

FIFTY-FOURTH DAY

MORNING SESSION.

WEDNESDAY, April 10, 1912.

The Convention met pursuant to adjournment, was called to order by the president and opened with prayer by the Rev. Clarence A. Hill, of Columbus, Ohio.

The journal of yesterday, the legislative day of April 2, was read and approved.

Mr. HALFHILL: I desire to offer an amendment to paragraph 2 of the special rule adopted April 9, 1912. I move that that paragraph be rescinded and the debate be limited to ten minutes on any amendment offered to the amended substitute Proposal No. 184 by Mr. Peck.

The purpose is to change the rule limiting the debate on the proposal to three minutes.

Mr. DOTY: That was changed yesterday.

Mr. HALFHILL: Very well, then. It is manifest on the examination of this proposal here that this is a very important matter and can not be considered, so far as any amendments are concerned, in three minutes. I call attention to the importance of this from the fact that several gentlemen have told me of amendments that they want to offer. Some of them, with which I am familiar, I desire to support. At lines 6 and 9 the provision for six judges is affected by one of the amendments, as to whether there will be five or seven, and if that is adopted it will do away with lines 24 to 27, inclusive, in this proposal, which provide that where the supreme court is equally divided in opinion that fact shall be entered upon the records, etc. That would be a most unsatisfactory situation. There may be some other changes that may be necessary—for instance, this clause of the proposition allowing legislative powers to add additional jurisdiction to the supreme court. There may be some question on that. I am not familiar with that, but it looks to me as though this might be a dangerous thing. Amendments to that should and doubtless will be offered. Of course, that will be objected to by the chairman of the committee, as indicated yesterday, and that will provoke discussion.

Mr. PECK: That opens the door to go back to the old system, and we do not want that door opened.

Mr. HALFHILL: It is an open question, however, and we desire to have that amendment discussed.

Mr. PECK: Your motion is to make it ten minutes instead of three. There is no objection to it. The motion will be adopted.

Mr. DOTY: You might have indicated that a moment ago.

The amendment was reduced to writing and was read as follows:

That paragraph 2 of the special rule adopted April 9, 1912, be rescinded and that debate be limited to ten minutes on any amendment offered to the amended and substitute Proposal No. 184 by Mr. Peck.

The amendment was agreed to.

Mr. DWYER: I ask unanimous consent—

Mr. DOTY: I call for the regular order.

Mr. HARRIS, of Hamilton: As one of those who voted not to put the Bowdle resolution on the table and as one of those who subsequently voted to invite the Hon. W. H. Lewis to address us I now move to reconsider the vote by which that invitation was extended, and it is done not through any discourtesy to Mr. Lewis, whom all of us would be glad to hear, and to whose race all of us would be glad to pay honor; but out of justice to ourselves and with the limited time at our disposal, I think we ought to reconsider the vote. The action of the Convention to adjourn on April 26, has made it absolutely necessary that we should occupy every minute of time at our disposal. We will have to hold not only day sessions but evening sessions, and that would probably break into one of the evening sessions. Even if it does not, it is an enormous burden on us to sit here all morning and frequently late in the afternoon and then have to come back two hours in the evening to listen to a discussion, no matter how interesting or how important, and I trust as we have lost a great deal of time that this motion will be reconsidered.

Mr. DWYER: I ask unanimous consent to offer a proposal and I ask that it be referred to the Judiciary committee.

Mr. STILWELL: I move that the motion of the delegate from Hamilton [Mr. HARRIS] be laid upon the table.

The motion was lost.

The PRESIDENT: The question is now on reconsidering the vote by which the resolution extending this invitation was carried.

Mr. BOWDLE: I appreciate the spirit in which Mr. Harris makes the motion. It is rather curious that we should become so exceedingly chary of the time of the Convention at this particular point. Our economy in the matter of time is a good deal like the economy of most people, people become economical of their money when there is not a nickel in the house. We are approaching the end of our Convention, and it seems to me the hour assigned for this gentleman to speak, being in the evening, will not impinge upon the deep meditations of the entire Convention, and I therefore oppose the reconsideration.

Mr. ELSON: We have had a little byplay. Now what is the use of carrying it further? The candidates have all gone on record. We can not afford to carry this thing any further. People say, "What is the use of inviting a man just because he is colored?" He is not a national character at all. We have had our fun out of it and now let us drop it. I am sure it will not be appreciated by the people of the state if we carry the thing out. I say by all means let us reconsider.

The motion to reconsider was carried.

Mr. DOTY: I now move that the motion be referred to the committee on Rules.

The motion was carried.

Mr. DWYER: I ask unanimous consent to offer a proposal and ask that it be referred to the committee on Judiciary.

Introduction of Proposal — Change in Judicial System.

The PRESIDENT: Does anybody object?

Mr. DOTY: I object. Everyone understands this is no reflection upon the member from Montgomery [Mr. DWYER], but I desire to say if you want to make haste the way to do it is in regular order and not to be breaking in on the regular order by interruptions. We have a big day before us, and it will take all day to do the threshing out of this particular proposal.

Mr. DWYER: You are taking more time talking to the Convention about it than it would take to get my proposal introduced and referred. Now what is before the Convention?

Mr. DOTY: I hope nothing.

Mr. DWYER: Then sit down.

Mr. STOKES: To allow the gentleman from Montgomery [Mr. DWYER] to introduce his proposal I ask unanimous consent that the proposal may be introduced at this time.

Mr. DOTY: I object.

The PRESIDENT: Unanimous consent is not given.

Mr. WINN: I move that the further consideration of Proposal No. 184 be postponed for one minute.

The PRESIDENT: That motion is not in order.

Mr. STOKES: I move that the rules be suspended and the delegate from Montgomery [Mr. DWYER] be allowed to introduce his proposal.

The motion was carried.

The following proposal was introduced and read the first time:

Proposal No. 330—Mr. Dwyer: To submit an amendment to article IV, of the constitution—Relative to dividing the state into appellate court districts.

Mr. DWYER: I move that that be referred to the committee on Judiciary.

Mr. DOTY: I object.

Mr. STOKES: I move that the rules be suspended and the resolution be referred to the Judiciary committee.

Mr. DOTY: Does the member from Montgomery [Mr. DWYER] desire to have his proposal printed?

Mr. DWYER: I don't care.

Mr. DOTY: If you desire to have it printed I want to inform you it will not be printed if this motion carries.

The motion was lost.

The PRESIDENT: The question now is on the adoption of the substitute amendment offered by the delegate from Hamilton [Mr. PECK].

Mr. PECK: There are one or two matters omitted in drafting this paper, correction of which ought to be made, and there is one correction to which attention was called by the delegate from Erie yesterday. I propose at the beginning of line 28 to insert these words:

In any case wherein the judgment of the court of appeals is reversed, statutes shall not be held unconstitutional and void except by the concurrence of all the judges of the supreme court.

That will leave it this way: If the supreme court affirms the judgment of the court of appeals declaring a law unconstitutional, it is necessary to have only a majority of the supreme court to affirm that judgment.

Mr. TALLMAN: I rise to a point of order.

The PRESIDENT: The gentleman will state his point of order.

Mr. TALLMAN: Is any amendment in order?

The PRESIDENT: No.

Mr. PECK: This is a correction I am offering to a substitute I myself offered.

Mr. TALLMAN: I insist upon my point of order.

The PRESIDENT: The president will rule on the point. If the Convention agrees to accept these as corrections they can be considered.

Mr. HOSKINS: I object to a vital point being inserted as a correction. It should be put on the same plane as an amendment.

Mr. TALLMAN: I insist that anything in the way of a change is an amendment.

Mr. BROWN, of Highland: The member from Hamilton [Mr. PECK] simply notifies the Convention that it is his intention to offer this amendment.

Mr. BROWN, of Lucas: A word on the point of order. It seems very clear that Judge Peck, having offered the amendment, is entitled to offer it in any form he desires. It is his own amendment, no step has been taken in regard to it and if he wants to vitally change it he should be permitted to do it. He is not seeking to amend anything. He is simply endeavoring to get an amendment, that he himself offered, in the shape he wishes it.

Mr. PECK: There is another place where three lines were left out in copying and I want to put them back.

Mr. HOSKINS: With all due respect to the chairman of the Judiciary committee, the change the gentleman has just offered is an amendment. It can not come under any other head, and I insist that it come regularly.

Mr. PECK: I passed that matter. It is another matter altogether in another place that I am referring to. What I refer to now is in line 36, and I want to insert three lines that were left out there.

Mr. LAMPSON: Are the lines that you wish to put in in the original amendment or in the copy that was offered? If they were simply left out in printing they are in the proposal.

Mr. PECK: They were left out in copying, not in printing. I will give them to you and you will see what they are. Without them the proposal would be lame. After the first word "judges" in line 36 these words should be inserted: "And until altered by statute, the circuit in which circuit courts are now held will constitute the appellate districts."

Those words were in all the proposals and in the hurry they were not copied, and I overlooked the fact that those lines were not in the proposal that I offered as a substitute yesterday. Without them the proposal is incomplete.

Mr. KING: I would like to have the lines read as they would read with this correction made.

The PRESIDENT: The president wishes to rule upon this point of order. The president understands these are not in the nature of corrections, that they are the matters that in the hurry of preparing the proposal were omitted, and the only way that these matters can come up now is after the adoption of the substitute, so as to clear the way for further amendments, and the matter shall be offered as amended.

Mr. PECK: I give notice that I want to offer these when the substitute is adopted.

Mr. FESS: I think we should vote on this substitute now and then we can offer amendments.

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A vote being taken the substitute of the delegate from Hamilton [Mr. PECK] was agreed to.

The PRESIDENT: Now the matter is open to amendment and the member from Hamilton [Mr. PECK] offers the following amendment:

Amend Proposal No. 184 as follows: At the beginning of line 28 insert: "In any case wherein the judgment of the court of appeals is reversed."

In lines 28 and 29, strike out "by any proceedings in this court."

In line 29, strike out the word "five" and insert the word "all."

In line 28, change the capital "N" to a small "n."

Mr. PECK: The members want to be heard on each of these proposed changes. We had better stop right there at present and we had better take each one separately.

Mr. STEVENS: That first amendment is not exactly in form. It reads in any case wherein the judgment of "the court of appeals is reversed." Should not that be in any case where the judgment of "a court of appeals is reversed"? These courts are not one court.

Mr. PECK: I accept the gentleman's suggestion.

The PRESIDENT: The secretary will make the correction.

The correction was made accordingly.

Mr. PECK: I want to explain this amendment a little before discussion goes further so the members will not be under any misapprehension about it.

The original idea of the Judiciary committee was that no laws should be declared unconstitutional except by a vote of all the judges of the supreme court. That was the original proposal as reported, but there was considerable opposition and in the Taggart proposal it was made five-sixths; then Judge King showed yesterday there were certain cases wherein it would be not workable. For instance, where the court of appeals decided a case unconstitutional and that went up, if five-sixths of the supreme court agreed that that case should be affirmed they could not affirm it because as the proposal then stood it required a unanimous decision by the supreme court to declare a statute unconstitutional, and in that case if one of the supreme court judges voted to reverse the decision of the court of appeals declaring the statute unconstitutional, it would be reversed. We thought if both courts, the court of appeals and the supreme court, held by a majority of each court that the law was unconstitutional that that raised a presumption that it was unconstitutional, and therefore I have proposed this amendment. This only applies where the supreme court is passing upon a decision of the court of appeals declaring the law unconstitutional, and there the supreme court does not have to be unanimous.

Mr. KNIGHT: I desire a division of the amendment offered. It seems to me the changes applicable to the cases where judgment of the court is reversed, is one amendment and the change about the five judges is another. It seems to me there are two questions involved.

Mr. HOSKINS: I want to offer an amendment.

Mr. ANDERSON: How many amendments are there?

The PRESIDENT: This is the second.

Mr. WOODS: Do I understand that the first amendment has been adopted?

The PRESIDENT: The substitute amendment has been adopted wiping away all the others.

Mr. WOODS: But the substitute has not been adopted?

The PRESIDENT: The member from Franklin asks that this amendment just offered by the delegate from Hamilton [Mr. PECK] be divided.

Mr. WOODS: I don't understand that amendment just offered by the delegate from Hamilton and I do not think it is workable. I would like to have it read again.

The amendment offered by the delegate from Hamilton [Mr. PECK] was again read.

Mr. HOSKINS: I desire to offer an amendment to that amendment.

The PRESIDENT: The president is in doubt as to whether that amendment is in order in view of the request of the member from Franklin [Mr. KNIGHT] to have the amendment divided.

Mr. LAMPSON: The request of the member from Franklin is simply for a division on the vote. He wants an opportunity to vote on each distinct part of the amendment, but prior to that amendments are in order.

Mr. KNIGHT: I withdraw my request for a division.

The PRESIDENT: The member withdraws his request for a division and the member from Auglaize [Mr. HOSKINS] offers the following amendment:

Strike out of line 29 the word "all" and insert the word "five."

Mr. HOSKINS: Just a word. We all understand the situation. Judge Peck's amendment to his substitute takes out the word "five" in line 29 and inserts the word "all." I have offered an amendment to his amendment—which simply reinserts the word "all"—and I want to take out the word "all" and insert the word "five," so that five out of six can render the decision.

Mr. WINN: It is provided that "until otherwise provided by the legislature the supreme court shall consist of six judges." Suppose the legislature changes the supreme court and makes it consist of five, what good will your amendment do? Or if the legislature reduces the number to four.

Mr. HOSKINS: Are you in favor of this word "all."

Mr. WINN: I am not.

Mr. HOSKINS: That matter can be corrected.

Mr. WATSON: I move to lay the amendment upon the table.

Mr. ANDERSON: Let us discuss it.

Mr. HOSKINS: On that I demand the yeas and nays.

The PRESIDENT: The question is, Shall the amendment offered by the delegate from Auglaize [Mr. HOSKINS] be laid on the table? On that the yeas and nays are demanded.

Mr. HOSKINS: I would like unanimous consent to change that just a bit.

The PRESIDENT: If there is no objection the gentleman can change his amendment.

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Mr. FARRELL: I object. The gentleman from Cincinnati [Mr. PECK] tried to do the same thing and objection was made.

The gentleman from Auglaize [Mr. HOSKINS] was among those who objected, and I object now to his amendment.

Mr. HOSKINS: I desire to withdraw that and at the proper time I will offer a proper amendment.

The PRESIDENT: We had started to take a vote and we will take a vote on the motion to table.

The motion to table the amendment was carried.

Mr. BROWN, of Lucas: I desire to offer an amendment.

The amendment was read as follows:

Strike out line 28 and the words "this court" in line 29 and insert: "No judgment of a court of appeals shall be reversed by reason of the unconstitutionality of any statute." In line 29 change the word "five" to "all."

Mr. BROWN, of Lucas: It will then read "except by the concurrence of all the judges of a supreme court."

Mr. PECK: That is the same thing as mine but in a little better form.

The SECRETARY: Does this take the place of the Peck amendment entirely?

Mr. PECK: Yes, sir.

The SECRETARY: It will then read as follows: "No judgment of a court of appeals shall be reversed by reason of the unconstitutionality of any statute except by the concurrence of all the judges of the supreme court."

Mr. ANDERSON: I move that that amendment be laid on the table.

Mr. PECK: No; it is all right.

The PRESIDENT: The motion to table is not entertained. The gentleman making the motion had not been recognized. The delegate from Lucas [Mr. BROWN] had the floor.

Mr. BROWN, of Lucas: The purpose of this amendment is to avoid the Hibernian use of language. "In any case wherein the judgment of the court of appeals is reversed those statutes shall not be held unconstitutional or void."

That is to say, no limitation is placed upon the reversing of the judgment, but the statutes shall not be held to be void. The thing we are attempting to do is to regulate the reversing of the judgment. What I am trying to do here is to reach the judgment itself, and I do that by saying no judgment in the court of appeals shall be reversed for the reason of unconstitutionality of a statute except by the concurrence of such number of judges as the constitution shall prescribe. I am simply attempting to correct that.

Mr. PECK: The gentleman from Lucas [Mr. BROWN] showed me his amendment before he offered it, and I think it expresses my idea better than I express it.

Mr. LAMPSON: I would like to ask the gentleman if his amendment does not in effect direct the supreme court to disobey the constitution?

Mr. BROWN, of Lucas: I think not.

Mr. KING: I want some information about cases involving questions of the unconstitutionality of a statute in a case in which by this proposal original juris-

diction is given. How are they to be declared unconstitutional? By a majority or by five, or what?

Mr. PECK: This does not affect those cases.

Mr. KING: This only refers to the reversal of cases coming from the court of appeals, and does not apply to cases originally brought in the supreme court.

Mr. PECK: That is left to be decided as always.

Mr. KING: By a majority. The statute could be held unconstitutional by a majority of the court.

Mr. BROWN, of Lucas: What I am seeking to do is to get into this language the meaning that Judge Peck desires to have in it. I am not caring at all about the form. I am trying to get his ideas correctly embodied. I am trying to get this to say exactly what Judge Peck wants to say. It may not be full enough, and if it is not will some one offer a suggestion tending to correct it?

Mr. ANDERSON: If your amendment is adopted would not this be the situation: Where the present circuit court, the court of appeals under the new proposal, would hold an act of the general assembly unconstitutional, then the law would be just as it is now so far as the supreme court is concerned, but if the court of appeals held it constitutional, then it would require all of the supreme judges to declare it unconstitutional. Is that correct?

Mr. BROWN, of Lucas: Yes.

