice and leave the trial by jury not as it was, under the old original common law, but something like an approximation to it, by abolishing this absurdity which does not prevail anywhere else, or in any portion of our government, of requiring twelve men to agree unanimously before the litigant can get justice in the courts. Do you apply it upon the bench? You have five judges, and three render the judgment. Do you apply it in your boards of arbitrators? You may have one or more, but the laws always provide that the majority governs. Do you apply it in the gravest questions of legislation, either in committee of the whole or convention? No, the majority governs. Do you apply it in the business affairs of your life? Is it applied anywhere except in this question of trial by jury? Does not the common sense of the business community, does not the common sense of the public, does not the common sense of every individual man reject it, as applied to any and every other consideration or matter of business which arises, which requires settlement or adjudication, or even agreement in the mat-

ter of carrying on a business? Do you apply it in the case, even, of your large corporations? By no manner of means. What kind of a corporation would it be if it took a unanimous vote of all the stock to agree to every resolution that might be offered in a meeting of stockholders or a board of directors? What kind of a proposition would it be to carry on business where there were a number of men in the firm or association of individuals if it required the unanimous consent of all before anything could be done? Does not every member upon the floor of this convention plainly see that the application of any such rule as that to any of the business affairs of life would operate as a complete paralysis of the ends for which business operations are transacted or projected? And if it is true with regard to all of our business relations or is true with regard to the determinations of our courts, if it is true in regard to the awards of our arbitrators, if it is true with regard to the elections of those who shall rule over us, where the majority prevails, and if the substitution of any other rule in all these varied relations of life and political freedom, would operate as a paralysis of the functions which are therein performed, then, Mr. Chairman, I ask the members of this convention, does not this fact sufficiently explain how it is that the courts of justice are so frequently paralyzed in the administration of the law? You have inserted in the body of your law that which practically destroys the vitality of its administration.

How do you find it abroad? It is only two years ago that in the large city of Cincinnati, containing three or four hundred thousand people, there was a riot in which many men were killed and hundreds were wounded, where the people rose up in arms and undertook to sack the jail, and hang the prisoners there confined. Why? Because under the constitution of the state of Ohio requiring this unanimous jury verdict, public justice had become a mockery, and by influencing one man to hang the jury, it had become utterly impossible to secure the ends of justice, and the ends for which all governments

are originally created, and at great expense to the taxpayers are maintained.

I do hope, Mr. Chairman, that this convention will do one of two things: That it will either adopt this provision as it is reported by the committee on the Bill of Rights, or, if this is considered a new question, and the members desire to study the matter more carefully than this hasty examination permits, let us pass the section for the present and consider it some other time; but, in all events, let us take such action as calm deliberation requires to be taken.

Mr. REID. It is with diffidence, Mr. President, that I talk in the presence of these Hannibals, old soldiers of the law, but I have learned in the affairs of life and government, in the short experience I have had, that the conservative course is always the safest; and as the gentleman states, this is an innovation which we ought to approach carefully, thoughtfully, considerately; we should not hurry through it; we ought to take time for deliberation. As the gentleman has stated, this question has been before the judiciary committee, but he should have gone further and stated that it was there rejected by that committee after full discussion. Now, Mr. Chairman, in taking up this Bill of Rights and reading it through, you will find it contains all of those old safeguards, all those old fundamental principles which constitute the ground-work of our government in the western empire, and upon which all these great states have been built up in the eastern part of our Union, have flourished and grown and become mighty and strong and made us the most powerful nation on the earth. Every one of these principles of government which have been enunciated here, are the inherent right of the people to have political power, the state shall be an inseparable part of the union—a question which was sealed by blood, that religious liberty and conscience shall always be secured, and habeas corpus shall never be suspended, that no excessive fines, unusual punishments nor bail shall be required, and right along, constituting one

of the bright jewels in this constitution is that the right of trial by jury shall never be waived, a right which back in the ages was wrung from oppressors and tyrants. It is true, it has the sanction of time; it does come down hoary with age; but it comes down also hoary with the protecting of the people and their rights.

My distinguished friend argues that there is an analogy between majorities in political parties and in the ordinary affairs of life, and as between jurors. Why not carry his analogy further and apply it to all criminal cases, which he does not propose to do? Why apply it only to misdemeanors, why not go further and say that the man who is accused of a felony shall be convicted by a majority verdict, or three-fourths? That is not proposed. Why not? Because he is not willing that this humane doctrine which has become part of the jurisprudence of every civilized country—the doctrine of a reasonable doubt, that any one in his conscience can have, before he convicts a fellow-being of a crime, that the jury shall give heed to that doubt and return a verdict of mistrial or disagreement—shall be annulled. But why not apply the gentleman's argument to that? If your right of liberty, if your person is sacred and inviolate by a jury of twelve men, when your home and the title to your home and your water rights and mines come into litigation, why should not twelve men just as well say that you shall be deprived of your property rights as of your liberty?