Mr. ANDERSON: In all other matters where the supreme court is passing upon the constitutionality of an act of the legislature the law would be just as it is now, and the only form of remedy, if this amendment is carried, would be where they would seek to reverse the court of appeals where the court of appeals held the statute unconstitutional?

Mr. BROWN, of Lucas: Yes.

Mr. ANDERSON: That is not much of a reform.

Mr. PECK: That is all we can get.

Mr. BROWN, of Lucas: That is what the member from Hamilton [Mr. PECK] wanted put in. I was simply endeavoring to get the language the member himself desired.

Mr. ANDERSON: It is not what you are trying to do, but what you have done.

Mr. HARRIS, of Hamilton: Will you explain to us laymen the following proposition: Suppose a statute is declared unconstitutional by the supreme court. The case is brought directly in the supreme court and the majority of the supreme court declare it unconstitutional. Then suppose the same question comes before the circuit court and they declare the statute unconstitutional?

Mr. PECK: They could not.

Mr. HARRIS, of Hamilton: They could not do it, you say? But they might.

Mr. PECK: I don't think it will ever happen.

Mr. HARRIS, of Hamilton: Is it possible for it to originate in both courts at the same time?

Mr. BROWN, of Lucas: I think not, but whatever action is taken by the supreme court prevails.

Mr. KNIGHT: Suppose the court of appeals has declared a statute unconstitutional and it goes to the supreme court and the supreme court is equally divided?

Mr. PECK: The judgment of the court of appeals would prevail.

Mr. KNIGHT: Then the law would be declared unconstitutional by an equally divided court?

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Mr. PECK: The judgment of the court below prevails.

Mr. KNIGHT: Then you are having the supreme court declare a law unconstitutional by a divided court?

Mr. BROWN, of Lucas: It appears to me that what Judge Peck is trying to do is to reach a situation which sometimes occurs when the circuit court sustains the statute and the supreme court reverses it. I want to frame his language so he will accomplish what he is trying to do.

Mr. KNIGHT: I don't know what you are trying to do, but I want to see that I understand exactly what it is you are doing.

Mr. ANDERSON: Is not this the thing that you are desiring: Where the court of appeals holds an act of the legislature unconstitutional the law shall remain as it is now; but where the question as to the constitutionality of the law is first raised in the supreme court and where the court of appeals has held the statute constitutional, it must require all of the supreme court to declare it constitutional.

Mr. BROWN, of Lucas: That is the effect of what Judge Peck is seeking to accomplish in this particular amendment. What I am trying to do is to get the language so clear that it can be understood.

Mr. NORRIS: If that is what it is intended to do, why don't you write it up in language that ordinary people can understand and not have different sections that may be clashing?

Mr. ANDERSON: I move that the amendment of the gentleman from Lucas [Mr. BROWN] be laid on the table.

Mr. WOODS: I don't believe this matter is understood yet.

Mr. WINN: I rise to a point of order. The member from Medina is not in order.

The PRESIDENT: The member from Medina is not in order. The question is on the motion to lay the Brown amendment on the table.

The motion was carried.

Mr. HOSKINS: Now I offer an amendment.

The amendment was read as follows:

Amend the amendment of Mr. Peck to Proposal No. 184 as follows: Insert after the word "all" the words "but one."

Mr. PECK: That just reverses the amendment offered by me, and it is in effect the same amendment the gentleman attempted to withdraw.

Mr. HOSKINS: No; it is not.

Mr. PECK: Your amendment was laid on the table and this is the same thing.

The SECRETARY: No; it is not.

Mr. PECK: Don't put your oar in, Mr. Secretary; attend to your own affairs.

Mr. HOSKINS: The distinguished member of the committee [Mr. PECK] has a peculiar way of getting in his arguments. The other amendment I offered was not exactly in the form I desired it to be, and attention was called to it by the member from Defiance, whereupon I changed my amendment. I first said "five" instead of "all" and attention was called to the fact that if the number were reduced by the legislature that would mean "all" just the same. I have changed it to read "all but one," so that, whatever the number is, it will require

all but one to declare a statute unconstitutional.

Mr. PECK: As there are six judges now, the word does not change your former amendment.

Mr. HOSKINS: No; but if the number would change this would mean a different thing from what the other amendment did.

Mr. PECK: So it is the same thing that was laid on the table.

Mr. HOSKINS: I think that this Convention can draw the line at what they want to do. My position is this: We ought not to pass an arbitrary rule by which it would require all of the supreme court judges to declare an act unconstitutional. If you retain the present system of six judges it would require five out of the six under this amendment. I regard your idea of unanimity as going too far. It is absurd to say that five judges out of six shall not be allowed to pronounce a decision of the court on any proposition. The requirement of unanimity of all the supreme court judges may work all kinds of trouble. Some one man on the court may have an accident. He may be run over, or he may be sick and disabled. I would like to know how you can get all the judges of a court if one is disabled, and that is a practical reason. The other reason is, I don't think it should be a principle adopted by this Convention. If we can not trust five of our supreme judges to pronounce a decision on any proposition we are entertaining a very small opinion of them.

Mr. HALFHILL: I agree with this amendment so far as it goes, but I wish it would go farther. I think we are limiting the jurisdiction of this court by a hard and fast rule and we are laying down requirements here which may arise some time in the future to plague us and justly so.

I want to call attention to a situation that has arisen in the courts of Ohio. Under our dual form of government every judge of the supreme court has to take an oath to support not only the constitution of the state of Ohio, but the constitution of the United States and the treaties of the United States, which are a part of the supreme law of the land. Now, under the rule of international law, as all of us who have investigated know, treaties always provide a rule of action relative to personal and property rights. The United States has not with any civilized nation in the world, a treaty that does not provide how the property of a subject of that nation shall be disposed of in certain contingencies; and in the case of death or injury occurring to that subject the consul of that foreign power residing in that jurisdiction is the one who represents the subject or the property of the subject, notwithstanding any state statute that conflicts with such treaty right. The courts of Ohio in construing a statute as to the right of an administrator of the estate of a foreigner has to be governed by the treaties of the United States. Now, a case went up from Tuscarawas county, I think, in which all of the lower courts permitted the ordinary statutes of Ohio to govern the appointment of an administrator to take charge of the estate of a deceased alien, and permitted such administrator to be appointed in the probate court, on application of a creditor, just as any creditor of a citizen of the United States could go into the probate court and have an administrator appointed to reduce an estate to a fund. All of those statutes and all the constructions given to

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the statutes by the lower court of the state of Ohio were in direct conflict with the treaty of the United States with the foreign power and the foreign country in the case in question. I know that to be the fact. I have had experience along that line and have seen cases where the administrator has been appointed for the estate of a subject of a foreign power by a creditor acting under the statutes of the state of Ohio, and wherein that administration was held to be of no force and effect, and the consul of that particular power came in, upset the proceedings of the lower court, took charge of the estate and made a settlement of it under the treaty.

Mr. ANDERSON: Will you permit a question?

Mr. HALFHILL: When I get through with my statement. If that condition should arise, and I am only pointing to the illustration where it might arise, I do not see why the supreme court of the state of Ohio should not have a right by majority vote and without every member of that court joining to declare that the treaty obligations that are binding upon every citizen of Ohio should be superior to any statute passed by the legislature of Ohio, and even if all the lower courts had held that those statutes were constitutional and not in conflict with the treaty right. There is a case where it would not be wise to involve ourselves in complications with the United States law, by having any conflict with a treaty right guaranteed to foreign subjects under the obligations existing between the United States and that foreign country.

Mr. ANDERSON: In the case you cite you would not expect the probate judge, sometimes not an attorney, to take into consideration treaties of other countries, but you would expect, when that case got up to the learned men of the supreme court, to have them know what the treaties were and prevent doing what the treaty said should not be done. Don't you think you could get all the supreme court judges to decide on a question like that which you state so clearly?

Mr. HALFHILL: I certainly do not think the supreme court of Ohio should be fettered by any such rule. It is entirely possible that some member of that court would insist upon holding to a situation which would involve us in difficulty and I see no reason in the world for putting such a hard and fast rule as that into the constitution.

Mr. ANDERSON: Do you not know that just such a question as that went up in Pennsylvania, as to whether or not you could bring an action for the death of a foreigner; and don't you know it went to the supreme court and then to the supreme court of the United States—I think about 207 or 208 U.S.—and there was no trouble in getting the supreme court of Pennsylvania to be unanimous on a question of that kind? Do you really, seriously contend that where the treaties of a foreign country plainly set forth certain rights of their subjects in this country that the supreme court would be divided on it?

Mr. HALFHILL: I do.

Mr. ANDERSON: You do?

Mr. HALFHILL: I do. And the question that has gone through the courts of Pennsylvania or any other state of the Union cuts no figure in the discussion and is quite beside the point. This is the sovereign state of Ohio and you are making fundamental law for it. I point to a condition which seems to me ought to be ap-

parent to any man who is biased or prejudiced to the extent of desiring that the supreme court of the state of Ohio should be shackled by a rule that should not be inflicted upon any court. What this proposal ought to do is to fix the rule that a majority of the court shall control, and I say, unless you do it, you will live to see the day when this hysteria, this attack upon the courts, made here, will be a thing to rise up and plague you. It is to the courts of Ohio and courts of the country that we owe the liberties of the country. They protect the liberties of the country and the rights of the individual. And these cases that have been cited here, some thirty in number, to show that individual rights have been transgressed by the supreme court of Ohio are a slander upon the courts of the state of Ohio, unless you take into account the hundreds of other cases where the rights of the individuals have been fully and fairly protected by holding statutes unconstitutional, and I can cite a number of them right here in these reports.

The PRESIDENT: The time of the gentleman is up.

Mr. BROWN, of Highland: I want to ask a question.

The PRESIDENT: The member's time is up. The question is on the adoption of the amendment.

Mr. LAMPSON: It seems to me there are many cases reported in the supreme court reports where statutes have been held unconstitutional by a divided court. Now suppose we change the rule and our court of appeals, which we propose to establish, following the precedents of those decisions, shall hold some statute unconstitutional. When those decisions reach the supreme court does it require the unanimous decision of the judges of the supreme court in those cases?

Mr. PECK: No; that is just what we are trying to avoid.

Mr. LAMPSON: Then I do not construe it correctly. If I understand it, you require unanimity in the court.

Mr. PECK: Only when the court reverses.

Mr. LAMPSON: Would not the effect of that be to permit one or two members of the court to overturn all of those precedents?

Mr. PECK: No.

Mr. COLTON: After all of the gratuitous instruction that has been given by members of the bar to laymen of the Convention, it may be regarded as presumptuous for one to venture a suggestion. But I think an amendment of this kind or a statement in a proposal of this kind should be so plainly put that laymen can understand it. I do not understand this amendment to be clear in its language. It reads: "In any case wherein the judgment of the court of appeals is reversed no statute can be held unconstitutional," etc. If I understand what is aimed at, this language would be nearer the point, "and no judgment rendered by an appellate court declaring a statute unconstitutional shall be reversed except by the concurrence of all but one," etc. I do not know that I understand the amendment, and if I properly caught the meaning that is what is intended. It seems to me this language would be much clearer than the language that is employed in the amendment.

Mr. KING: The statement is made, if I caught it correctly, that if a statute be held unconstitutional by the appellate court it shall require five judges of the supreme court to reverse that. Now, the reversal would mean to

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hold it constitutional and not to hold it unconstitutional. Why not let four judges reverse? There is not anything in any of the proposals that prevents that.

Mr. FACKLER: I offer a substitute for the Peck substitute and all pending amendments—

Mr. HOSKINS: There are two amendments pending as I understand it. That is what the parliamentarians tell me.

The PRESIDENT: No; the substitute is treated as the original proposal and three amendments may pend to that substitute.

The amendment offered by the delegates from Cuyahoga [Mr. FACKLER] was read as follows:

Strike out lines 28 and 29 and all pending amendments thereto and substitute the following:

“No law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges sitting in the case, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void.”

Mr. PECK: I am inclined to accept that amendment. It accomplishes the same purpose.

Mr. FACKLER: The purpose of the amendment is not to allow the supreme court to declare an act unconstitutional in those cases in which it has original jurisdiction except by the concurrence of all but one of the judges. If a case should come from the court of appeals which had affirmed the constitutionality of an act, it could not be reversed except by a concurrence of all the judges. If it came up from the court of appeals from a judgment of that court holding the act unconstitutional, then a majority of the supreme court could affirm the judgment of the court below. I think that takes care of all three possible ways in which the matter can come before the supreme court.

Mr. PECK: It also takes care of the provision by saying “all of the judges sitting in the case.”

Mr. ANDERSON: As I understand the situation now existing, first we have the amended Proposal No. 184. That was printed last night and stands as the proposal. Then we have an amendment offered by Judge Peck to line 28; we have an amendment to that by Mr. Hoskins changing “all” to “all but one,” and then we have the amendment of Mr. Fackler as just read. The purpose of Judge Peck’s amendment was to permit cases coming to the supreme court on questions of the constitutionality of an act of the legislature, where the court of appeals had held the statute unconstitutional, to be affirmed by the supreme court and just as now. That might be by a three to three vote if it so happened. The Peck amendment went to that and that alone. In all other parts it was to be by the supreme court, that all of the judges sitting in the case should agree as to the unconstitutionality of an act before it should be so declared. The amendment by Mr. Hoskins means the same as the one by Mr. Fackler except one of the judges need not agree. It seems to me that the Fackler amendment should prevail. It seems to me if the supreme court can declare an act unconstitutional where the lower court has held it unconstitutional that this provision ought to be satisfactory. Then “all of the judges sitting in the case” cures another trouble that has been suggested, and

that is that some one may be sick, or some one, by reason of interest in the case or having been in the case when he was not a supreme judge, may not be able to sit. It does seem to me there is not much reform, as to acts declared unconstitutional, in the Peck proposal, unless the Fackler amendment carries, and I hope all in favor of the reform of the law will support this amendment.

Mr. NYE: I do not want to let this pass without saying a word. It seems to me we have been elected to this Constitutional Convention because of our qualifications to prepare amendments to the constitution, and if we prepare amendments they ought to be more binding than any statute that can be passed by any legislature that is elected in the ordinary way. If the legislature can pass a statute by a bare majority and then we require a unanimous decision of the supreme court to declare it unconstitutional, it seems to me that you gentlemen are belittling your work in this Convention. I believe that the supreme court ought to have a right by a majority of the court to hold unconstitutional any statute passed by the legislature in violation of the provisions of the constitution we are making. I believe we are putting a millstone around our own necks, and that the people of the state now and to come hereafter will regret our action. I believe we ought to leave the constitution as we have it now, with reference to the point of declaring a law unconstitutional. We ought not to change a provision which has been the rule in this state for a hundred and ten years, and the rule in the United States for a hundred and two years. I say this as a warning. I say that this is wrong in principle and wrong in practice.

Mr. FACKLER: You admit that no law should be declared unconstitutional unless it is so beyond reasonable doubt?

Mr. NYE: Certainly.

Mr. FACKLER: Then under the substitute amendment the requirement of unanimity in the supreme court only applies where the judge of the court of appeals has decided in favor of the constitutionality of the act, does it not?

Mr. NYE: The supreme court ought to be considered by us as the highest and best court under the law of this state, and a majority of that court in my judgment ought to rule.

Mr. LAMPSON: Legislatures have been in the habit of passing what is known as special legislation. Such legislation has usually been held to be unconstitutional. There is a long line of precedents upon that subject. Some times the statutes are so near the border line that statutes of that class have been held unconstitutional by a divided court. It seems to me that this proposal will reverse, or may reverse, this whole line of precedents and permit those special legislation statutes to be held constitutional simply because one member of the supreme court refuses to hold them unconstitutional. If I am wrong in that I would like to know it.

Mr. FACKLER: Under this his judgment would have to be concurred in by the court of appeals.

Mr. LAMPSON: It need not come from there at all. It may come direct to the supreme court without going to the court of appeals. The thing we have to guard against is special legislation. This opens the door wide to the legislature to pass all kinds of special legislation and have it held constitutional in the supreme court.

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Mr. HARBARGER: Where a case goes to the supreme court direct and does not come to the supreme court from a court of appeals, it only requires a majority of the supreme court to hold a statute unconstitutional.

Mr. LAMPSON: You are wrong about that. It takes all of them, and it is the supreme court that makes the law on these questions.

Mr. OKEY: A point of order: Was not a roll call demanded?

The PRESIDENT: Some one did call for the yeas and nays, but the member from Ashtabula [Mr. LAMPSON] had been recognized and the member who called the yeas and nays did not have the floor to make the demand.

Mr. LAMPSON: I would like to have my question answered.

Mr. FACKLER: The original jurisdiction of the supreme court is very limited?

Mr. LAMPSON: Yes; but all of these administrative questions will be special matters. The legislature used to be flooded with applications for special acts to allow cities and towns things peculiar to themselves which were entirely applicable to them. We used to get around the constitution by providing that a city not having more than a certain population and not less than a certain other population might be so authorized. As a matter of fact the population specified would make the statute applicable to but that one city.

Mr. FACKLER: But that was finally knocked out?

Mr. LAMPSON: Yes.

Mr. FACKLER: And it was only when a case arose about the lighting plant in Cleveland that they knocked it out.

Mr. LAMPSON: Yes; but for a long time they held those statutes constitutional. Finally they held them unconstitutional.

Mr. SMITH, of Hamilton: I want to ask Mr. Fackler a question. Under your amendment, which takes the place of all the other amendments and strikes out lines 28 and 29, you provide that "no law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges sitting in the case, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Now the supreme court, after hearing a constitutional question argued, often delays quite a considerable time before it reaches a decision. What would happen if in that time one of the judges should die? Could there be any claim that the death of that judge would settle the constitutionality of the law?

Mr. FACKLER: I think not.

Mr. SMITH, of Hamilton: Would not all cases of that kind have to be heard again?

Mr. FACKLER: I am not certain as to that, but I do not think so. The remainder of the judges would be all the judges sitting in a case and they would render the decision.

Mr. SMITH, of Hamilton: You say "sitting in the case." All the judges that heard the case would be sitting in the case and if one died after that time that would not alter the number of judges who were "sitting in the case," so don't you think the matter ought

to be safeguarded? I think it ought properly to be put "all but one."

Mr. FACKLER: I am willing to consent to that.

DELEGATES: We object.

Mr. FESS: I do not want to reflect on anybody, but it does seem to me that there is an attempt to defeat by minor corrections without number the reform that is here sought. Every suggestion that could be thought of has been made here, and every modification. It seems to me if the proposition concedes the unanimous decision for reversal in pronouncing a law unconstitutional—that, if there be concession about it and it is put "all but one," that can meet the approval of the Convention and the Convention can pass the proposal as it was proposed in the amendment by Judge Peck this morning.

Mr. KING: Will the gentleman from Greene [Mr. Fess] be kind enough to tell us what his idea would be as to the language that ought to be put into this amendment so that it would be clear and so it would be plain and so it would accomplish everything we want?

Mr. FESS: It would be very difficult to word the language so as to avoid technicalities of the practitioner of today whose chief stock in trade is to find a flaw in order to carry a case to the supreme court, and that is the thing we are trying to avoid. If there is any ambiguity in the language the committee on Phraseology, which is appointed for that purpose, will straighten it out, not a hundred and nineteen people, but a small committee of seven here in session, and it seems to me, if there is no dispute on the point we want to preserve with respect to the judiciary, we ought not to delay long about it. I call the attention of my friend from Lima [Mr. HALFHILL] that while we want to respect in the largest way the judiciary, we can have a greater respect if you don't allow five men against four in the supreme court of the nation to declare a law unconstitutional. If it had required a greater proportion than that we would have had greater respect for that court. I stand here in defense of the judiciary, but it seems to me there is no injury or violation to the judiciary to make the concession of "all but one;" that certainly will cure it, and why can't we get out and vote on this proposition?

Mr. LAMPSON: Does the gentleman seriously think that we should amend the constitution so as to permit one or two of the judges out of six to hold all sorts of special legislation constitutional which have heretofore been held unconstitutional?

Mr. PECK: It has to be held so in the court below before one can do it.

Mr. FESS: If the legislature had seen fit to pass a law and it goes to the court for adjudication and interpretation, I believe that one man dissenting from an entire court does not make that law seriously defective.

Mr. LAMPSON: But the one man becomes the controlling power.

Mr. FESS: No.

Mr. LAMPSON: Certainly the one man can reserve all the precedents under this proposal.

Mr. FESS: Not under this proposal.

Mr. PECK: "All but one" is put in there.

Mr. LAMPSON: That helps it some.

Mr. PECK: I rise to a point of order. A vote was ordered some time ago. The roll call was ordered. Mr.

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Lampson was permitted to take the floor for the amendment. It degenerated into a general discussion, and I demand the roll call.

The PRESIDENT: The president did not recognize any one on that matter. There was no roll call. Does the member move the previous question on the amendment?

Mr. PECK: Yes.

Mr. DOTY: That would be the previous question on the whole thing.

Mr. FESS: In answer to that I would like to read this proposed amendment: "No law shall be held unconstitutional and void by the supreme court without the concurrence of all the judges but one sitting in the case, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Mr. LAMPSON: Suppose the courts had been holding a certain class of legislation unconstitutional right along for ten or fifteen years, and now some act that has been passed, similar to those that have been held unconstitutional, goes to the court of appeals and under that provision that act can not be held unconstitutional without the concurrence of all of the judges?

Mr. FESS: Not under that amendment.

Mr. FACKLER: I wish to withdraw the amendment and offer this:—

The PRESIDENT: If there is no objection the member from Cuyahoga [Mr. FACKLER] withdraws the amendment and offers the following amendment:

Strike out lines 26 and 29 and all pending amendments thereto and substitute the following: "No law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

Mr. WATSON: I move that that amendment be laid on the table.

The motion was lost.

The PRESIDENT: The question is now on the adoption of the amendment.

The yeas and nays were regularly demanded, taken, and resulted—yeas 94, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Dwyer,	Hursh,
Antrim,	Earnhart,	Johnson, Madison,
Baum,	Eby,	Johnson, Williams,
Beatty, Morrow,	Elson,	Kehoe,
Beatty, Wood,	Evans,	Keller,
Beyer,	Fackler,	Kilpatrick,
Bowdle,	Farnsworth,	King,
Brattain,	Farrell,	Knight,
Brown, Lucas,	Fess,	Kramer,
Brown, Pike,	FitzSimons,	Lambert,
Campbell,	Fluke,	Lampson,
Cassidy,	Fox,	Leete,
Cody,	Hahn,	Leslie,
Colton,	Halenkamp,	Longstreth,
Cordes,	Halfhill,	Marshall,
Crites,	Harbarger,	Mauck,
Cunningham,	Harris, Hamilton,	McClelland,
Davio,	Harter, Huron,	Miller, Crawford,
DeFrees,	Harter, Stark,	Miller, Fairfield,
Donahey,	Henderson,	Miller, Ottawa,
Doty,	Hoffman,	Norris,
Dunlap,	Holtz,	Partington,
Dunn,	Hoskins,	Peck,

Peters,	Shaw,	Thomas,
Pettit,	Smith, Geauga,	Ulmer,
Pierce,	Smith, Hamilton,	Wagner,
Redington,	Stamm,	Walker,
Riley,	Stewart,	Winn,
Rockel,	Stilwell,	Wise,
Roehm,	Stokes,	Mr. President.
Rorick,	Tannehill,	
Shaffer,	Tetlow,	

Those who voted in the negative are:

Brown, Highland,	Malin,	Stevens,
Collett,	Moore,	Taggart,
Crosser,	Nye,	Tallman,
Kerr,	Okey,	Watson,
Kunkel,	Stalter,	Woods.

The roll call was verified.

The substitute was agreed to.

The PRESIDENT: The question now is on the adoption of the amendment as amended by the amendment just adopted.

The amendment was agreed to.

Mr. PECK: Now I want to offer an amendment which simply restores three lines that were left out.

The amendment was read as follows:

In line 34 strike out "until otherwise provided by law." In line 36 insert after the word "judges" and before the period "and until altered by statute the circuits in which the circuit courts are now held shall constitute the appellate districts aforesaid."

Mr. PECK: There will be an interval before the general assembly can act.

The amendment was agreed to.

Mr. KNIGHT: I move that we recess until two o'clock p. m.

Mr. MILLER, of Crawford: I move to amend that by recessing until 1:30 p. m.

The amendment was agreed to and the original motion thus amended was carried.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. PECK: I have another brief amendment to offer and then I am done.

In line 58 strike out the words "such other" and in line 60 after the word "court," add "and other courts of record."

The amendment was agreed to.

Mr. BROWN, of Highland, I offer an amendment.

The amendment was read as follows:

In line 58 strike out the word "and," immediately following the word "prohibition," and insert a comma. After the word "procedendo" insert "the right to try de novo cases, not triable by jury, appealed from any inferior court."

Mr. PETTIT: I have an amendment along that line myself.

The PRESIDENT: The member from Highland [Mr. BROWN] has the floor.

Mr. BROWN, of Highland: In the consideration of this proposal it occurred to me that lawyers of small

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caliber are sometimes elected to judgeships and that in the examination of cases, as suggested on the floor the other day, sometimes are introduced witnesses whose very personal appearance renders them credible and other witnesses whose credibility would appear not to be of the very best. When the transcript goes to the reviewing court that court does not come in contact with the witnesses under those conditions, and if the court only has a right to review on the cold transcript, justice may miscarry, particularly if the judge who previously tried the cases is not competent. I have seen judges on the bench before whom I would hesitate to try a case if I could avoid it, and I would do this all the more when I knew that there would be no appeal except to a reviewing court. I think this proposal is fraught with danger to the litigant, that should have the right to have the case tried de novo before this court of appeals. These are reasons why I oppose this proposition.

Mr. FESS: In view of the fact that this amendment will not close up the gap we are seeking to close, I move that it be laid on the table.

Mr. PECK: It is too late, of course, to be heard, but if you pass that amendment you will have to double the court of appeals.

Mr. BROWN of Highland: Is not that better than having the cases not properly tried?

Mr. HALFHILL. I ask the gentleman from Greene [Mr. FESS] to withdraw that motion until we can be heard on this.

Mr. FESS: I am willing to withdraw it.

The PRESIDENT: The question before the Convention is, unless it is withdrawn, the tabling of the amendment.

Mr. FESS: I will withdraw the motion at the request of members who wish to have the amendment discussed.

Mr. BROWN, of Highland: Does the gentleman from Greene [Mr. FESS] impugn any one's motives?

Mr. FESS: You will learn something later on.

Mr. BROWN, of Highland: I have not learned much yet.

Mr. WINN: Once before the member from Greene county [Mr. FESS] challenged the good faith of the other members of the Convention who were seeking to perfect this proposal so that they may be able to vote for it. I think I am just as heartily in favor of the proposal as the member from Greene [Mr. FESS]. I have not thus far offered an amendment, but I have several written out, several of my own already have been covered by amendments offered by the author of the proposal. I regard this amendment as one of the very greatest importance. I have one prepared along the same lines which I think covers the situation better than the one under consideration, but I am not particular about that.

We must remember that judges who sit on the common pleas bench—in fact, all the judges—are merely men.

When we impanel a jury to try a question of fact we take the greatest care to obtain men to sit in the jury box whose minds are unbiased, but if we have a question to be tried by the court we have no means of challenging the prejudice or bias of the one man who is trying the case, and I come back to what I have said before, that the judges on the bench are merely men, whose minds are warped, whose judgments may be con-

trolled by opinions formed before a single word of testimony has been heard, just as the judgment and conviction of a juryman is controlled by his prior opinion.

Now the trial of a case before a jury is altogether different. It has been said by the author that after you have had a trial by a jury you should have a right to have it reviewed on error upon the record and that that ought to be sufficient. I submit that the cases are not analogous. You try a case before a jury of disinterested men. You try a case before the court many times when the court sitting in the case has already determined, before a word of testimony, everything in the case; that is within the practice of every man who has tried a case in court. I have in mind one case now in a northwestern county where a ditch proceeding was involved and more than fifty farmers were interested, and you need not tell me that the judge who tried that case had not an opinion before the testimony was heard. I was not interested in that case and I am not speaking from the standpoint of one interested, but from the standpoint of a practitioner who knows from thirty years' practice at the bar that judges are prejudiced and biased the same as jurors. When they try cases and render judgments the litigant should have the right to appeal to another tribunal and be heard, not upon the record, because the reviewing court is liable to say, as some one suggested yesterday, "If this case were originally in this court a different judgment would be rendered, but we do not feel justified in disturbing the judgment of the lower court." So I insist that this amendment is of the utmost importance to litigants. It does not do any harm. It does not put us back where we are, as has been suggested, and I hope the amendment will be adopted. It ought to be agreed to by the author of the proposal.

Mr. PETTIT: I have an amendment on this same subject which I think more fully covers the ground. It is really a substitute.

The amendment was read as follows:

Amend the amendment to Proposal No. 184 by Mr. Peck, by inserting in line 59 of the said proposal, after the word "jurisdiction," the following words: "to try de novo all chancery cases, appealed from the courts of common pleas and superior courts and."

Substitute the word "said" for the word "the" before "courts" near the end of line 59 and strike out in line 60 the phrase "of common pleas and superior courts."

Mr. PETTIT: It would then read: "The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo and appellate jurisdiction to try de novo all chancery cases appealed from the courts of common pleas and superior courts and to review, affirm, modify or reverse the judgments of said courts."

Mr. BROWN, of Highland: If the member will permit I would like to have the secretary read the proposal as it would read if the amendment offered by the delegate from Highland were adopted.

The SECRETARY: "The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, the right to try de novo cases not triable by jury appealed from any

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inferior court, and appellate jurisdiction to review, affirm modify or reverse the judgments of the courts of common pleas and superior courts within the district, etc."

Mr. PETTIT: Now the member from Hamilton [Mr. PECK] has made the objection that this would increase the number of appellate courts.

Mr. PECK: Yes; the appellate courts cannot do the work now.

Mr. PETTIT: They do it now and this does not increase their duties one bit, under this proposal. I agree with everything my friend from Defiance [Mr. WINN] has said about the one-man judge. They have the same kind of failings that the rest of us have. They are made of the same dirt. I know in my experience in one bastardy case that the judge was very wild; he came in with his mind made up before the case was called. I would not have stood any more chance before that man than a snowball in hot regions. I do not think one man should try a case. I think we should go mighty slow in this matter. I agree with about everything that Dr. Fess has said in this Convention, but I cannot agree with him on this matter. I have practiced law for twenty-five years. I know what I am talking about, and everybody else knows that when you submit a case to one man, although you have a right to go up on error, that is about an end of your case. At any rate it will not increase the work of the appellate courts one particle over what they have to do now. In our district they are playing more than half of the time. It just preserves the appeal as we have it in the chancery cases, and I think it would be an outrage on the poor class of litigants not to allow them to go on up in a chancery case.

Mr. FACKLER: The Peck proposal preserves the right of appeal, but it does not give the right to hear new testimony.

Mr. PETTIT: What is the benefit of an appeal if you cannot hear the testimony?

Mr. FACKLER: If the lawyer tries his case correctly in the lower court he will have all his testimony in the record.

Mr. PETTIT: He may have in all that is obtainable then, but may he not discover testimony after that?

Mr. FACKLER: You have your rights under the law in that particular.

Mr. PETTIT: After a certain time you have no remedy.

Mr. DWYER: I feel like criticising that language. That "de novo" cannot apply in the appellate court. I think that phraseology ought to be changed.

Mr. STILWELL: I would like to ask the delegate from Adams [Mr. PETTIT] if it is not done now just exactly the way this proposal provides.

Mr. PETTIT: It may be—

Mr. STILWELL: Is it not a fact that in five of the eight circuits you must go up on your transcript of evidence in appealed cases?

Mr. PETTIT: It is not in compliance with the statutes.

Mr. STILWELL: Nevertheless it is the rule of court, and you are simply insisting that what prevails in three of the circuits shall become the law in the eight circuits.

Mr. PETTIT: I don't understand that a rule of court can override a statute.

Mr. HALFHILL: Will you allow me to ask a question of the gentleman?

Mr. PECK: I object unless the question is asked of the speaker.

Mr. PETTIT: If I don't object you can't.

The PRESIDENT: Does the gentleman from Adams [Mr. PETTIT] yield to the gentleman from Allen [Mr. HALFHILL] to ask a question?

Mr. PETTIT: Yes.

Mr. PECK: I object.

Mr. HALFHILL: If the member yields to me I have the privilege of asking the question.

Mr. PECK: Well, it is disorderly to ask a question of some one not on the floor. If you want to ask Mr. Pettit a question all right, but you have no right to ask anybody else.

Mr. PETTIT: Just keep cool, we will get along.

Mr. PECK: I object to the member asking questions of anybody except the member on the floor. I submit that it is out of order.

Mr. PETTIT: I have yielded my right to him.

Mr. HALFHILL: Now I want to ask a question of the delegate from Cuyahoga [Mr. STILWELL].

The PRESIDENT: Does the member from Cuyahoga yield to a question from the member from Allen [Mr. HALFHILL]?

Mr. STILWELL: Yes; if I can answer the question I will do it.

Mr. HALFHILL: In the districts you speak of this rule is by an order of court?

Mr. STILWELL: Yes.

Mr. HALFHILL: Yes, but the law will allow the introduction of witnesses?

Mr. STILWELL: No; the judge would simply refer the case to a commissioner.

Mr. HALFHILL: But there you can introduce witnesses?

Mr. STILWELL: Oh, you can!

Mr. HALFHILL: In all the courts of which you speak, and I am familiar with them, you can always apply to the court for a right to supplement your written transcript with oral testimony, and if the court thinks it ought to be heard the court will grant that as a matter of course.

Mr. STILWELL: That is true, but it all depends on the number of the witnesses. The court won't go into any lengthy testimony. They may permit a witness or two to clear up some point.

Mr. HALFHILL: But there is no hard and fast rule of court and no rule of the statutes which says that you cannot present testimony in the circuit court.

Mr. STILWELL: I don't suppose it will be absolutely binding, but that is the practice.

Mr. PECK: I hope this amendment will not be passed. This is the last stand of stupid conservatism, I was about to say; I will say it is certainly the last stand of conservatism. It is a sort of conservatism that lawyers always manifest whenever any suggestion touches anything that affects their sacred purse. It is the same way when any statute is offered to abolish something that has been existing a long time. Why, it is history that when the statute was offered to abolish hang-

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ing men in England for stealing a few shillings the lament was made by Lord Eldon that it was a wicked reform in the law. It is of record in the state of Ohio that when the code of civil procedure was adopted it was fought by nearly all the leaders of the bar in the state and it had to be adopted and put into effect over their objection. Now nobody objects to it and if anybody were to want to change it the lawyers would sit back in their conservatism and fight against it. There is an unreasoning element of conservatism in the bar and it always has to be overcome from the outside. The right of appeal has existed too long; it has clogged the court and has been gotten rid of by five of the circuit courts through a rule which the gentleman from Allen [Mr. HALFHILL] claims violates the statute. At any rate it is a rule that is operated in all of them and they enforce it, as indicated by the gentleman from Cuyahoga [Mr. STILWELL] in this way: If you insist on coming in with witnesses they will simply refer you and your witnesses to a master and let him take the depositions and let him bring them in; then they will hear them. That would put you in no better position than to simply let the court try on the record of the common pleas court. You seem to say that you would rather have the trial by the master than the judge of the common pleas court. Well, I think not, if you know what is good for you.