Now, gentlemen, we are laying the foundation of a great state. We have made one innovation which we are all apprehensive about; I mean this question with regard to polygamy and bigamy. So far as that is concerned, we all unite on that proposition. And why do we make it? Because we find an extraordinary condition of things in our new state, and we are determined to put it down. We are going carefully and as far as we can go without jeopardizing the adoption of our con-

stitution by congress, to enable us to get rid of this evil, and we are going to do it. Gentlemen, let us not make any more innovations.

My friend said—what I was sorry to hear him say—that perhaps our honorable profession needs reformation. The people of Idaho do not think so; out of this body representing Idaho, I am proud to say that nearly one-half are lawyers. In naming the twenty-five committees which my friend (MR. CLAGGETT) formed here, I am glad to say he did not carry out his theory, because such was his unbounded confidence in his brother lawyers that at the head of those 25 committees he put sixteen lawyers. Furthermore, I say that in no profession, whatever it may be or wherever you may find it, considering the number of important and delicate trusts committed to its care, are there fewer breaches of trust, in none are there more loyal men. I do not recognize that the profession needs reformation so much, but I do assert that whenever it sees an innovation, whenever it sees the rights of the people menaced, those who have studied the law and precedents and from experience found out what protects the rights of clients and people, have always been first to battle back any innovation that has encroached upon the rights of the people. And as an evidence of this, I appeal to the convention that framed the Constitution of the United States and that framed the constitution of every state in this Union. Where lawyers were in a majority, they have adopted constitutions that have made this country and these states great and glorious. I appeal to this convention to be careful in adopting innovations. We have a great empire here, a glorious territory; we have great resources of hidden wealth, that the wildest imagination never dreamed of. We have the great principles of government under which the eastern states have prospered and profited. Let us follow experience. Hereafter, when we get to be a great and glorious state, such as California is, or such as Nevada is not, we may adopt these innovations; but when we have offered to you a conservative, tried, known, safe and secure way, and on the other hand, an

experiment, when you are building a new state, I take it that it is the part of a conservative man to adopt that which is known to be safe and secure in the past. That is the reason I support the substitute. Mr. friend, (MR. CLAGGETT) says we have been a little specious in regard to this matter; that I first wanted to leave it to the legislature. I suggested that for this reason: I thought from the report of the committee that perhaps there was such a sentiment here as would be ready to take this new departure, and by thus offering a compromise, it might be accepted; but in the first instance I was prepared to go as far as my friend from Shoshone (MR. HEYBURN), and say that trial by jury, which has been transmitted to us through two hundred years, shall remain sacred and inviolate. Hence, I support the substitute.

Mr. SHOUP. I move the convention take a recess until one o'clock.

Mr. MAYHEW. I move an amendment to that, that the committee now rise and report progress and ask leave to sit again. (Seconded).

Motion carried.

CONVENTION IN SESSION—PRESIDENT CLAGGETT IN THE CHAIR.

Mr. SHOUP. I move we take a recess until two o'clock.

The CHAIR. What will you do with the report of the committee of the Whole? It is not in order to make a motion until this action is disposed of.

MAYHEW. The chair might ask the committee to report.

The CHAIR. The motion was that the committee rise, report progress and ask leave to sit again.

Mr. MORGAN. Mr. President, your committee of the Whole have had under advisement the report of the committee on Preamble and Bill of Rights, and report progress and ask leave to sit again.

The CHAIR. All those in favor of adopting the

report of the committee of the Whole, say aye. (Vote). The report is adopted.

Mr. MAYHEW. Mr. President, I do not desire in this motion to cut off this debate upon this question that is being considered in committee of the whole this morning at all, but I desire to make a motion that this convention adjourn until 8:00 o'clock this evening. I believe we have to meet this evening for the purpose of hearing some lecture upon some subject. I simply desire to state, not to discuss the question, that the committee on Judiciary and other committees, desire to have time to consider the questions before them and that they may report at an early hour to this convention. If we go on considering these matters, we will never reach the end. (Seconded).

The CHAIR. It is moved and seconded that this convention adjourn until 8:00 o'clock this evening. Carried.

EVENING SESSION.

The CHAIR. Gentlemen of the convention, you will please come to order. The convention adjourned until this hour for the purpose of listening to Mrs. Duniway in support of her petition with reference to female or woman's suffrage. As the lady is not here, by general consent, inasmuch as I understand there are several standing committees ready to report, we will now receive the reports of standing committees in order that the manuscripts may go to the printer as soon as possible.