Mr. PETTIT: If we insert a proviso can the courts adopt any system that will override the constitution?

Mr. PECK: If they cannot, that is the reason why it ought not to be in here. The only reason your circuit courts are not all clogged up now is that this rule they have adopted has saved the situation. If you would carry this out the way you would want it done and have all the witnesses in every case introduced in the circuit courts or court of appeals, you would have twice as many courts as you have now.

Mr. PETTIT: We only had three cases in Brown county and two in Butler county at the last term.

Mr. PECK: But there are many other counties in your district. And we are tired of the way they are trying cases now. A case ought to be carefully tried on its first trial and that is enough. I am opposed to these a la justice of the peace trials that we have had in some of the common pleas courts. There is only one way to try an equity case and that is to try it before the chancellor.

Now the objection is made that judges are only men. What would you have them be? I don't know of any other sort of being that tries cases. You may get some women in certain cases if woman's suffrage carries. There may come a time when my friend will have a right to argue a case before a petticoated chancellor, but as it is now he has to take his chancellor in trousers. That is the only kind he can have. I do not know of any other kind of tribunal that you can have except one presided over by a man. Of course, you must in all things make allowance for human nature. Human nature is weak in everything under the sun and it is not worth while to talk to me, as the gentleman from De-fiance has been talking, about cases here and there where the trial judge may have made a mistake. No trial judge and no jury and no circuit court is free from mistakes. Three of the circuit court judges may be in error and

may come to a false conclusion, but they are just as likely to come to a correct conclusion on a record brought before them as any other way. Now let us vote upon these amendments and dispose of this last stand of ultra conservatism.

The chair recognized the delegate from Noble.

Mr. PETTIT: I want to make a few remarks in reply.

The PRESIDENT: The member from Noble has the floor.

Mr. OKEY: I have been in favor of the Peck proposal and I was on the committee that reported it out, but at the time it was reported out it did not occur to me that the right in chancery cases to be tried anew in the appellate court had been taken away. I am opposed to the taking away of that right from the people. I know that that right ought to exist. We have one trial in equity cases in the court below and we ought to have a right to go to another court and there let the case be heard before three disinterested judges that they may hear the testimony; because it sometimes happens that, when we try an equity case in court and take it up on transcript, new witnesses have been discovered that will entirely change the decision of the court below. I have known such a thing to happen in numerous cases, and I say that the people ought to have a right to a retrial in an equity case.

When I voted to report this proposal I did not know that it contained that provision.

Mr. FACKLER: Is not the object sought to be accomplished by the Peck proposal one trial and one review, and would not that be defeated if this amendment carries?

Mr. OKEY: Not one bit. It would not add any more burden on the appellate court than is now on the circuit court.

Mr. WOODS: Do you think there should be a single review of all cases?

Mr. OKEY: Yes.

Mr. WOODS: If this amendment should go into this proposal, would there be any review of cases tried de novo in the appellate court? Could you go into the supreme court on an equity case that has been tried de novo in the circuit court or the court of appeals?

Mr. OKEY: No.

Mr. WOODS: Then you would have two trials and no review.

Mr. BROWN, of Highland: Under this proposal if a case is important would not the supreme court have a right under certiorari to reach down and get the case for review?

Mr. OKEY: No; not as I understand it. There has been a good deal of talk about the circuit court's adopting certain rules saying that cases shall be heard upon a transcript taken in the court below. It is as Judge Laubie said to me. The circuit courts of the state adopted a rule that doesn't rise to the dignity of a rule, because the court is doing something it has no right to do, and he never observed the rule in my county strictly, but permitted us to introduce as many additional witnesses as we desired.

The member from Mahoning was here recognized.

Mr. PETTIT: Mr. President.

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The PRESIDENT: The gentleman from Mahoning has been recognized.

Mr. PETTIT: I was on the floor first.

The PRESIDENT: The member from Mahoning has the floor.

Mr. PETTIT: It seems to me that this Peck proposal is considered such a sacred thing that nobody ought to touch it. The statement of the gentleman from Cuyahoga [Mr. FACKLER] intimated that we must take this Peck proposal just as it is. They first brought in a proposal here and then after it had been discussed Mr. Peck yesterday offered a substitute. Then he came up this morning and there were three or four more amendments that he had to offer, showing that it was not perfect; and now if anyone else suggests that he wants to amend it they act as if the whole fat were within the fire. I am not trying to delay. We want to get this thing right, and this talk about doubling the number of courts if we allow cases to be tried de novo in the circuit courts doesn't amount to anything. In our circuit they don't work one-half the time. In Adams county sometimes they have one or two cases. Last week in Brown county they only had one case. I don't know of any judges that are overworked anywhere. It seems to me that my amendment or the amendment of Mr. Brown, of Highland, ought to prevail. Talk about poor litigants! Here is a right taken away from them and you want to allow them only one trial in the lower courts.

Mr. ANDERSON: I do not believe either carrying the amendment or rejecting the amendment injures very much or to any extent the great reform sought to be accomplished by the Peck proposal. So that those who are not lawyers may better understand it, in a certain kind of cases, equity cases, where you have not any jury, you try the cases before the common pleas judge sitting as a chancellor, both judge and jury, and as it is now if you are not satisfied when you lose in that court you may go on to the circuit court and try the case over again before three circuit judges sitting as a court and jury just as if it had not been tried in the common pleas court. The men who are back of this amendment wish that to remain where it is.

Mr. STILWELL: Can you do that now?

Mr. ANDERSON: Yes; where there is not a rule. In many of the courts, in five of the circuits out of the eight, they have made a rule, and whether they like it or not they abide by it, by which the circuit court demands of the plaintiffs or defendants, when they come from the court below in an equity case, that they bring, in typewritten form, the testimony of the witnesses below. Then, if either the plaintiff or the defendant asks that further testimony be heard, the circuit court sometimes permits the witnesses to come in, take the stand and testify before the circuit court. In the smaller counties they take practically all of their witnesses up to the circuit court. Really this is the difference between the small counties and the big counties. In the larger places, like the cities of Youngstown, Cleveland and Cincinnati, they now conduct affairs just as it is provided in this proposal. In the smaller counties it is different; it is as the gentleman from Adams [Mr. PETTIT] and the gentleman from Defiance [Mr. WINN] suggest. Sometimes they handle matters in the same way we do, but generally they take up their witnesses to the circuit courts. I am

in favor of the amendment, which permits the smaller counties still to try before the circuit court sitting as a court and jury.

Mr. HOSKINS: Is it not a fact, if one of these amendments is not adopted, that the other circuit courts are simply trying to force their rules on all the rest?

Mr. ANDERSON: If it remains as it is now the larger counties can have just what this amendment proposes to give them and the smaller counties have it the other way, but I am afraid of the wording—I don't like that de novo. If they would erase that, I am in favor of it; but I don't believe that I am in favor of doing away with the rule.

Mr. PECK: Well, that is just what will happen.

Mr. KING: I have never been very warmly in favor of a retrial of an equity case, but the custom is well established throughout Ohio. This is the only state in the Union that has it; but we have it and have had it for sixty years. It has grown into a system and we feel that we ought to have it.

But I disagree with those who object to it on the ground of the time it will take. I undertake to say proper judges can hear all the witnesses in a case and know more about the case when they are through, in less time than you can read a typewritten record that comes up from a lower court; because a judge hearing the case will know when to stop the witnesses and when to stop the bringing in of testimony, whereas the court below will feel a hesitancy about doing that. Then the attorneys below understand that they have to get everything in the case in the common pleas court. They call witnesses and keep on piling up testimony and the judge trying the case will necessarily be slow about stopping the introduction of testimony. But the circuit court can stop it wherever it pleases, and my experience on the circuit court bench in hearing cases with witnesses was that we could hear them quicker and decide a case quicker and more satisfactorily from the evidence of the witnesses than from the transcript of testimony.

Mr. BROWN, of Highland: Does it cost much more to try a case de novo in the same court house in a county where the circuit court is sitting than it would to have a record transcribed and brought up?

Mr. KING: No.

Mr. BROWN, of Highland: What is the expense of a transcript as compared with a trial?

Mr. KING: If you could avoid taking up the transcript—which you could probably not do—if you could avoid that you could take the witnesses up cheaper than you could take the transcript.

Mr. STILWELL: If any equity case is going to the circuit court in any event, what is the use of having it tried in the common pleas court?

Mr. KING: We have no control over that question under this proposal. The common pleas court has always had control over those cases since our constitution was adopted, and there was no proposal to abolish that jurisdiction. Many cases are not appealed.

Mr. WINN: I wish you would turn to the amended proposal. I have a substitute to offer for that, which I think covers the case better than either of these proposals or substitutes. You will remember that the words "such other" in line 58 have been stricken out. My amendment strikes out the word "appellate" at the end

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of that line so that it would read, "The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo, and jurisdiction to review," etc.—leaving out the word "appellate." I do that for this reason: In Ohio there is a distinction between cases prosecuted through the higher courts by appeal and those prosecuted by proceedings in error. That does not prevail in many of the states besides Ohio. If you turn to our statutes you will find all through them the word "appealed" is used where we mean to go up and try the case, as has been said, de novo. We find error proceeding used where we have to review questions of law by a higher court, so that I think it is not advisable to use the word "appellate" jurisdiction where we mean jurisdiction by review of proceedings below.

Again, in all our circuit court reports and supreme court reports there is always a distinction made between cases heard on appeal, as we use the term, and cases on review, so that I would strike that word "appellate" out at the end of that line and amend it so as to read as follows: "The court of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo, and jurisdiction to review, affirm, modify or reverse judgments of the courts of common pleas and superior courts and other inferior courts of record," and these are the words that I would provide for retrial, "and for the retrial of cases appealed from any of such courts."

Mr. PETTIT: I will accept that amendment as far as I am concerned.

Mr. KING: Do you wish to provide by that amendment an open door by which the legislature can enact laws which will permit all cases to go up?

Mr. WINN: I just will add the word "equity" which I omitted and make it read, "and the retrial of equity cases appealed from any of said courts."

The amendment was reduced to writing and read by the secretary as follows:

Substitute the following for the amendments of Mr. Brown, of Highland, and Mr. Pettit to Proposal No. 184: Strike out the word "appellate" at the end of line 58. Between the word "district" and the word "as" in line 60, insert the words "and for the retrial of equity cases appealed in any of the said courts."

Mr. ANDERSON: Will the gentleman from Defiance permit a question?

Mr. WINN: Sure.

Mr. ANDERSON: Do you think your proposed substitute will in any way interfere with the rules they now have in the different circuit courts?

Mr. PECK: It will. This is then a constitutional right.

Mr. WINN: I do not know what rules they have in the circuit courts. I submit this, that if any of the circuit courts of the state have, without any authority of law, deprived any citizen of his right to have an equity case appealed and tried as from the beginning, that court has usurped authority that it has had no right to do. The humblest citizen of the state has a right to appeal in an equity case and he has a right, if he did not have all the testimony below, to call his witnesses into the circuit

court and have his witnesses heard there, and no circuit court has a right to deprive him of that privilege.

Mr. PECK: But the circuit court can send him to a master.

Mr. WINN: I don't know what they can do in the big cities, but they don't do that in our district.

Now I want the members to think about this. This is an important matter. You have heard it talked from the stump, from the pulpit and from everywhere that the courts have been depriving the people of their rights by injunction. Remember this matter applies to injunction suits. Are you here to say that if some judge who has already prejudged an injunction suit decides it in one way and renders an opinion no appeal can be taken from it? I submit that to deprive litigants of this right deprives them of one of their sacred privileges and we should hesitate a long time before doing it.

Mr. ROCKEL: I am very much in favor of this amendment. I think it materially affects the rights of the people of this state. I remember within the last two or three years attending a state bar association at which Judge Reeves, of Cuyahoga county, brought this question before the association, and it was there discussed. It was the sentiment of the bar association of this state that this would be a serious invasion of the rights of the people.

Mr. PECK: Did you ever know any bar association to declare in favor of any legal reform?

Mr. ROCKEL: I do not profess to have the wisdom of the gentleman from Hamilton—

Mr. PECK: That wasn't the question at all. That was not an answer to my question. Did you ever know of any bar association declaring in favor of any legal reform?

Mr. ROCKEL: I don't know and I don't care. It is not material to the question before this body. I want to say to the gentlemen of this Convention that the poor man is the man who is likely to be affected by this. You have heard a great deal said in the Convention about injunctions and the cases that come up before one man and I say to the Convention no man should be entrusted with absolute and arbitrary power. I am in favor of reserving to the people of this state all the rights that can be reserved to them. I had the honor to be on the circuit bench a while and we never found any difficulty under the present procedure. If a case came up on a transcript and an attorney wanted to present his witnesses, we heard the testimony of the witnesses. I repeat to you, don't take away this barrier, don't put the power in the hands of one man to determine rights that may affect the humblest citizen of this state far more than the rich and corporate wealth.

Mr. KING: I would like to ask the member from Defiance [Mr. WINN] to examine his amendment to see where it comes in. As it was just read by the secretary after the last word of your amendment, in the copy I have, there is the phrase, "as may be provided by law."

Mr. WINN: It comes after the word "district."

Mr. KING: Where does the phrase "as may be provided by law" come?

Mr. WINN: I think that is stricken out.

The SECRETARY: No; it is not.

Mr. WINN: That should be stricken out.

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Mr. KRAMER: I want to say just a word. The most important cases we try are those that are in courts of equity. Equity cases usually involve a great deal more money and a great many more sacred rights than jury cases. For instance, a poor old man is imposed upon by some person and he deeds away his one hundred and sixty acre farm, worth \$16,000. You go into a court of equity and try to have that deed involving \$16,000 set aside, and we are compelled to try it before one man finally and absolutely, no difference what his prejudices may be. You may go into a court to have a will proved and it may involve an estate of thousands of dollars; you go before one judge and you are bound absolutely by what he finds. Hence, I think we should have the right to try the case before more than one man if we want to.

Mr. FACKLER: Does not the Peck proposal give you the right to try the case in the court of appeals upon the testimony in the common pleas court?

Mr. KRAMER: You know just as well as I do, and Judge King suggested it, that no circuit court will read a long record. Judge King hinted at it, but I say it outright.

Mr. ROEHM: How many times do you get a chance to put your testimony before the jury?

Mr. KRAMER: Once; but we have twelve men to hear the testimony and if one man is prejudiced one way or the other, or if he has a lesion in his brain, as Judge King said, the other eleven men may convince him that he is wrong. In any event, with our three-quarter jury verdict one man cannot stop the wheels of justice as one judge could.

Mr. ROEHM: What has been your experience in trying cases with judges and juries? Have you ever waived a jury and consented to try before the judge?

Mr. KRAMER: Not in many cases. If there is a whole lot of law and very little fact we do it sometimes.

Mr. ROEHM: Is it not conceded by ordinary lawyers—excepting damage suits—that they prefer to try questions of fact before a court rather than a jury?

Mr. KRAMER: Well, if they wish to do it they can do it.

Mr. JONES: When this proposal was first brought to the attention of the Convention and when I had occasion to first speak in reference to it, I was inclined to the view held by the gentleman now introducing this amendment, and so stated from the floor in the remarks that I made upon the subject. Upon further reflection I am inclined to the view that the provisions of the proposal as it stands are the better. As has been suggested, this constitutional provision proposed to be incorporated by this amendment may have the effect of preventing the court of appeals from doing the very thing which in practice is done now by the circuit court in reference to hearing cases on appeal. It may prevent the exercise of the power to refer to a master in order to compel parties to submit their cases upon transcript.

Mr. WINN: Suppose this amendment is adopted; will it be any different from what it is now?

Mr. JONES: It may be. If this becomes a part of the constitution and you provide that cases shall be and must be tried upon appeal with the oral testimony of witnesses, I can readily see how that might have the effect suggested of preventing the court of appeals from

requiring them to be tried on transcript of the testimony.

Mr. HOSKINS: Is it not a fact that that provision is simply a jurisdictional feature?

Mr. JONES: What provision?

Mr. HOSKINS: The amendment proposed by the delegate from Defiance.

Mr. JONES: But the manner in which it has been presented here, in at least some of the amendments, will raise a very serious question as to whether you may not have to try those cases on appeal by oral testimony, just as this provision contemplates.

Mr. WINN: You understand that the statute provides these cases can be tried de novo on appeal?

Mr. JONES: Yes.

Mr. WINN: Do you think it is more difficult to disobey a constitutional provision than a statutory one?

Mr. JONES: Certainly it is more difficult to disobey a provision of the constitution than of a mere statute. That is illustrated by the provision with reference to reporting decisions. Suppose you have a statute requiring the court to report all decisions; how can you enforce it? If there is a constitutional provision to the same effect you can enforce the provision and secure reporting of all the cases.

Mr. WINN: If a statute provides that the circuit court must hear the evidence on appeal in certain cases, and if the circuit court can disobey that provision of law, what is there to prevent the circuit court from disobeying a similar provision in the constitution?

Mr. JONES: That is assuming a situation that does not exist. The statute now simply gives the right of appeal, and the court has applied to the trial of cases on appeal as provided by our statute the existing methods of trial.

Mr. PETTIT: You say that if this amendment is adopted it may tie the hands of the court of appeals. What harm will there be in tying the hands of the court of appeals in this matter?

Mr. JONES: The main object of this whole reform in our judicial system is to secure a prompt disposition of cases. Now, as we all know, if all the cases that go to the circuit courts in the various circuits had to be heard on oral evidence taken by the court, the courts could not possibly do all the business. It could not be done now, and necessity has compelled changing the rule in the respects referred to. As a matter of fact, nineteen out of twenty cases, aye, more than that, forty-nine out of fifty cases, tried on appeal in the circuit courts, are tried on a transcript of the testimony. In every other state in this country cases on appeal are tried in that way. They are tried that way in the federal courts. What wrong can there be to the litigant in trying them that way in Ohio, in these proposed appellate courts?

Now, there is another matter in connection with this that should not be lost sight of. The great majority of cases that go to the circuit court are jury cases. At least that has been my observation and experience.

Mr. PETTIT: What jury cases can be appealed from the common pleas to the circuit court?

Mr. JONES: They would come up on appeal, where now they come up on error proceedings, which simply brings up for review the whole evidence in the case and the questions of law made in the lower court upon the

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introduction of evidence and otherwise, and the question is whether the judgment below is fairly sustained by the evidence in the case.

The great majority of cases you have in the circuit court are jury cases, and the rights of parties are determined upon the record from the court below. They are often the largest and most important cases that go up. What reason can there be for having two trials on oral testimony of an equity case and only one trial of a jury case, when the rights of the parties may be just as great in the one and the interest involved just as important as in the other?

Mr. BROWN, of Highland: The gentleman from Fayette seems to deal with this question as if the amendment made it mandatory on the appellate court to try a case de novo. If the member from Fayette [Mr. JONES] will endeavor to ascertain, he can easily see that the amendment I propose only gives the court that right. It is not a mandatory provision, but it gives the court the right and under that it is in the court's discretion.

Mr. JONES: That may be, but under one of the proposed amendments the question arises whether it does not make it mandatory on the court to hear the evidence on appeal. But if the rights of parties can be subverted and justice can be properly administered in law cases by taking them on error proceedings to the reviewing court, why cannot the rights of the parties be equally subverted in an equity case in the same manner? The best answer to be made to this is that the experience of the whole country and of the English speaking world has demonstrated that it can be done.

Mr. HOSKINS: I want to speak just a moment on this proposition and I want to say this: I am more vitally interested in this thing than in any of the rest of the provisions. I want reform, but I do not want it at the expense of the average litigant. You are simply seeking by the Peck proposal to take away from the average litigant certain rights that we have enjoyed for the last sixty years.

Now, as to the matter of time, you do not save any. Judge King has told you so. You don't save any time and you don't save any money. The member from Erie [Mr. KING] has had years of experience on the bench. He tells you that you can hear the witnesses quicker, with less expense and with a great deal more satisfaction, in the circuit court, or the court of appeals, or whatever it is called, than you can read the transcript.

Mr. JONES: May I ask the gentleman a question?

Mr. HOSKINS: No, don't bother me; I do not yield. I want to call attention to the fact that if you are compelled to try the case before the lower court you are going to put every scrap of evidence in because the upper court will hold you to the evidence in the lower court. That common pleas judge will be slow to shut out any evidence. You will not be controlled by the strict rule of the evidence as in jury cases. He will be slow to shut out anything, unless it is clearly incompetent. Consequently you will spread your transcript over about five times as much as you should.

Now, some circuit courts have adopted an arbitrary rule, which they had no right to do. I don't care what they do down in Cincinnati or in Cleveland; I want to practice law in my own county, and I want my people's rights preserved. If the circuit court of any other place

have taken away the people's rights, it is a matter that concerns those people and not the remainder of the state. I know our circuit court has not taken these rights away. My information is that the states of New York and Indiana, and possibly other states, have this intermediate court, and that in it you may introduce evidence. You have started to rip things up. Now, we people who represent circuits that have not been enforcing an arbitrary rule ask to be let alone. We don't want to change our customs and adopt the customs of Cincinnati. We don't want the arbitrary rules of any Cincinnati court written into the constitution of Ohio, and I protest against it. I have great respect for the gray hairs of the gentleman from Cincinnati [Mr. PECK]. He has practiced in Cincinnati, but if he had practiced in Northwestern Ohio he would not take this position. We ask the Convention to allow the appellate courts, or the circuit courts, to remain as they are now and not to inaugurate a revolutionary proceeding on the idea of saving time and expediting litigation, when we are told by those in position to know that it does not do either. There may be some other features of the Peck proposal that will expedite and facilitate, but certainly this is not one of them. I was glad to see the gentleman from Mahoning [Mr. ANDERSON] so fair as to agree that this should be written into the Peck proposal, which he helped to draft.

Mr. STILWELL: Is it not a fact that the only place where this custom at the present time prevails is in the three circuit courts of this state and that it does not prevail anywhere else?

Mr. HOSKINS: I don't know.

Mr. STILWELL: Is it not a fact that you are attempting to force the rules of those three circuit courts upon all the other parts of the state?

Mr. HOSKINS: What right have you to attempt to force your rules and your customs on us?

Mr. STILWELL: You are making objection to a course and you cannot show an instance where any hardship has resulted from it.

Mr. HOSKINS: I don't know anything about that.

Mr. JONES: If your statement is true that these cases can be heard on appeal with the witnesses before the court more expeditiously than they can be on transcript, how do you explain the fact that in five of the circuits of the state they all come up on transcript and that in the other three circuits nineteen out of twenty cases come up on transcript?

Mr. HOSKINS: I don't know anything about that. It is an arbitrary rule and in that rule they are violating the statute.

Mr. STILWELL: But they don't object.

Mr. HOSKINS: I would if I were there.

Mr. LAMPSON: Is not the essence of the controversy that it is one between the cities and the country counties?

Mr. PECK: No.

Mr. HOSKINS: That may be true, but I think there are people over the state who are fair enough not to attempt to urge a rule on us.

Mr. LAMPSON: Don't you think that the country representatives ought to understand what the issue is?

Mr. HOSKINS: Most assuredly, and I think the country representatives ought to protest against writing

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the rule of the Cincinnati circuit court into the constitution of Ohio.

Mr. SHAFFER: As a matter of fact, the only point that you make in this argument of yours is to give the court of appeals the right to consider additional testimony in cases that come before it.

Mr. HOSKINS: Not necessarily.

Mr. SHAFFER: Is not that the whole of your controversy?

Mr. HOSKINS: No.

Mr. SHAFFER: What else is there?

Mr. HOSKINS: You have all the evidence that has been given in the trial below. Now I don't care to have my time taken up by an argument. The proposition has been made half a dozen times that in an equity case the judgment is by one man. He may be a good judge, but he may be a two-by-four, and I want to say that all the poor judges are not on the supreme bench. Some of them are on the common pleas bench, and you have to go before judges of that class and have one man instead of twelve pass on your rights. It has also been argued here that the upper courts are loath to disturb a finding of a lower court upon a cold transcript, where you cannot get all the facts before them in the manner in which the witnesses themselves could present the facts.

Mr. BEATTY, of Wood: Couldn't the judge be sworn off the bench if there is any just ground for it?

Mr. HOSKINS: We have not a statutory right now to do that, and if the senator could recognize what a delicate thing that is to do he would know that would not be an adequate remedy. Next week you would have to meet that same judge in some other matter, and if you have sworn him off the bench you are not in very good standing with him.

I hope this Convention will realize that there are some arbitrary, narrow-minded judges on the common pleas bench and that you cannot get a proposition properly before the appellate court without a right of retrial.

Mr. FACKLER: Several questions have been raised regarding this amendment.

There has been an attempt to inject sectional differences here, leaving the impression that the cities are asking for the Peck proposal while the country districts are opposed to it. All of the circuits of the state except two or three have adopted as a rule of court what the Peck proposal provides, and this rule is in effect in the district embracing Ashtabula county, from which the gentleman comes who asks the question.

Does the gentleman think that Geauga county is one of the city counties? Is Columbiana county? Is Harrison county? Is Noble or Monroe? Take your map of the districts of the state and you will find your answer and the answer will be diametrically opposed to the statement of the gentleman from Auglaize [Mr. HOSKINS].

Mr. LAMPSON: There has been considerable complaint in those counties along that line.

Mr. FACKLER: The object of the Peck proposal is simply this, and it is an object that has been advocated by every progressive lawyer and thinker on the subject of judicial reform in the country: "One trial and one review." What is sought here? Here is an effort on the part of some men to cut out that principle as applied to equity trials. They say you would not save any money. You can try cases in an appellate

court in a few hours and if you attempt to bring all the witnesses before the court on appeal, in a case involving considerable testimony, you will have lawyers' fees and witnesses' fees piled upon the litigant. No, sir; this is a help to the poor people. The proposal here offered is cheaper. Very much so in the long run.

Mr. CROSSER: Have you tried any cases in the circuit court?

Mr. FACKLER: Yes.

Mr. CROSSER: Didn't you find that you could try them as rapidly and more so by the introduction of the witnesses?

Mr. FACKLER: Not nearly so.

Mr. BROWN, of Highland: Don't you regard a review de novo as more valuable for your case than an appeal on the record?

Mr. FACKLER: That depends entirely on which side of the case you are on. Taking it as an abstract proposition, stripped of interest in the matter, you will get just as near justice by trying the case rightly in the lower court and then taking the record up to the higher court. The result of what we have now is really slipshod trials in the lower court, because the lawyers feel they can go to the higher courts and try it over again. That means expense and extended litigation.

Mr. BROWN, of Highland: It seems to me that you are not trying to reach justice.

Mr. FACKLER: We are trying to reach justice, and we believe it is best to reach justice with one trial and one review.

Mr. WINN: Suppose you were trying an equity case in a certain city of the state where most of the judges are boss-made, and on one side of the case was a litigant of the same persuasion as the boss and on the other side was a man fighting the boss, what chance do you think the man against the boss would have before the boss-made judge?

Mr. FACKLER: That is an argument that goes not to the system of jurisprudence, but to the manner in which you carry out your system of jurisprudence, and I submit you will have just as much chance if you take that case upon a transcript of testimony to the higher court as if the lawyers had the right to bring in all the witnesses and spend all the time trying the case over again in the second court. It does not take away the right to an appeal; it simply says on what facts you try the appeal; that it is on the testimony below. I believe if this amendment is adopted it will strike out of the Peck proposal very much of its merit.

Mr. PETTIT: What right have you to impugn the motives of any lawyer?

Mr. FACKLER: What did I say?

Mr. PETTIT: You said substantially that lawyers are taking cases to higher courts to make more money out of them.

Mr. FACKLER: That is the effect of it. Now let us vote upon this proposition. This is the last stand to try to save an equity case from "one trial and one review," which has been established as a sound and progressive doctrine in judicial procedure.

Mr. ROEHM: When this amendment is voted on won't the next move be to provide a method for going to the supreme court?

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Mr. FACKLER: I don't know. Some people are never satisfied with an end to litigation. Litigation must end somewhere, and usually it is to the advantage of the poor litigant to have the end quickly.

Mr. HOSKINS: Will the gentleman yield for a question?

Mr. FACKLER: No; I will not.

Mr. TALLMAN: I want to start with the idea that if we have our equity case in the court above we have one trial and one review. I presume the gentleman used the word "review" in the sense of reviewing the law in the case, which is the only sense in which it can be used unless there is testimony and the case is heard on testimony above. In jury trials they have a judge and a jury and the case is again heard by a judge on the facts on the motion for a new trial. It is heard upon the facts below by thirteen men. It goes on error, and the questions of law are reviewed. When an equity case goes up on appeal it is heard upon the facts and the law by the judges who pass upon that case, and it is reviewed as to the facts and there is a review as to the law. If the facts are reviewed it is a better review than a review of the law alone. The idea of having only one trial and one review is theoretical; I do not care what you call it. I want to ask this question: Doesn't the judge who tries the case below decide upon what is competent and what is incompetent testimony? Let us have your boss-made judge upon the bench, let us have your boss-counsel trying his side, and let us have a man opposed to the boss-made judge as one of the parties to the case. How about your review if you want to have it as does Judge Peck, the Martin Luther of this century? The judge below determines the law and what is competent testimony and he determines what is to go into that record of the case and what doesn't go into the record of that case. The court of appeals can't read or review evidence that is excluded, and you can always beat a case on review before the court of appeals if you keep out all of the proper testimony, or a good portion of it, that ought to have been admitted below. I want to ask some of you, how are you going to get that testimony before the court of appeals if it is not in the transcript and the court below has erred—this boss-made judge, this narrow-minded judge, this judge who has made up his mind before he took his seat upon the bench?

How are you going to get the whole testimony before the court above if the judge chooses to rule it out? There is only one way on earth that you can do it. You would have to go up by a petition in error and you would also have to go up by appeal. Now if you cannot get your testimony in the transcript which has been wrongfully excluded by the court below by this boss-made judge how are you going to get it there if you are not allowed to bring the original witnesses before the court? That is what I would like to know. Here we are called stupid conservatives. I admit, if this is stupid conservatism, I am a stupid conservative, and I would rather be a stupid conservative than that kind of a progressive, a progressive that goes backward—a crawfish. That is another name for it, and it is just as apropos as the one applied to us.

Mr. JONES: Your inquiry was, how the evidence rejected by the boss-made judge is gotten into the record. How would it get into the record in a law case?

Mr. TALLMAN: By exception.

Mr. JONES: Could it not be gotten into the equity case just as in the law case?

Mr. TALLMAN: When you except to the testimony, how are you going to get it there on petition in error?

Mr. JONES: Could you not get it in the equity case the same as you get it in the law case?

Mr. TALLMAN: The court rules it out and the transcript only embodies what the court permits.

Mr. JONES: But wouldn't you get the evidence in the equity case just the same as you would in a law case?

Mr. TALLMAN: The court above would say in the common law case that the court below erred in ruling it out.

Mr. JONES: But if he ruled it out erroneously in the one case would it not be just as erroneous as in the other?

Mr. TALLMAN: Would you send it back to another jury?

Mr. JONES: It certainly would be sent back if there were wrongful exclusion of evidence.

Mr. TALLMAN: We don't want a crawfish—we don't want to go back.

Mr. JONES: Well, why go back in the one case and not in the other?

Mr. TALLMAN: Simply because the other doesn't go up and you can't hear it on testimony. We have a class of cases where the facts have been heard and have been passed on by the jury, but you cannot get them up to the other court.

Mr. DWYER: If the court refuses to give you a proper transcript can you not compel him by mandamus?

Mr. TALLMAN: There is no trouble in getting the transcript. The trouble is in regard to what the transcript contains, when you take it to the appellate court.

Mr. REDINGTON: I acknowledge that I am oftentimes influenced by experience, and I find that some of the delegates here are also influenced by experience. Before I state the reason for my opinion upon this proposition, I want to give you one illustration only. I could give others in my practice, but one will suffice. About twenty-two years ago a father and son got into a controversy over a farm. The son obtained possession, claiming he obtained possession under a gift from his father and that he had made valuable improvements thereon, and he claimed the title. The father denied having given the son the farm as a gift, the farm still being in the father's name. I happened to represent the son. We brought our evidence to the common pleas court as a trial court, and after the evidence was in I received a lecture from that court. The court took the position that he would always believe a father as against a son in property transactions of that kind, that the father knew what the son should have and the father could be trusted to do what was right by the son. The court absolutely ignored the testimony. I appealed the case to the circuit court. That was twenty odd years ago, when the circuit court heard their witnesses. They heard the case upon the same evidence and they gave the farm to the son. Now, how can you get justice between two parties in a case like that under this proceeding? While we are making these courts, why not make them right? I don't care what the circuit court has done. I don't care anything about courts de novo or courts of

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appeals, but as long as we pay the court and there are only a few equity cases that go to the court while they have ample time and the difference between hearing a case on record and with the witnesses is a mere bagatelle, I believe that the equity case, as a matter of justice between the parties, ought to be heard de novo in the circuit court. Six months may have intervened between the two hearings, and you may have found some new witness or some document that will add to your side. Why can't the parties, as between man and man, receive full and complete justice and introduce the record below plus the new testimony discovered? As long as the court is here, why not allow it to hear the new evidence if the parties demand it? No harm is done.

Again, as has been well said, the trial judges do not always allow you to introduce such testimony as you think ought to be introduced, and how are you going to introduce that record into the trial above when it hasn't that evidence in it? You can do it in an error case by going to the stenographer and have him put in the record what you expect to prove. But on the hearing of an equity case, as long as that evidence doesn't get to the ears of the court he does not weigh it, and you have no advantage of it in the appealed case, for it is not in the record, but you have in an error case. It makes no difference what you call the court. The mass of the people want to know when they go into a court that all of their evidence will be heard, and it seems to me it is a play upon words to say that one man can get justice in a review as well by reading a cold record. Here is a man whose appearance would convince anybody that he is telling the truth and yet a scalawag can go upon the stand and contradict him. The testimony of the scalawag will look as well as the testimony of the credible man. How can the judge above decide between those two parties?

Now, I didn't expect to say anything, but the remarks have gotten on my nerves. I have had some experience and I don't believe it is just between the parties to shut off this trial by hearing witnesses in the circuit court in an equity case where there may be a settlement of an estate, a construction of a will, a receivership, an injunction or a great many cases of that character. I am not satisfied every time with the judgment of the trial court in those cases. I know oftentimes, where certain corporations are interested, they expect certain things from the court. I feel the judgment in advance, and I believe we have a right when we go to the second court to let that second court hear all of the testimony, hear the witnesses, hear the evidence and dispose of the case in such a way that justice may be done between the litigants. That is what the people want. They don't care what you call the courts. You are making the court and you are giving it certain powers. I don't care what the supreme court has done, I don't care what rules of common law the courts in England follow; you are arranging for the courts in Ohio, and I think you should arrange things having in view somewhat the practice that we have had here in such cases.