COMMITTEE REPORT—PUBLIC INDEBTEDNESS AND SUBSIDIES.

Mr. HAGAN. The committee on Public Indebtedness and Subsidies desires to make the following report. ALBERT HAGAN, *Chairman.*

(Report read by secretary and ordered to lay upon the table to be printed).

CHANGES IN COMMITTEES.

The CHAIR. Any further reports of standing com-

mittees? I will call attention to the fact that Mr. Stull who was chairman of the committee on Manufactures and Irrigation will be compelled to remain away for some time and he requests that his colleague, Mr. Cavanah from Elmore county, be substituted in his place as chairman of that committee. Is there any objection to the granting of that request. If there is none, it will be so ordered.

My attention also has been called to the fact that a representative on the committee on Apportionment from Kootenai county, Mr. Hendryx, has not yet reported to the convention, which leaves Kootenai county without a representative upon that committee and under the rule which provides that one committeeman should be appointed from each county, the number has not as yet been filled by the appearance of all the delegates so appointed, and Mr. Melder, who represents that county here, requests to be placed upon that committee in the absence of Mr. Hendryx. Is there any objection? If not, it will be so ordered, and Mr. Melder will act as a member of that committee.

Mr. REID. Mr. President, I move that Mr. Cavanah be placed on the committee on Legislative Apportionment in the place of Mr. Stull for the county of Elmore, and in the same motion, I will move that Mr. Hagan, the gentleman from Kootenai, be placed on the Judiciary committee in place of Mr. Stull. (Seconded).

The CHAIR. It has been moved and seconded that Mr. Cavanah be placed on the committee on Legislative Apportionment in the place of Mr. Stull, and that Mr. Hagan be placed upon the committee on Judiciary. (Carried.)

The CHAIR. Gentlemen of the convention, the convention this morning took a recess until this hour for the purpose of listening to Mrs. Duniway in support of the petition which she has been pleased to present to this convention in reference to the subject of woman's suffrage. The time has now arrived and it gives the

chair great pleasure to introduce to you the lady speaker in this behalf.

ADDRESS OF MRS. DUNIWAY.

Mrs. DUNIWAY.

Mr. President and Gentlemen of this convention:

It affords me great pleasure to accept the honor with which you have kindly consented to endow me on this occasion; and I beg you to take notice that in the controversies that arise among men concerning great public affairs, the women seem destined not to be left much behind in the race as their struggles go onward and upward toward liberty. And although we may and do differ very much as women, sometimes, as to the methods and aims of public work, yet in a multitude of counsellors there is wisdom. The women are learning, although they may criticise each other's aims and purposes, to be tolerant of each other, which we were not in the years gone by before we had tasted even in anticipation of the sweet luxury of liberty.

I come before you tonight to consider two propositions, or, rather, to place before you two alternatives, either one of which I believe you, in your judgment, will consider carefully, and one of which I am not without hope that you will adopt. Which one, of course, will be left to your wisdom, your magnanimity and your chivalry to determine. Just as in the infancy of the government of the United States, the people who lived beyond the Rocky Mountains and beyond the valley of the Mississippi formed newer and better conceptions of the fundamental principles of liberty under the plastic conditions of their then new environment than had even been dreamed of by their ancestors, so in the proposed incoming states, in which I have the proud honor to claim a permanent interest, being a resident of Idaho, the people of the new generation are forming yet broader conceptions of the glorious heritage in store for them and their children than their ancestors ever anticipated. I realize as I stand in this honorable presence that we, the people of Idaho, are making history, for although the class I represent is not otherwise represented in this honorable body, the fact that you gentlemen have now for the second time convened yourselves to give woman a hearing is proof that the world is moving in the right direction.

Without taking up the time of this body in rehearsing facts of history with which it is considered you are all acquainted, I will at once take up the subject which your chivalry has permitted us to consider, namely, the fundamental principles of liberty upon which the government in these United States is professedly founded. The fact that governments derive their just powers from the consent of the governed, is not longer dis-

puted by any set of lawmakers, nor is its logical sequence disputed, that taxation and representation are co-existent factors in all just governments.

You, gentlemen, have already occupied a fortnight in convention assembled, combining your wisdom, erudition, eloquence and logic in the incubation of a state constitution to be presented to your electors—no woman's unless by your permission—in the forthcoming month of October. So far as you have yet gone in the completion of such parts of your work as have come under the observation of lonely stock-ranch cabins like ours in the Lost River wilderness, it has seemed to most of us that you have legislated wisely and well. We cordially approve the public spirit you have manifested in considering the just claims of the executive and judiciary as well as the legislative departments of a state government to such constitutional protection, as well as such constitutional restriction as shall best insure the proper administration of public and private affairs among men.