Mr. FESS: As a layman, you may regard it as presumptuous for me to speak upon this proposition, but as a practitioner of law with ten years of experience and as a teacher of legal procedure in a college for five years. I am partially conversant with the method of legal pro-

cedure as practiced in the courts today. I came to this Convention with no pledge written upon paper on any proposition, but I came here with a pledge to myself that if there were any possibility of reforming the methods employed now by the judiciary so as to prevent delays and make it possible for litigants to reach the end of a lawsuit without unnecessary loss of time and expenditure of money, I would do it, and I am going to speak to you now in favor of that idea.

Mr. HOSKINS: Will you tell the Convention how you are going to make litigation any shorter by the adoption of this original proposition?

Mr. FESS: If you have a trial in the lower court and insist upon having the case retried in the upper court on the evidence introduced orally you have multiplied the possibility for delay and expense. You insist upon having a retrial of the case de novo in the upper court.

Mr. HOSKINS: Is not the review upon the evidence the same thing in point of expense as the hearing of the witnesses?

Mr. FESS: No, sir; the review on the evidence will not bring in testimony de novo.

Mr. HALFHILL: Do you not know that the preparation of the stenographer's transcript and the fees charged for it are vastly in excess of the expense of litigant's taking the testimony into the circuit court for another trial?

Mr. FESS: I do not know that is true. I would think that would depend entirely on the character of the case.

Mr. HALFHILL: That would be true in any case. The testimony of ten witnesses, covering a day in the common pleas court, will make a transcript that will cost \$75 to \$100. So, on that statement, would it not be much cheaper for the litigant to take his witnesses at \$1 per day and mileage into the circuit court?

Mr. FESS: Don't pick out a single instance and use it to apply under all circumstances. You may find a case where the transcript will be more expensive than the retrial, but the principle is the thing we are going upon. We do not see any necessity for the lawyers' contention that when a trial has been heard in a court there must be another retrial of it. That is the thing we want to avoid. I insist that we must reach some form of reform that will cheapen and make possible for us to reach an end of a trial without doing injustice to any one.

If you carry this amendment I am ready to vote against the whole proposition, for we might as well give it up so far as reform is concerned. I insist that we come to some conclusion here, and therefore I move that we table this amendment and thus bring it to a test one way or the other.

The yeas and nays were regularly demanded, taken, and resulted—yeas 58, nays 51, as follows:

Those who voted in the affirmative are:

Baum,	Doty,	Harbarger,
Beatty, Wood,	Dunlap,	Harter, Huron,
Beyer,	Dwyer,	Harter, Stark,
Bowdle,	Fackler,	Henderson,
Colton,	Farnsworth,	Hoffman,
Cordes,	Farrell,	Hursh,
Crites,	Fess,	Johnson, Williams,
Davio,	FitzSimons,	Jones,
DeFrees,	Hahn,	Kehoe,
Donahay,	Halenkamp,	Knight,

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Kunkel,	Read,	Tetlow,
Lambert,	Roehm,	Thomas,
Leete,	Rorick,	Ulmer,
Leslie,	Shaffer,	Wagner,
Longstreth,	Smith, Geauga,	Watson,
Malin,	Smith, Hamilton,	Wise,
Mauck,	Stamm,	Woods,
McClelland,	Stevens,	Mr. President.
Moore,	Stewart,	
Peck,	Stilwell,	

Those who voted in the negative are:

Anderson,	Fox,	Norris,
Antrim,	Halfhill,	Nye,
Beatty, Morrow,	Harris, Hamilton,	Okey,
Brattain,	Holtz,	Partington,
Brown, Highland,	Hoskins,	Peters,
Brown, Pike,	Johnson, Madison,	Pettit,
Campbell,	Keller,	Pierce,
Cassidy,	Kerr,	Redington,
Cody,	Kilpatrick,	Rockel,
Collett,	King,	Shaw,
Crosser,	Kramer,	Stalter,
Cunningham,	Lampson,	Stokes,
Dunn,	Marshall,	Taggart,
Earnhart,	Matthews,	Tallman,
Elson,	Miller, Crawford,	Tannehill,
Evans,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Winn.

The roll call was verified.

So the amendment was tabled.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

In line 8 strike out the first comma and all following in that line.

In line 9 strike out the first four words and insert the following: "consist of a chief justice and six judges."

In line 20 after the period insert the words "The chief justice and".

In line 20 change the capital "T" in the word "The" to a small letter.

Mr. KNIGHT: I shall take only three or four minutes to show why I offer this amendment. I want for the first time to bring a direct vote on the question of the constitution of the supreme court. The purpose is to avoid the question of a divided court upon important matters that may come before the supreme court. If an equally divided court affirms the judgment of a lower court, that is of interest to all the people. Further than that, we have provided distinctly in this provision that the judgments of the court of appeals are final, that no ordinary case can be taken from the court of appeals to the court of last resort until or unless there be a diversity of judgment in two different circuit courts or courts of appeals. Often in one circuit a question has been decided one way and in another circuit it has been decided just the other way. Under this provision that would be certified to the supreme court and the supreme court being divided affirms the judgment of the lower court. So if two of those cases should go up at the same time, decided in an exactly opposite way in the lower courts and the supreme court divided equally, each of those cases would be affirmed when the decisions were diametrically opposed to each other.

During the noon recess I had an opportunity to speak to a number of attorneys, and one of them called my attention to a matter that arose in his own practice in

Missouri, where, within the last year, he himself has happened to be engaged as an attorney. There they have two appellate courts and they have a rule like this: Where there is a diversity of decision by the two courts of appeals upon a question, it then goes to the supreme court. In Missouri with only those two courts—where we are going to have eight—contrary decisions do arise; my informant says that in his practice they have arisen in those two courts and that they had to be sent to the supreme court to reconcile the decisions of those two courts of appeals. Now, if we have eight we multiply by at least four—and I think if we apply the proper rule of arithmetic it would be many times four—the number of conflicting decisions they would have in a state where there were only two courts of appeals. Therefore, I do not think it is a good idea to have a case affirmed by an equally divided court. The court should be constituted of an uneven number of judges in order that there cannot be a divided court even in the few instances where the supreme court may have to pass upon conflicting decisions from two different courts of appeals. If there were an absent member, leaving an equal number on the supreme court bench, the supreme court would probably decline to hear the case until the absent member returned.

Now, the reason I increase the court to seven rather than reduce it to five is that to reduce it to five would legislate out of office a present member of the supreme court bench, whereas to increase it to seven would simply necessitate the election of a chief justice.

A DELEGATE: There are only five now.

Mr. KNIGHT: There will be six on the bench before you get this passed.

Now, whether the supreme court business is decreased or increased by this proposal makes no difference; the thing we want above all other things is certainty as to decisions. In the second place we want expedition, and in the third place we want a court that will have weight, and on account of the very size of the court the decisions of that court will have weight not only in this state but in others, and it will make it impossible ever hereafter to have thrown at us what was published widely a short time ago when the president of the American bar association said publicly that if any one would give him any price at all for his Ohio State Reports he would be glad to get the money out of them, because they were valueless in his practice. I think we want to make a supreme court that shall command respect at home and abroad. I think increasing the number of judges by one and putting the chief justice on the bench will be money well expended, for we have done something to expedite justice and to give us greater confidence in the court than we now seem to have, and we avoid the possibility of a divided court, a court divided at a point where we cannot afford to have it divided when we are making our courts of appeals the courts of last resort in so many cases.

Mr. PECK: I want to speak a moment about this matter. If the judgment of the Judiciary committee is of any value at all on any question it is on this question, because they very carefully considered it for quite a while and discussed it calmly and dispassionately when everybody was there, and there was a considerable tendency at one time to adopt the view expressed by the

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gentleman from Franklin. Upon final and full consideration, however, it was agreed by everybody present that it was not advisable to increase the judicial force of the state, especially the supreme court, the duties of which we are reducing. We do not want to put another man into a court that many of us think will not have enough to do under its reduced jurisdiction. What would the people say about that for economy, and what will they say about increasing the judicial force of the state when it is not needed?

Mr. KNIGHT: Has not the gentleman forgotten that this new proposal makes the entire court sit in one body, whereas it has been sitting in two divisions?

Mr. PECK: How will seven expedite it? Six men can do just as much as seven.

Mr. KNIGHT: Does not the reduction of the supreme court to one body instead of two, as it is now, offset the claim that we are reducing the work so that they won't have anything to do?

Mr. PECK: I believe it is reducing the work greatly. I think we will lighten the work considerably and enable them to keep up with their docket. If that does not happen I will be surprised.

The people have the final say, and we want the people to be able to see that we have not legislated out any judge and we have not created any new judges. We have simply readjusted the judicial work so that in our opinion they will do the work better and more promptly. Let us maintain the position and don't let us have anything to explain.

Mr. KNIGHT: How do you dispose of the cases that I have referred to?

Mr. PECK: Where two conflicting decisions come up from two different circuit courts at the same time and the court is divided equally?

Mr. KNIGHT: Yes.

Mr. PECK: I don't think that will happen once in twenty years. It is a negligible quantity.

Mr. KNIGHT: It has happened in this state.

Mr. PECK: It might, but it is not worth making an amendment to provide against. The supreme court would work that out. They will contrive to make a decision and to make it harmonious. Our judges of the supreme court are honest and conscientious men. They are good lawyers, too. No man has heard me in the whole course of this discussion say anything against the supreme court. I am not here to say anything against them or to cast any reflections, and when a case like that goes up before them, they would find some way to decide the question without dividing equally.

Mr. JOHNSON, of Williams. I offer an amendment.

The amendment was read as follows:

In line 9 strike out the word "six" and insert the word "five." Strike out lines 24, 25, 26 and 27.

Mr. WATSON: I offer an amendment.

The amendment was read as follows:

In section 2, line 9, strike out the word "six" and insert "one chief justice and four judges."

Mr. KING: I move that all amendments be laid on the table.

The motion was carried.

Mr. KILPATRICK: I offer an amendment.

The amendment was read as follows:

In line 14 strike out the second comma and the word "prohibition."

In line 58 strike out the second comma and the word "prohibition."

Mr. PECK: This sounds like a report from the Liquor Traffic committee.

Mr. KILPATRICK: Prohibition as used in this proposal really should be "writ of prohibition." The present constitution provides: "It shall have original jurisdiction in quo warranto, mandamus, habeas corpus and procedendo, and such appellate jurisdiction as may be provided by law." Now I do not know how many members there are in this Convention who have given any particular attention to that word "prohibition" as it appears in this proposal. The proposal before us says: "It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo and appellate jurisdiction, etc." If we understood what that word "prohibition" means there wouldn't be more than two or three votes against my amendment. With your indulgence I want to read what the writ of prohibition means as used in this proposal. It was not in the constitution of 1802; it was not in the constitution of 1873-'74, nor is it in the present constitution, adopted in 1851. Now the writ of prohibition is a writ issued by a superior court directed to a judge and the parties in an inferior court, commanding them to cease from the prosecution of some case upon a suggestion that the cause originally or some collateral matter arising therein does not belong to that jurisdiction, but to the cognizance of some other court. If this is put into the constitution and a case were commenced in the court of common pleas, or in any circuit court where they have original jurisdiction, one of the parties could go to the supreme court and ask for a writ of prohibition and the supreme court immediately could say to the parties of the lower court, "Get out of court; you have no right of action." In this state just a very short time ago a certain higher court did issue in fact writs of prohibition. I refer to the case which took place in Cincinnati a short time ago. They didn't call it a writ of prohibition, but it was a higher court issuing an injunction against the lower court to prevent it from doing certain things. We don't want to place in this constitution the right in the supreme court to say to the lower courts you cannot do thus and so, and for that reason this amendment ought to prevail.

Mr. PECK: This amendment was put in at the suggestion of Judge Worthington. He thoroughly explained it. This word "prohibition" was thoroughly explained by Judge Worthington and I do not think the gentleman could have heard Judge Worthington's argument on the subject on this floor. He gave the very case to which the gentleman alludes as a reason for placing this writ of prohibition in there, and certainly if anything could have stopped the unseeing action of the court of common pleas and the circuit court of Hamilton county, it would have been a very good thing. It was a bad exhibition of judicial conduct in that matter, and if some court above could have stopped it, it would have been a godsend. This writ is only used occasionally. I

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understood Judge Worthington to say it was in use under the constitution of 1802 and was left out of the constitution of 1851. At any rate the supreme court of the United States issues such writ. I have known that court to issue such writs to territorial and other courts. It is a rare writ. It is something that the average lawyer would not meet once in a lifetime, but it is one like a weapon adjusted to rare circumstances. It is not very often used, but when the circumstances arise it is a very handy thing. This supreme court is not going to be arbitrary and interfere in a case in which it has no warrant. We must always assume, and I have always assumed in my attempts to arrange this matter, and that is the proper basis of assumption, that they are all going to do their duty and do it honestly and conscientiously, and the possibility of abuse of power is no argument against the existence of power. You give any other body of men a power and they are liable to abuse it, but those powers must be vested somewhere. Every power necessary for the community must be entrusted to some one. It may be abused, but the person to whom it is entrusted will feel responsible.

Mr. DWYER: This writ is only used where the lower court is departing from its jurisdiction?

Mr. PECK: Only where the lower court is going beyond its jurisdiction and doing something it has no right to do.

Mr. STOKES: I move that the amendment be laid on the table.

The motion was carried.

Mr. JONES: I offer an amendment.

The amendment was read as follows:

Insert after the word "may" in line 30, the following: "and in cases where the decision of the court of appeals upon questions other than the weight of the evidence is not unanimous for a reversal of a judgment of an inferior court shall, upon application of a party in interest". Also strike out in line 64 the words "of public or or great general interest." In line 65, after the word "may" insert the following: "as herein provided."

Mr. JONES: Those who were present a few days ago when I spoke on this matter may recall that I discussed this to some extent at that time. The number present was very small at the time and I ask your indulgence for a few minutes to say something I may have said heretofore on this same matter. I called Judge Peck's attention to this amendment and he was under the impression that this provision was in the substitute. However, upon examination it appears that the amendment is not in this substitute proposal.

Mr. PECK: I wrote it into one draft and another got into the hands of the copyist.

Mr. JONES: This amendment is now some different from what it was when I first offered it for the consideration of the Convention. It is now intended to meet simply those cases in which the appellate court is not unanimous for the reversal of the case upon grounds other than the weight of the evidence. The objection made to this amendment before was that if a case should go to the supreme court the duty might devolve upon that court of reviewing the case upon the weight of the evidence; so I have now provided for

that class of cases, where the appellate court divides upon the question of reversal, that the case may, upon all questions other than the weight of the evidence, upon the application of a party in interest, be certified to the supreme court for decision.

Now it will readily be seen on a moment's reflection that this will only cover a class of cases where a member of the appellate court has coincided with the views of the common pleas judge, making two judges in favor of the judgment rendered below, and two court of appeals judges on the other side, so that you have a situation where there are two members of the reviewing court saying the judgment is wrong and two judges, one a member of the appellate court and the other the common pleas judge, saying it is right. It does appear to me in a case of that kind that the rights of the parties ought not to be concluded by that sort of a judgment of the appellate court, and that there should be some provision whereby the litigants can have the judgment in some way or other of more than two judges against two. If the case is reversed on the weight of the evidence it will of course go back for a new trial, but if the reversal is upon other grounds the appellate court may render the judgment which the common pleas should have rendered, and thus finally dispose of the case. If the case is taken to the supreme court merely upon the questions of law, you could have a determination by the highest court in the state of the questions upon which the lower courts have divided equally. The appellate courts are not going to divide upon questions of law unless one or the other of two situations exists. They may divide because they claim that one court of appeals has decided a question one way and another the contrary, or because the question has never been decided in Ohio and is a new question. Now, in either case, it is important to have the judgment of the supreme court upon the question which caused those four judges below to divide, two on the one side and two on the other.

The means of taking the case to the supreme court would be simply by the ordinary proceedings in error, and would require review by the supreme court merely of those law questions involved in the case. What will result if this sort of a provision is not incorporated into the proposal? A case comes to the court of appeals and two judges of the court vote to reverse and one to affirm. The case might go back to the common pleas court and be retried and come up again in the court of appeals with exactly the same practical results—that you have the rights of litigants finally determined upon questions of law with two judges of inferior courts of the state on one side of those questions and two on the other. It is hard to see how you are going to satisfy litigants with that sort of a final judgment.

If two judges of the court of appeals are in agreement with the judge below, you would have three to one, and it is suggested that where you have the concurring judgments of three members of these courts, two of the appellate court judges and one common pleas judge, that ought to be enough and ought to satisfy the parties. There is a good deal of force in that suggestion and so I have changed my original amendment and applied it only to reversals.

Mr. PECK: I am inclined to accept this amendment and I hope it will prevail.

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Mr. ANDERSON: I object to it. With all due respect to Judge Peck I cannot understand why the committee in favor of this proposal should accept that amendment. It would practically destroy the whole proposal. Let us analyze and see what it means.