We also cordially and heartily approve of your manifest determination to permit no alien or theocratic power to arise among us to wield our ballots and control our offices while bearing allegience to a dynasty of priests. And although there is a diversity of opinion upon some questions which women have sought to place before you, to-wit, the trite one of prohibition, for instance, to which less than two per cent of the women of the territory or of the nation adhere, there is a remarkable unanimity among us concerning our own enfranchisement. Women, like men, are rapidly outgrowing the idea that prohibition is the reformatory measure they a few years ago considered it. When first the idea was placed before them by press and pulpit, large numbers of them grasped at it as a sort of a providential compromise between their own growing and struggling mentality and their desire to do something which all men might praise and pet them for attempting. They soon discovered also that as an ally of the church, they had not only found an avenue to fame and honor, but to emolument also; and say what you will, gentlemen, there are few men and fewer women who can forego financial considerations altogether, as you will demonstrate before you are through with the financial problems with which you will be called upon to wrestle here. These facts and more especially the last named, so stimulated woman's long-repressed and naturally emotional sensations that it was not difficult for political cranks, the one-idea men, who had been kicked out of the old parties, to secure their catspaw services in raking chestnuts for themselves from the fires of political controversy.

It was and is the easiest thing on earth to make a prohibition speech. It is so easy to depict the ways of intemperance, the iniquities of the dramshop and the horrors of the drunkard's

home. We have heard it all our lives, more or less, through the oratory of the John B. Goughs and Francis Murphys, who from time to time have visited us in rural communities, and the heart of woman being emotional by nature, it is not to be wondered at that the very first avenue or opening that seemed to come to them would find women ready and willing to enter therein, who are conscientious in what they do, although in the judgment of those of us who have had a broader and more practical conception of life through out struggles in the far, free West, it has seemed sometimes that they have looked as through a glass darkly.

Money is the motive power that moves the world. It is more potent than religion and more powerful even than love. No organization can long exist without it. It is as potent a factor in the church as with its adversary, the saloon and is not lost sight of by even that honorable and excellent body, the Woman's Christian Temperance Union, or its latter ally, the Woman's Suffrage Association. I am not complaining of these things, but simply stating facts that you may see that women are not blind to the financial situation. Hitherto their opportunities have been sadly circumscribed in money matters, as they are now except in certain directions. And it is not to be wondered at that they have sought the first avenues that opened to them for making money in which they may work and travel and receive pay and the plaudits of men, while at the same time comforting their consciences by the feeling that they are serving God and doing good. Multitudes of the great rank and file of prohibition women are not to be included in this category, no more than are the multitudes of the great rank and file of women in the church and in the home who have given aid and comfort to whatsoever means might open to them to work in their quiet, humble way for the enfranchisement of women. But it is the leaders of whom I speak, and I beg you, gentlemen, to remember that in pursuing this hobby and never losing sight of its emoluments, they are only following the example of men engaged in the same business. So I beg you, gentlemen, that you will cease the harsh criticisms that I sometimes hear of women who are engaged in this work, because you claim that they are after the money. Show me a man who is not after it, but who thinks he can live without it, and I will show you an inmate of the poorhouse or a pensioner. Be patient with them. They have plenty of material in sight in every town they visit upon which to expend their eloquence, nor can you expect they will cease to harp upon that string as long as they can make it profitable.

Of the philosophy of prohibition, I need say but little. Every thinking man or woman who analyses the subject closely reaches one conclusion, and this is, coercion or any species of arbitrary

law never yet restrained any man in his vices so long as he was not constrained in his liberty. Give a man who desires to indulge a vice the liberty of locomotion, and depend upon it, he will find the opportunity to indulge that vice. Openly, if he can, but secretly if he must. That is human nature, and men have for so many generations been accustomed to oppose the arbitrary laws of women, that it is little wonder that they have risen up with remarkable unanimity (only now and then a man excepted and he a leader in the prohibition ranks), to oppose with vehemence or ridicule, or whatever else may seem to him most convenient, the growing desire upon the part of women to deposit the "white-winged messenger" of peace on earth and good will to all the people in the ballot box. The stale argument that compares horse-stealing, against which we have prohibitory laws by common and undisputed consent, with liquor selling, about which there are many differences of opinion, is most unfair, since there are no laws against horse-selling—provided the purchaser is ready with the cash, and the horse offered for sale is all its owner claims for it. In like manner the comparison about the prohibition of murder is unfair, since the sale of guns, knives and ammunition is not prohibited, except under certain conditions, nor are humanity and horses forbidden to exist because some men are murdered and many horses are stolen.

Of the evils of intemperance and the sufferings of its victims. I need not speak, since I could not hope to teach or to edify you on these points. If I were the Omnipotent Power, and I say it reverently, I should not hesitate with my finite conception of things, to prohibit everything that is evil. I would prohibit disease, poverty, slander, arson, murder, vice in any and every one of its various forms wherever it raised its hydra head. I would with the mandate of Omnipotence, provided I possessed it, with my finite conception of things, at once strike it down. But since I cannot do this, and God plainly teaches us that he won't, I have no desire to do so, nor has the very large majority of American women whom I have the honor to represent, nor have they the remotest wish to run atilt against that Omnipotent power. Clearly the prohibition movement is dying out. I am sorry, but truth and candor compels me to tell these truths in the face and eyes of dear and earnest women who so desire the contrary; but I am here with your permission, gentlemen of the constitutional convention, to tell the truth as I understand it, feeling satisfied that as the years go on the proof will not be wanting that will compel all women to confess it. Need I instance Michigan, Massachusetts, Vermont, Oregon, Rhode Island, Pennsylvania and Connecticut, where prohibition has lately met with overwhelming defeat, in support of this statement. Women as well as men have lost faith in it by the tens of thousands within the

past few years, hence these defeats. Many women in Washington territory who had never lifted voice or finger to secure the ballot before it came to them, but who unwisely yielded to the counsels of women from the east who sought them out, on a handsome salary, to induce them to use their newly found ballots as cats-paws in the hands of idealists and cranks, have discovered under the humiliation of the great defeat that has deprived them temporarily of the ballots they had but just learned to prize, that what women need for the purification of the race is not an arbitrary law for the coercion of men but liberty for themselves, that they may rise above the conditions of subjugation against which their forefathers rebelled, and under which they are now so often compelled to become the mothers of a progeny of drunkards.

In Wyoming where the women have been voters long enough to learn wisdom before the prohibition rage became the fashion, better counsels prevailed and no such innovation has been introduced to act as a boomerang against their ballots. Consequently when the incoming state of Wyoming wheels into line with her constitution, unless you, gentlemen of the convention, shall have proven yourselves wondrous wise and grandly chivalrous and gloriously patriotic, the territory of Wyoming bids fair to be the only one in which the full, free voice of the people shall be heard upon its constitution.

I am making no fight against prohibition per se, since I realize that everybody has a right to ride a pet hobby even when riding it to its death, provided, of course, that he does not override the principles of liberty with his hobbyhorse. But I wish I might convince every man in this convention that most women realize, and as keenly as any of you do, the fact that every woman who sits behind the prison bars of her present political environment, lifting her manacled, ballotless hands to men and saying, "Give us the ballot and we will put down your whiskey," not only tells us a self-evident untruth, (since all the force of arms to say naught of ballots could never do it unless men should voluntarily put it down themselves) but every such woman merely offers the strongest possible inducement to most men to say, "Very well; we will see that you do not get the ballot at all if you are going to use it when you get it as a whip." That is the way they talk, and while I am not speaking now of what ought to be, I am here to tell you as nearly as I can, what is.

What the women ask, gentlemen of the convention, the great majority of the women of the territories are asking for, I mean, women who have no time to spend in running to ice cream festivals to induce men to fill their stomachs with an indigestible compound for a consideration, that sends them to the dramshop for an antidote; women who look upon the practical side of every

subject and are not sent out as the paid representatives of any set of men or any political party, is that you will engraft into the fundamental law of Idaho a clause in your chapter on suffrage and elections providing that, other rights and qualifications being equal, (except the right to bear arms which nature accords to man, and the still more perilous right to bear armor-bearers, which the same inexorable power assigns to woman) there shall be no restriction placed upon the suffrage on account of sex. Do this wise and patriotic thing, gentlemen of the convention, and your constitution will be adopted by spontaneous combustion. You will put power in the hands of your wives and mothers with which they can level blows of irresistible strength at the demon of polygamy that now menaces their daughters in many sections of the southern and eastern portions of this rising commonwealth.