1. It defeats the purpose of the proposal. I hope we understand the proposal by this time. Its purpose is to limit litigation and make it cheap, swift and sure; to give one trial before a jury and a court and one trial before a reviewing court, and let it stop there. If this amendment is adopted what have we? Take the witnesses before the jury, try the case, the judge charges the jury, the jury decides in your favor. The losing side takes the case to the circuit court or the court of appeals. On the question of the charge to the jury two of the judges of the court of appeals may say the court committed error and the other judge may say, "Yes, but that is a technicality." It is an error, but it is not prejudicial. Now you have the divided court that Mr. Jones has referred to. Under these circumstances it goes to the supreme court. What happens? Two years expire before you can have it heard as to whether or not the charge to the jury, although technically wrong, is prejudicial, and it costs hundreds of dollars to have that question determined. The supreme court says it is prejudicial and sends it back to the common pleas court; you try it all over again, and then probably the judge in charging the jury will change one sentence in the charge—

Mr. JONES: Why do you say, if this reform in the judiciary is going to get business through the courts so rapidly, that it will take two years for a case to be reached by the supreme court?

Mr. ANDERSON: I mean what I say.

Mr. JONES: Don't we hope that these cases will be promptly disposed of by the supreme court?

Mr. ANDERSON: No; because if your amendment carries there will be practically no change in the present system.

Mr. JONES: Would it not be much better after the case has once been tried and has gone to the appellate court, where there are questions of such serious nature that the appellate court divides upon them, to have the court of last resort immediately determine them? Would not that expedite business much more rapidly than to send the case back for another trial?

Mr. ANDERSON: You know that ninety per cent of the lawsuits that go from the common pleas court to the circuit court on questions of law go upon the charge to the jury or upon the admission of testimony or refusal to allow testimony to be introduced—some little technicality or other about evidence being introduced improperly. Ninety per cent of the cases that go from the common pleas court to the circuit court and up to the supreme court on error are predicated upon what I suggest.

Again, say that some witnesses are called. The Jones amendment is carried and certain questions are asked him and the common pleas judge permits him, over the objection of the other party, to answer. The losing party takes the case to the circuit court upon the evidence improperly introduced. The two judges hold it was a technical error and prejudicial. The other judge holds that technically it was an error, but not prejudicial.

What happens? In the course of two long years the case goes up to the supreme court; printed records, printed briefs, expense of hundreds of dollars, and the supreme court finds the circuit court was right, the evidence was improperly introduced, and you have to go back to the common pleas court and start all over again. Then when the same witness testifies the next time there is a change of the phraseology of his answer, in no way changing the substance, but still a change of phraseology, and it goes up again.

Mr. JONES: Does not the gentleman know that in actual practice in our circuit courts there is probably not one case in fifty, certainly not one case in twenty-five, where the circuit court fails to reach a unanimous conclusion? That being so, will there be a burdening of the supreme court to any great extent? Will not the provision in practice simply result in taking to the supreme court those cases in which important questions arise on which the court of appeals divides?

Mr. ANDERSON: Under conditions as now existing to some extent you are right, but we are now making the circuit court a court of last resort, and that is what we who are the friends of the measure want to have done. In the doing of that you are going to add responsibility and dignity to the court. If your amendment carries you offer to the court of appeals a premium to escape responsibility by having a divided court. The court of appeals can simply say we will escape responsibility and one judge will take one position and the other two the other and then the case will go to the supreme court at the expense of years — delays and hundreds of dollars of expense.

Mr. JONES: Does the gentleman mean to claim that in practice the court of appeals of this state, if this system is adopted, is going to degenerate into any such condition as he suggests?

Mr. ANDERSON: I mean this: We are trying to legislate, not in favor of the lawyers or the court, but in favor of the people, if I understand it rightly. Just as Judge Peck suggested, we cannot have a suggestion of reform that is not fought by the lawyers. I don't want to be unfair to the bar, but the only interest that a lawyer can have is the additional fee for doing additional work, which does not at best amount to much.

Mr. JONES: If the result is to facilitate a disposition of cases, why is not that in the interest of the clients and against what you claim is the interest of the attorneys?

Mr. ANDERSON: If I agreed with you that it helped to facilitate the cases, I would not be talking. As Judge King suggests, what if the circuit court were to find upon the weight of the evidence that the common pleas judge and the jury were wrong, and in addition to that found that the court committed an error in the charge to the jury, what would happen then?

Mr. JONES: Wouldn't the case go on to the supreme court?

Mr. ANDERSON: Then you would have all kinds of cases. Let us be honest and say we are against the proposal. Let us get out in the open and say we are not for it.

Mr. JONES: I don't like remarks of that kind.

Mr. ANDERSON: I move that the Jones amendment be tabled.

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The motion was carried.

Mr. TANNEHILL: I offer an amendment.

The amendment was read as follows:

Strike out lines 30 to 33 inclusive. Place a period after "jurisdiction" in line 64 and strike out "or cases of public or great general interest in which the supreme court may direct the court of appeals to certify its record to that court," in lines 64 and 65.

Mr. TANNEHILL: If we are going to make the court a court of last resort, let us make it a court of last resort. If we are going to fix an impassable gulf over which you cannot come up, let us prevent them from going down in the other direction. If you leave in this provision which I am seeking to have taken out, you will lose most that you are trying to gain in the way of reform. I think we all agree that the supreme court has been, in the past at least, too far from the people. If that court in the future should be, as it has been in the past, unfriendly to the people, and you put this provision in, and the lower courts make the decision favorable to the people and against the corporations, and the highest court of the land continues in the future as it has been in the past, friendly to corporations, as the proposal now stands, what is to prevent that court from reaching down and bringing that case up? I think this is an important matter and that these words ought to be stricken out of the proposal.

Mr. PECK: I hope this amendment will not prevail. This matter of certiorari has been attacked from the other side, and I was against that. The proposition was that the supreme court should have a right to get any cases up and I opposed that. Now the attack comes from the other side. They want to strike it out altogether. I do not believe in any impassable gulf, but I believe the supreme court should have the right occasionally to reach down and bring up cases to the supreme court. It is a great help to the United States court jurisdiction, this taking of cases from the circuit court of appeals, and this proposal is largely modeled upon that principle, which has been found to work well. I hope that this will be left as it is so that cases that should go up to the supreme court will be taken there and decided, and I move that this amendment be tabled.

The motion was carried.

Mr. KNIGHT: With the full consent of the author of the proposal I wish to offer a minor amendment and take a moment to explain.

The amendment was read as follows:

In line 66 strike out "the court of common pleas and superior courts" and insert in lieu thereof "a court of common pleas, a superior court or other court of record".

Mr. KNIGHT: Just after recess today Judge Peck introduced an amendment, which was adopted, inserting in lines 58, 59 and 60 the words "other courts of record". Evidently it was an oversight not to make the same amendment here. Incidentally, I offer this to try to correct the English a little. I do not wish to put any more work than is absolutely necessary on the committee on Phraseology. It will have enough to attend to at best.

The amendment was agreed to.

Mr. SMITH, of Hamilton: I offer an amendment.

The amendment was read as follows:

Add at the end of line 23: "All judicial officers of the state shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever."

Mr. PECK: That ought not to be here. There are several places where that might possibly go, but it is not germane to this proposal and I move to lay it on the table. There are twenty sections of article IV and several of them will have to be amended.

Mr. SMITH, of Hamilton: Do I understand you to say that to make the constitution conform to this proposal we shall have to change other sections in it?

Mr. PECK: There will be changes made in other sections. The committee on Judiciary is contemplating a number of them.

Mr. SMITH, of Hamilton: I am not sure that this Convention will want to do anything more in the way of judicial reform aside from this proposal.

Mr. PECK: Well, there are some proposals to the effect that the supreme court shall be limited in its power to punish for contempt. These matters will come in here and you can't help it.

Mr. SMITH, of Hamilton: I feel that if we are to reform the judiciary we had better begin right now. This last general assembly made an attempt to take the judiciary out of politics, but they didn't do it. Section 4965 still provides that parties of any kind may have partisan committees to decide nominations for judges. If my amendment carries the judiciary will be as free from politics as it can be made; it will sound the knell of party control of judicial nominations. To my mind this would be a most beneficial provision.

Mr. FACKLER: The legislature would have to enact additional legislation to make this amendment effective.

Mr. SMITH, of Hamilton: It would make section 4965 unconstitutional. The legislature has already provided the machinery to carry the idea out I have suggested. It would simply wipe out section 4965.

Mr. PECK: I think the gentlemen are all out of order. I move to table this amendment. I am in favor of this matter when it comes in its proper place, but not now.

The motion was carried.

Mr. PECK: I move the previous question on the amended proposal.

The motion was carried.

The PRESIDENT: The question is on the adoption of the amended proposal as offered by the member from Hamilton [Mr. PECK].

Mr. LAMPSON: I think this vote is upon the proposal as amended by the adoption of the amendment of the gentleman from Hamilton [Mr. PECK].

The SECRETARY: It is the final vote.

The PRESIDENT: The question is on adopting the proposal as amended.

Mr. KILPATRICK: As I understand it the gentleman from Hamilton [Mr. PECK] introduced an amendment and we are voting upon that. We are not voting on the original proposal. This is not the final vote.

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The PRESIDENT: Those amendments are voted on, the substitute amendment of the gentleman from Hamilton was adopted and this is the final vote.

Mr. FESS: I think there was a misunderstanding this morning. I made the motion that we adopt this amendment in order that it would be in shape to offer further amendments. It was adopted and they have offered amendments and they have been voted upon and disposed of.

The PRESIDENT: This is the final vote and the secretary will call the roll.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 78, nays 28, as follows:

Those who voted in affirmative are:

Anderson,	Hahn,	Miller, Ottawa,
Baum,	Halenkamp,	Moore,
Beatty, Morrow,	Harbarger,	Peck,
Beatty, Wood,	Harris, Hamilton,	Peters,
Beyer,	Harter, Huron,	Pierce,
Bowdle,	Harter, Stark,	Read,
Cassidy,	Henderson,	Roehm,
Colton,	Hoffman,	Rorick,
Cordes,	Johnson, Madison,	Shaffer,
Crites,	Jones,	Shaw,
Crosser,	Kehoe,	Smith, Geauga,
Davio,	Keller,	Smith, Hamilton,
DeFrees,	Kilpatrick,	Stamm,
Donahey,	King,	Stewart,
Doty,	Knight,	Stilwell,
Dunlap,	Kunkel,	Stokes,
Dunn,	Lambert,	Tannehill,
Dwyer,	Lampson,	Tetlow,
Earnhart,	Leslie,	Thomas,
Elson,	Longstreth,	Ulmer,
Fackler,	Malin,	Wagner,
Farnsworth,	Marshall,	Walker,
Farrell,	Mauck,	Watson,
Fess,	McClelland,	Wise,
FitzSimons,	Miller, Crawford,	Woods,
Fox,	Miller, Fairfield,	Mr. President.

Those who voted in the negative are:

Antrim,	Halfhill,	Partington,
Brattain,	Holtz,	Pettit,
Brown, Highland,	Hoskins,	Redington,
Brown, Lucas,	Johnson, Williams,	Rockel,
Brown, Pike,	Kramer,	Stalter,
Campbell,	Matthews,	Stevens,
Collett,	Norris,	Taggart,
Cunningham,	Nye,	Tallman,
Evans,	Okey,	Winn.
Fluke,		

The roll call was verified.

So the proposal passed as follows:

Proposal No. 184 — Mr. Peck. To submit an amendment to article IV, sections 1, 2, and 6, of the constitution.—Relating to the supreme and circuit courts.—Judicial.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

SECTION 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

SECTION 2. The supreme court shall, until otherwise provided by law, consist of six judges,

and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition, procedendo and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state and in cases of felony on leave first obtained, also in cases which originated in the courts of appeals and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such terms, not less than six years, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law.

Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below.

No law shall be held unconstitutional and void by the supreme court without the concurrence of all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void.

In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct the court of appeals to certify its record to the supreme court and may review and affirm, modify or reverse the judgment of the court of appeals.

SECTION 6. The state shall be divided into appellate districts of compact territory and divided by county lines, in each of which there shall be a court of appeals consisting of three judges and until altered by statute the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall continue to be judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the appellate districts respectively in which such vacancies shall arise and the same number shall be elected in each district. Laws may be enacted to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least

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one term annually in each county and such other terms at a county seat in the district, as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such courts by its judges and officers. Each judge shall be competent to exercise his judicial powers in any district of the state.

The respective courts of appeals shall continue the work of the circuit court and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the courts of appeals, subject to the provisions hereof, and the existence of the circuit court shall be merged into and its work continued by the courts of appeals.

The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo and appellate jurisdiction to review, affirm, modify, or reverse the judgments of the courts of common pleas and superior courts and other courts of record within the district as may be provided by law, and judgments of said courts of appeal shall be final in all cases, except such as involve questions arising under the constitution of this state, or the United States, or cases of felony, or cases of which it has original jurisdiction, or cases of public or great general interest in which the supreme court may direct the court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence and by a majority of such court of appeals upon other questions and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

The decisions in all cases in the supreme court and courts of appeals shall be reported, together with the reasons therefor.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: The next matter before you is Proposal No. 236 — Mr. Worthington.

The proposal was read the second time.

Mr. HARRIS, of Hamilton: Mr. President and Members of the Convention: The proposal referred to is one that I think will receive the unanimous support of the Convention. It is that of Judge Worthington, who asked me by a note on Monday night if I would take charge of the proposal on the floor, owing to his absence because of sickness. I have consulted with Mr. Harris, of Ashtabula, the chairman of the committee, and he has authorized me to speak in his behalf. The sole object of this proposal is to meet a condition which confronted Hamilton county two years ago when the famous Drake investigation was in progress. The supreme court of Ohio stopped that investigation on the ground that it

was not authorized by a concurrent resolution by both houses of the general assembly. This proposal simply meets that condition by giving to each house power to do the things contemplated originally. The attorneys in the Convention are familiar with the legal aspects and it will not be necessary for me to refer to them. I sincerely hope that you will pay the compliment to my honorable colleague and let me send a telegram to him that his proposal has been passed on second reading.

Mr. ANDERSON: The only language that has been changed in the proposal from the present constitution is that part which is italicized?

Mr. ROEHM: There was an amendment passed by the committee.

Mr. PECK: I hope this will pass. The power here conferred should be in each house.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 102, nays none, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Nye,
Antrim,	Hahn,	Okey,
Baum,	Halenkamp,	Partington,
Beatty, Morrow,	Halfhill,	Peck,
Beatty, Wood,	Harbarger,	Peters,
Beyer,	Harris, Ashtabula,	Pettit,
Bowdle,	Harris, Hamilton,	Pierce,
Brattain,	Harter, Huron,	Redington,
Brown, Highland,	Harter, Stark,	Rockel,
Brown, Lucas,	Henderson,	Roehm,
Brown, Pike,	Hoffman,	Rorick,
Campbell,	Holtz,	Shaffer,
Cassidy,	Johnson, Madison,	Shaw,
Collett,	Johnson, Williams,	Smith, Geauga,
Colton,	Jones,	Smith, Hamilton,
Cordes,	Kehoe,	Stalter,
Crites,	Keller,	Stamm,
Crosser,	Kerr,	Stevens,
Cunningham,	Kilpatrick,	Stewart,
Davio,	King,	Stilwell,
DeFrees,	Knight,	Stokes,
Donahey,	Kunkel,	Taggart,
Doty,	Lambert,	Tallman,
Dunlap,	Lampson,	Tannehill,
Dunn,	Leslie,	Tetlow,
Earnhart,	Longstreth,	Thomas,
Elson,	Malin,	Ulmer,
Evans,	Marshall,	Wagner,
Fackler,	Matthews,	Walker,
Farnsworth,	McClelland,	Watson,
Farrell,	Miller, Fairfield,	Winn,
Fess,	Miller, Ottawa,	Wise,
FitzSimons,	Moore,	Woods,
Fluke,	Norris,	Mr. President.

So the proposal passed as follows:

Proposal No. 236 — Mr. Worthington. To submit an amendment to article II, section 8, of the constitution. — Relative to investigations by the general assembly.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend section 8, of article II, of the constitution shall be submitted to the electors to read as follows:

ARTICLE II.

SECTION 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceedings, punish its members for disorderly conduct;

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and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. ANDERSON: I move that 2,500 copies of the Peck proposal as passed on second reading be printed. The motion was carried.

The VICE PRESIDENT: The next business in order is Proposal No. 93 — Mr. Earnhart.

The proposal was read the second time.

Mr. ANTRIM: The one proposal recommended to the Convention for passage by the committee on Banks and Banking is a very simple measure, namely, double liability for the stock of incorporated institutions receiving deposits; and because of its simplicity and the absence of opposition to its adoption its consideration need take very little of the precious time of the Convention.

Mr. PECK: Will you allow me a question right there?

Mr. ANTRIM: Yes.

Mr. PECK: I want to ask whether this proposal applies to building and loan associations?

Mr. ANTRIM: I think so.

Mr. PECK: You want to be very careful about that. You will raise a hornets' nest. You will be sorry you ever fooled with it.

Mr. ANTRIM: However, from the fact that this proposal is a substitute for a state guarantee deposit proposal, from the further fact that Hon. W. J. Bryan, in his able address before this Convention eloquently recommended the guarantee of deposits, and finally lest some ultra-progressive delegate under the hypnotic influence of the peerless leader should be tempted to offer the original proposal as an amendment to the substitute, I decided to make a hasty review of the history of banking for the purpose of discovering, if possible, a precedent that would warrant the advocacy of the idea of guaranteeing deposits.

At this point, it was my idea to take you on a little excursion into the history of banking, but because of the resolution recently passed limiting the time of speakers to half an hour, it will be necessary for me to give you instead a little aeroplane flight. I will be the aviator and I shall want to go very rapidly. However, the flight will be sufficiently slow to permit of a bird's-eye view.