While I can and do point to Wyoming where the women have voted for the past two decades, in proof that women's ballots will not bring prohibition and also to Washington, where for three and a half years a majority of the women refused to use the ballot as a whip to coerce men into leading strings as though they were little children, I do say without prospect of contradiction that women are quite as much opposed to drunkenness in husbands as men are opposed to drunkenness in wives. And when women are everywhere free and equal with men before the law, they will cease to rear children of such weak moral fibre that they are unable to resist temptation. Grant us the right of suffrage, gentlemen, and we will not only pledge to you our lives, our fortunes and our sacred honor in aiding you to adopt this constitution, but we will when it is adopted, feel so proud of you and of ourselves that we will proclaim the glad tidings of our freedom among all the cities and countries of the east and by so doing, turn the tide of immigration into Idaho, just as we exultantly directed it to Washington during the period of three and a half years when we could do so consistently, because Washington was then "the land of the free and the home of the brave."

But, gentlemen, I well know there is no other dogma that dies so hard as any species of tyranny. I know that many of you, if married, may delude yourselves with the idea that you are "heads of the family." Your wives know better, but you do not. I know how persistently your wives—kind diplomats—persuade you to believe that you are the supreme power in the household. Your vanity and self-love are fed upon this sophistry and I do not wonder that you like it. Perhaps if the tables had been turned these six thousand years, we would have been equally blind in the same direction. You, like us, are very human and we, like you, are by no means perfect. We know every one of your threadbare arguments against our liberties by heart. You

say we must fight if we vote, forgetting or pretending to forget that life's hardest battles everywhere are fought by the mothers of men in giving existence to the race. You say we do not wish to vote, when all the opportunities we have ever had to vote have been as freely utilized in that direction as your own. You say if we wish the ballot, let us ask for it, when we have been asking for it for lo, these forty years.

You say bad women will vote, when you well know that bad men vote and claim the ballot for their protection, while you do not say them nay. You say we must sit on juries if we vote when ever and anon a woman is to be tried. May we not, gentlemen, look forward to the day when woman may be tried by a jury of her peers?

I do not mean that all, or nearly all, of you will say these hard, illogical things. Quite a number of you I know to be in favor of woman's full and free enfranchisement, and I sincerely hope that all of you will be so convinced of the justice and expediency of our plea that you will not hesitate to make your names immortal as the first body of constitution writers under the sun which has ever dared to be wholly just with the mothers of the race. But, O gentlemen, if in the extreme of caution that induces other men to uphold their own prejudices in opposition to the aspirations of women, you do not dare to grant us the free boon of full enfranchisement, we have another plan to lay before you which we have been hoping will not fail to meet your unqualified approval.

Remember that we ask you, appealing to your chivalry, your sense of justice and patriotism, appealing to your spirit of liberty and honor, to grant us as a part of the fundamental law you are making our own free, unquestioned right to vote; but if you will not grant this request, then we pray you as a compromise with your consciences and with us to put a clause in your chapter on suffrage and elections providing that the legislature may at any session pass a bill extending the elective franchise to women on equal terms with men. Surely you will not compel your wives and mothers under a constitutional law of the state of Idaho, which you have denied us the right to any voice in framing or adopting; surely you will not compel us to go before the ignorant and prejudiced voting classes of men with our hands on our mouths and our mouths in the dust, beseeching half fledged boys who have just attained their majority and have not ceased struggling with weak mustaches, or praying foreign-born voters who cannot speak our language or comprehend the first principles of our free institutions,—surely you will not so humiliate us and so outrage our sense of justice as to remand us to these powers only to be sent away when we ask for liberty, with a brutal and derisive "No," as has been so often done in older states when

we have asked their voters to amend their constitutions in our behalf. Surely you will not be thus unpatriotic, thus unchivalrous, gentlemen. You have opportunity to so frame your constitution in the very inception of your government that your picked men of the legislature may be allowed to sit in final judgment upon our plea for ballots.

The eyes of the world are upon these territories. The freedom-loving spirit of the west has long passed into a proverb. Shall we, the women of this borderland who have shared alike your trials and your triumphs, shall we not be permitted to go up to Washington next winter, bearing aloft like the women of our neighboring territory, Wyoming, the proud banner of our own freedom? Shall we not have the power to proclaim everywhere the chivalry and honor of our constitution makers, telling the world that these men scorn to accept a right for themselves which they would deny to the mothers of men? Will you not so equip us with the watchword of liberty that we can inspire all the world to turn its eyes upon Idaho as the promised land—the land of free women and brave men?

"But what," said a dear little earnest woman to me today, who has never had any avenue to work in except prohibition, "what do the woman suffragists who are not prohibitionists propose to do with the whiskey traffic; there's the point?" We answer: Tax whiskey and all other intoxicants as heavily as the traffic will bear, not so heavily as to amount to prohibition, for experience proves that the ends of justice are thus defeated for then the dealers will sell and pay no tax at all. I know all the arguments against the whiskey tax by heart. Time was when I supposed the tax on liquors was what men call it, a license, but study of the subject long ago convinced me of the mistake. Intemperance is among us like an ever-flowing, dark, deep pestilential river. Liquors are sold because men buy them, and the river of intemperance flows because it has a perennial fountain in the desire of the consumer. Men who drink immoderately are not the chief source of its supply, but no matter when the supplies come, the river is always flowing, flowing. You may obstruct it here and viaduct it there, but you cannot stop the flow. At the mouth of the Mississippi there is an immense swamp, so dark and pestilential is it that yellow fever lurks in the marshes and a green slime crawls upon the top of the stagnant water, among which reptiles play at hide and seek.

"Prohibit the accursed thing," cries out the moralist and the theorist; "don't tamper or temporize with it, but put it down." Vain hope, vain mandate, vain endeavor! If you cover the slum and slime with a prohibition plaster, be it ever so strong, the virus will exude, or, worse, it will burrow deeper and deeper into hidden places, marking its track by desolation and death.

Then what is the remedy? Science says, build levees upon the banks and so says common sense. Regulate what you cannot destroy. Confine the stream to a limit as narrow as will contain its flow and keep the dykes high and in order. This is high license, falsely so-called. It is a levee upon the banks of the stream of which even those who use the stream for financial purposes can recognize the need. Give us the levee, gentlemen, and oh, give woman the ballot with which to build it high and strong and we will help you build right royally.

Away across—far across the continent in the eastern city of Minneapolis—that wonderful growth of modern energy and enterprise, with its mammoth mills and merry-hearted men and women—we, a short time ago, held a national convocation of the women suffragists, and the great building there was filled to overflowing. The aisles and all the steps were crowded and the interest increased from day to day, and I remember an incident upon the closing night, when the only genuine woman voter we had among us, who has since, to the shame of the people of this nation, been disfranchised by a scheme that would have aroused a universal howl if she had been a negro in the south, Miss Bessie Isaacs, a most talented and genial and lady-like woman of Washington Territory—the only woman voter among us in all that vast enthusiastic congregation. And as we were about closing the exercises preparatory to adjourning *sine die*, that vast audience arose as with the voice of one and joined in the chorus of the Battle Hymn of the Republic, and there between Lucy Stone upon the one hand, venerable Lucy Stone who for more than forty years has been wielding voice and pen in behalf of human liberty, Lucy Stone with her snow-white hair and her snow-white cap and her matronly appearance which well becomes her seventy years, stood upon the one hand and your humble speaker upon the other, and in the center stood Julia Ward Howe, author of the Battle Hymn of the Republic, and as that vast audience joined in singing the chorus of that wonderfully inspiring battle hymn, the enthusiasm grew more and more intense as stanza after stanza rolled and swept through the vaulted ceiling, until at last as the last line of the last stanza died away in the evening air, a universal shout went up from that vast multitude, broken only at last by the sweet spoken refrain of Lucy Stone who put her hand upon the head of Julia Ward Howe upon the one side as I did upon the other, and said: "Yet, men and women, she cannot vote!"

Away in the city—in the classic city of Hartford, in a plain, unpretending house of considerable dimensions, hard by the elegant home of Mark Twain, and near the not much less sumptuous residence of Charles Dudley Warner, is the residence of the greatest woman that America has yet produced, Harriet

Beecher Stowe. When I was in Washington last winter attending the National Woman's Suffrage Convention, one of my nearest neighbors at the hotel where we all had headquarters, the Riggs House in Washington, was the youngest sister of Harriet Beecher Stowe, Isabella Beecher Hooker, and as our rooms were thus contiguous for days and days, our conversation naturally turned on much that interested us both. Mrs. Hooker, who is also getting well stricken in years, said to me that she would not have thought, so infirm was she at that particular time, from the effect of a severe cold, that it was possible for her to attend the convention, "But," said she, "I visited my sister Harriet before I started. Harriet, as you know, is in very feeble health and is just recovering from what we feared would be her last illness, but she entreated me with tears in her eyes to attend the convention and do what I could in her behalf to uphold the cause of liberty for women." And the tears stood upon the cheek of Isabella as she spoke of Harriet, and she said, "The last words Harriet urged upon me as I came away were not to forget that it was her wish to live long enough to see the work accomplished for women that had been accomplished for the negro."

Oh, men and brethren of this convention, as I looked as the sun came in at the window upon the pale gold of Isabella Beecher's white hair and watched her fine countenance lighten up with a halo that was indescribable and I realized that this wonderful woman and her more wonderful sister had yet to endure the humiliation of disfranchisement which all of those women are bearing, I could not help but say in the words of one of the old anti-slavery agitators: "I tremble for my country when I remember that God is just."

Men and brethren, I do not wish to detain you longer. All I ask of you as my last word is that when in your deliberations you are considering this question which I have hurriedly prepared in the rough draft to lay before your honorable body, this manuscript having been written this afternoon for the benefit or convenience of the press, as I appeal to you with my last words, let me again urge you to remember that the liberties of Idaho are not alone being weighed in the balance. You are making history. And as on the 2nd day of April 1787, Abigail Adams, for whom your humble speaker was named, went before the constitutional convention away over yonder in the city of Philadelphia and there made a plea for the enfranchisement of women, which was only temporarily, as they thought at the time, tabled that men might try the experiment of human liberty a little longer,—even as did Abigail Adams in her parting injunction to that august body, with George Washington in the chair, and her husband acting as secretary of the occasion saw fit to expunge from the minutes the fact that his wife had been there, and it was left for

Charles Francis Adams, a descendent of hers to unearth the fact and publish it in 1876,—as he did, even I, as the humble representative of such a grand foremother as that, say to you in all seriousness and with a plea that I would, that I might make so eloquent that no man would dare deny the plea, I would leave with you a plea that you will in the magnanimity of your wisdom and the chivalry of your own liberties add as a clause to your bill of suffrage and elections this section: "The right of suffrage shall not be prohibited to any law abiding person, if a taxpayer, or person of good moral character, on account of sex, provided always that such person be able to read, write and speak the English language."

Now, gentlemen, I ask you, is there any objection to such a clause as this in the constitution of the state of Idaho? A clause that would fire the patriotic fervor of womanhood all over this country; that would arouse an enthusiasm for the adoption of this constitution that no power could gainsay, if you would help us and we would help you, and the combined influence in behalf of the constitution would thus be irresistible. But if you are afraid to do this, if you are afraid of the foreign vote and the rabble vote; if you are afraid to grant us what we ask because of that vote, and that we know is the only reason why you can be afraid, then we ask you in the spirit of compromise to give us this substitute as a section: "Nothing in this chapter shall be construed to prohibit the legislature from extending the elective franchise to women."

These are the crude ideas as pencilled down for the deliberation of your committee on Suffrage and Elections, which I do hope will reconsider its somewhat arbitrary determination to do away with the women. I have nothing more to say in this matter. I feel sure that you will in the magnitude of your wisdom as a convention hear our plea, for I tell you, gentlemen, you cannot afford under the growth and impetus of woman's intellectual demand for liberty to ignore her petition.

I thank you for the courtesy you have extended to my humble endeavor in behalf of all womanhood. (Applause.)

The CHAIR. The petition of the speaker who has just addressed the convention, as embodied in the resolution presented by her, is submitted, under the rules, to the committee on Suffrage for their consideration and report.

The regular business of the convention has been, so far as the chair knows, exhausted. What is the pleasure of the convention?

Mr. REID. I move the convention do now adjourn until tomorrow morning at 10:00 o'clock. (Carried.)

ELEVENTH DAY.

WEDNESDAY, *July 17, 1889.*

Convention called to order by the President.

Mr. PRESIDENT in the chair.

Prayer by Chaplain Smith.

Roll Call. Present: Messrs. Ainslie, Anderson, Andrews, Armstrong, Batten, Bean, Beatty, Bivens, Brigham, Campbell, Cavanah, Chaney, Clark, Coston, Crutcher, Hagan, Hammell, Hampton, Harkness, Harris, Hasbrouck, Hays, Heyburn, Hogan, Howe, King, Kinport, Lamoreaux, Lemp, Lewis, Maxey, McConnell, Melder, Myer, Morgan, Pefley, Parker, Pierce, Pinkham, Poe, Pritchard, Pyeatt, Reid, Salisbury, Savidge, Sinnott, Shoup, Standrod, Steunenberg, Sweet, Taylor, Underwood, Whitton, Wilson, Woods, Mr. President.

Excused: Messrs. Ballentine, Glidden, McMahon, Moss, Stull and Vineyard.

Absent: Allen, Blake, Crook, Gray, Hendryx, Jewell, Mayhew, Robbins.

Journal read.

Mr. BEATTY. I think the minutes record that adjournment was taken until 8:00 o'clock. Our rules provide it should be termed recess.

Mr. PRESIDENT. The secretary will correct the record in accordance therewith.

Mr. WOODS. I desire to be sworn in, Mr. President. (Mr. Woods sworn in by the President).

The CHAIR. If there are no objections, the record will stand.

JOURNAL RECORD.

Mr. AINSLIE. It appears to me that when a body goes into committee of the Whole, the proceedings that take place in the committee of the Whole becomes a part