We shall start away back in an old historic city in Italy, and we find that the first bank organized was in Venice, in 1171. A few years later several other banks were established in Italy, one in Genoa, another in Florence. For a great many years banking in Italy, as well as to a certain extent banking in Europe, in the matter of international banking, was in the hands of these three cities. Then came a number of centuries when very

little was done in the banking business. That was during the Dark Ages. During the Dark Ages of European history we find nothing of any importance in banking history and we pass to the Bank of Amsterdam, established in the year 1609. Previous to the organization of this bank two important handicaps were found in the banking business. One was the scarcity of coin. Coin was very scarce all over Europe. The other handicap was the inability of reaching a basis of equivalence among the different coinages. When the Bank of Amsterdam was started in 1609 a way was found to remove both of these handicaps and it was found in this way: In the first place, the bank received all kinds of coin and gave credit for it in Dutch money; secondly, this furnished a good deal of money which was simply representative of coin deposits. Because of these two facts the trade of Europe was given a very wonderful impetus. We find in connection with the banks of Italy, to which I have briefly referred, as well as in connection with this great Bank of Amsterdam, which played an important part in the banking business in the seventeenth century, that no idea of guaranteeing deposits was ever mentioned or ever heard of by any of the people of the time.

From the Bank of Amsterdam we go over to the Bank of England, which was established in the year 1694. It was established to assist the government to liquidate government obligations and we find this bank has had a successful history from the time of its organization down to the present day. It became what we might call an impregnable bank after the "Peel Act" was adopted in 1844. At the present day we find the currency of England the safest in the whole world. Only 20,000,000 pounds is based on anything but gold. Twenty million pounds is based upon securities and all the rest is based on bullion or gold coin. The idea of guaranteeing bank deposits, as far as I know, has never been mentioned and never been considered in the British Isles! And this bank, being the reserve agent not only of the banks of the British Isles but of all the banks that have to do with British trade, we can see that the idea of guaranteeing bank deposits would not be considered.

From England we go over to the Bank of France, and we find that the first French bank was established in France by that most remarkable character, John Law, a Scotchman. We have all heard about the Mississippi bubble, or the Mississippi scheme, which was started in order to relieve the French government in its financial straits. John Law started the first bank, but it came to grief after the Mississippi bubble, of which Emerson Hough has written, burst. After the breaking of the Bank of France which was started by John Law we find little in banking history of any importance down to the year 1776. Then we have a state bank organized and from that time until the establishment of the great bank by Napoleon several other banks were organized. The banks that represented France during the eighteenth century were not very important institutions, but the great Bank of France started by Napoleon may be considered one of the great banks of all history. From the day it started until today it has often been in trouble, particularly during the Franco-Prussian war, but there never was a time when it came near insolvency. Its most remarkable period was during the Franco-Prussian

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war, when it paid the indemnity of the French nation amounting to a billion dollars and at the same time liquidated its own war debts.

We find that the great Bank of France does not even guarantee its circulation. We hear of guaranteeing bank deposits, but in France, whose credit is second to none among all the nations of the earth, the great bank of the nation does not even guarantee its circulation, and of course the idea of guaranteeing deposits was never heard of among the French people.

Then we go to Germany and we find the first great bank in Germany established in 1765, in Prussia. This bank operated in the German nation for quite a number of years, but really the first great bank of Germany was started after the war with France, when we have the Reichsbank, or Bank of the Empire. The remarkable thing about this bank is the wonderful elasticity of its currency. In this respect the Bank of Germany is one of the great banks of the world and it is the one thing needed in our banking system to put our banks on a sound footing. The Bank of Germany, the great central bank of the empire, has two-thirds of its circulation based on short-times notes and the other one-third on gold coin and bullion, and the same thing that I have said about the banks of Italy, the Bank of Amsterdam, the Bank of England and the Bank of France is true of the Bank of Germany as well as of the banks of all other nations. In none of these banks do we hear anything about guaranteeing bank deposits.

With this brief extemporaneous introduction, we come down to the banks of the United States. We find over a century elapsed after the first settlement in the United States before the first bank was established. It was in the year 1714 that Massachusetts led the way by starting a bank of issue. The sole purpose of this bank was to issue notes, and its notes were based on land security. Other banks similar to this one were from time to time organized. The first great name in the financial history of our country is that of Robert Morris. Unlike John Law, France's first banker, who started his banking career under the most propitious circumstances and ended it most disastrously, Robert Morris established America's first real bank under rather discouraging circumstances, but this institution has had an uninterrupted and honorable history to the present day. Robert Morris and several other patriotic men of means of his day accepted, in the year 1780, bills drawn by congress, and established on their own personal credit in the same year the Pennsylvania Bank of Philadelphia. Its sole purpose was to render aid to the government. This it did in a time when assistance was most sorely needed. Too much credit can not be given the father of American banking and his loyal supporters. This bank was replaced by the Bank of North America during the following year. It was much larger than its predecessor and had the double purpose of aiding the government and fostering the struggling business enterprises of the country. It issued a limited number of notes. This bank was in 1781 chartered by the state of Pennsylvania and has continued to the present date.

Between the establishment of the Morris Bank and the first bank of the United States several state banks were organized and played an important part in the financial history of those early days. In 1791 congress

chartered the Bank of the United States. With this bank is associated the name of Alexander Hamilton, the greatest financier of the eighteenth century. That the bank enjoyed the confidence of foreign investors is shown by the fact that of the 25,000 shares, 18,000 shares were sold abroad. Still the control was in the hands of home stockholders because of a special way of voting the stock. Naturally the first bank of the United States dominated the financial interests of the country; still the state banks were also a factor in the country and their number increased. However, with the expiration of its charter the Bank of the United States was obliged to go into voluntary liquidation on the ground of the alleged unconstitutionality of its charter. Of course the young republic missed its financial institution. The Bank of the United States had exercised a salutary influence over the numerous state banks and with its disappearance state banks rapidly increased, note issues expanded unreasonably and an unstable condition of affairs resulted. During the five years that intervened between the expiration of the charter of the first bank of the United States and the chartering of the second bank of the United States the finances of the nation fell into a very disordered state. Of course, the war with England during this period had much to do with the financial condition of the times. Still we feel that if the country had had a strong, conservative institution of its own the result might have been vastly different. The country was entirely dependent on state banks, and because of their advances to the government, with some exceptions, they were forced to a suspension of specie payments.

The discontinuance of the first bank of the United States marked the rise of private banking. Stephen Girard purchased the outfit of the bank and founded a private bank with a capital of \$4,000,000. There had been private banks before, though all of them had been small institutions. Girard floated a government loan, which the government had vainly sought to obtain, and this assisted materially in the effecting of an early peace. Private banks were followed by savings banks, which came into existence in 1816. Some years later, in 1831, building and loan societies had their origin.

On April 3, 1816, the second bank of the United States was established. The capital was \$35,000,000, of which the government took \$7,000,000. With the organization of the second bank of the United States pressure was brought to bear on the state banks and they resumed specie payments. Moreover, they increased and prospered. Unlike the first bank of the United States, the second bank had an unfortunate termination and its undoing was largely caused by Andrew Jackson, who was a bitter opponent of the institution. He boldly stated in his message to congress in 1829 that he would veto the bill to renew the charter. He vetoed the bill in 1832 and thence proceeded to remove the government deposits from the bank. This, of course, crippled the institution, since the government had a great deal of money on hand. The old bank ceased to be a United States bank with the expiration of its charter, though under a charter granted by the state of Pennsylvania it operated until 1840. From the expiration of the charter of the second bank of the United States to the time of the Civil War the business of the country was all transacted through state banks. Of course, with

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banking principles little understood, with the undeveloped condition of the country, with the great area of the country compared to the population, with the imperfect transportation facilities, with the scarcity of both capital and coin, and with lax ideas of redemption, it is no wonder that the record of state banks is somewhat checkered.

In this connection let me say that from the year 1171 to 1829 no government or state or county or municipality or other political subdivision, or bank, as far as I know, had ever guaranteed deposits. In the year 1829 a law was passed by the New York legislature requiring all state banks to contribute to a so-called safety fund to the extent of three per cent. of their capital to take care of the losses of failed banks. This law, which is the parent of the notorious Oklahoma act, came to an ignominious end, and recent months have proved beyond the shadow of a doubt that the Oklahoma child will go to an early grave. Michigan and Vermont, which adopted plans similar to that of New York, each experienced a more disastrous failure than did the Empire State, and the states that have followed Oklahoma, Kansas, Nebraska, South Dakota and Texas—will some day realize the error they have committed.

Our financial history preceding the Civil War reveals the fact that there was a strong sentiment against a central bank. However, the exigencies of the war demanded the raising of large sums of money to meet extraordinary expenses, and because of this fact it was comparatively easy to establish a national banking system, though the system established was a compromise. The purpose of establishing a national banking system was to float government bonds and to provide a national currency. The plan of chartering national banks was proposed in 1861, emphasized in 1862 and made a law in 1863.

This introduces us to the banks of the present time, since the banks of today are the banks of the Civil War times with the changes resulting from a modification of federal and state laws. There are three classes of banking institutions in the country, namely, national banks, which are under the supervision of the government; state banks, which are under the supervision of the several state governments; and private banks, which are under the supervision of the owners. Of the national banks nothing need be said, since they are under the sole direction of the federal government. In the class of state banks are included commercial banks, trust companies and savings institutions. Here we might also mention building and loan associations.

The member here yielded to Mr. Doty, who moved to recess until tomorrow morning at 10:00 o'clock.

Mr. PIERCE: I move to amend to 7:30 this evening.

Mr. FOX: That will upset some of the arrangements of the committees. We have a special meeting of the committee on Legislative and Executive Departments this evening.

A vote being taken, the amendment was carried, and a further vote being taken, the Convention recessed until 7:30 this evening.

EVENING SESSION.

The Convention was called to order by the president, and Mr. Antrim, having yielded to a motion to recess, was again recognized.

Mr. ANTRIM: To resume, Mr. President and Gentlemen of the Convention, in the brief introduction I gave before the Convention recessed I brought out just one fact and that was that nowhere else in the world has there ever been such a thing as guaranteeing bank deposits.

With this introduction we come to the question, What is the nation doing to make more perfect the system of 7500 national banks, and what are the forty-eight states doing to make more perfect the 17,500 banking institutions which came under their supervision?

I will devote a few minutes to the celebrated Aldrich monetary plan, one of the most ingenious devices to place a nation's banks on a more stable footing ever conceived by a world financier. A few years ago we had a disastrous panic in our country. This panic showed very clearly the weaknesses of our financial system. With the idea of eliminating these weaknesses a commission was appointed by congress to investigate carefully all the great banking systems of the world. The commission took its time and did its work, and a plan has been evolved which, if adopted by congress, will, in the estimation of the great majority of the leading bankers of the country, revolutionize banking conditions in the United States and inaugurate an unexampled period of prosperity in our nation.

The exigencies of the Civil War gave us our present monetary system and we have made few changes in it, with the result that it has become a brake on the wheels of progress. Aldrich tells us that two things have prevented our making changes that would put us on an equal footing financially with the other great nations of the world, and these are our almost inexhaustible natural resources and the wonderful energies of our people. However, after the experience of three very disastrous panics, in the years 1873, 1893 and 1907, each of which caused the loss of billions of dollars, years of business stagnation and indescribable suffering among the poorer classes, the fact is gradually dawning upon us that we can obviate all this by the adoption of a monetary system similar to the monetary systems of Europe, where they have had no panics during the last half century.

Three facts have impressed themselves on all financial experts in connection with the devising of a monetary plan, and these facts are:

1. The people will not accept a central bank, since the banking history of our country shows a strong repugnance to the idea of an institution similar to the government institutions in England, France and Germany.
2. The interests, or "big business," must have no connection with the scheme whatsoever.
3. The plan must be absolutely free from politics.

The Aldrich monetary plan would create a great number of local associations and would place each bank of the country in one of them. These local associations would be united through district associations. And the several district associations would be merged into a great central association, which would have a capital stock equal to one-fifth the capital stock of all the thousands of

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banks of the country; would be the chief reserve agent of the nation's bank; would handle the note issue of the country, thus giving the most perfect elasticity to our currency; would be the depository and fiscal agent of the government; would be managed by directors representing all the banks of the country; would render perfect the co-operation of all the nation's banks through rediscount, thus making their combined resources an element of strength in times of storm and stress; would make examinations, reports and publicity of all banks much more satisfactory; would give self-government in the banking business and make the financial interests of the country less dependent on Wall street; would give the United States the large profits arising from the handling of the great import and export business of the country, nearly ninety per cent of which is handled by foreign banks; would save the people millions of dollars annually through stable and uniform interest rates, and would be an absolute preventive of panics.

The Aldrich monetary plan is clearly illustrated by A. Piatt Andrew, assistant secretary of the treasury. The fire protection of towns and cities formerly depended on scattered cisterns. A large fire occurring, if the cisterns in the neighborhood of the fire became empty the burning buildings had to be abandoned, although there were millions of gallons of water in other cisterns. After the great Chicago fire a plan was devised of concentrating the water, and the result was our modern water works system. This makes it possible that all available water be concentrated in one place. We have in this country twenty-five thousand banks, each isolated like the fire cisterns of the middle of the last century. In the event of a local financial panic the banks of the locality must depend on themselves. If the strain on them is too great they must fail, though thousands of other banks have an abundance of resources. The Aldrich plan simply combines the resources of all banks, thus making the failure of any sound bank a practical impossibility. All banks would be given the protection guaranteed by the Aldrich plan if they should want it.

We all know that business rests on credit, that credit is based on confidence and that confidence is necessary to the life of our banking institutions with their twenty-one billions of assets, an amount equal to the assets of all the other banks of earth. Lack of confidence has caused every panic in our history. The one aim of the Aldrich monetary plan is to anchor confidence in our national life.

Looking to the safeguarding of depositors, what can we say of the Aldrich plan? We can say that it would be the most effective means ever suggested to any nation in the history of the world to protect the interests of the depositors of its banks. By uniting all banks, giving, in a way, each the strength of all, it would prevent panics and render bank failures extremely rare occurrences.

The next question is, what are the forty-eight states of the Union doing in the management of their seventeen thousand five hundred banking institutions? Within the past few weeks I have made, in connection with the work of the banking committee, sufficient investigation of the banking laws of a number of the states in the Union to warrant my hazarding a few general statements.

1. Many of the states of the Union already

have state banking departments, and the remaining, I believe, are soon likely to have them.

2. States are gradually raising the minimum bank capital. In Ohio the minimum capital of incorporated banks is \$25,000, which is higher than in many other states. However, the minimum capital of private banks in this state is absolutely nothing, which means that the private banker can operate wholly with the people's money.

3. Regarding the use of the word "bank", some states are very strict, some moderately strict and some have no restrictions whatsoever. A number of states allow only incorporated institutions to call themselves "banks"; other states permit simply those institutions that are supervised and examined by their state banking department to bear the name "bank"; many states have restrictions of a minor character. Ohio has no restrictions.

4. In the matter of the supervising and examining of banks the states are making rapid progress. Perhaps a majority of the states today supervise and examine their incorporated banks; many states insist on supervising and examining all their banks, both state and private; an increasing number of states do not permit private banks.

5. Double liability in the case of the stock of state banks has become so common that few states of the Union still have only single liability.

The tendency among the states, then, is the organization of state banking departments, the raising of the minimum capital of banks, greater strictness respecting the use of the word "bank", the extension of supervision and examination to all banks and the adoption of double liability for incorporated institutions receiving deposits.

Is it not plain to see that all this legislation looks to the protection of the depositor? The depositor seems to be the one person in the minds of legislators in all the bills pertaining to banks and banking that are enacted into law.

To recapitulate: I have given a hasty resume of the history of banking in foreign countries, as well as a brief statement of the history of banking in this country, and I have discovered before the present day only three cases of deposit guarantee, and they were failures; during the present day, five cases, and their future is dark.

Why should one urge a state law looking to the guaranteeing of bank deposits when the Aldrich plan, which I have briefly explained, in some form is sure to be enacted into law by congress, and when the legislatures of all the states of the Union, through rapidly increasing wise banking laws, will eventually make our great banking system by far the safest in the world?

A law guaranteeing bank deposits and requiring all banks to make good the losses of failed banks is a pernicious law that, I think, can point to only two groups of experiments in the history of banking. In the first group, New York, Michigan and Vermont, all were failures; in the second group Oklahoma may be considered a failure, and Kansas, Nebraska, South Dakota and Texas, which, influenced by Oklahoma, considered the most accommodating state in the country for trying out all kinds of legislative acts, and affected by the great panic of 1907, passed laws providing for the guaranteeing of bank deposits, have not yet had enough experience under these laws to enable one to pass intelligibly upon them. It may be stated, however, that letters from all

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these states indicate that enlightened public sentiment has unqualifiedly pronounced against this plan of the state guarantee deposit law.

A law guaranteeing bank deposits is a serious blunder because —

1. There is an absence of precedent in all foreign lands to justify its enactment; it was an absolute failure to New York, Michigan and Vermont many years ago, has in the past four years worked badly in Oklahoma and is likely to be repealed in Kansas, Nebraska, South Dakota and Texas. Postal savings banks give all persons who fear banks a chance to deposit their money on interest with the government; the adoption of the Aldrich plan by congress will make our banking systems almost impregnable, and practically all of the forty-eight states are passing better laws to regulate state banks.

2. It would discriminate against the business on which the nation is most dependent. Why force bankers to guarantee their credits and exempt all other business men from guaranteeing their credits? How would you like an amendment to our liquor proposal which would force all liquor men of the state to make good the losses resulting from inebriety, losses of a physical, intellectual and spiritual character, losses to the home, losses to society, losses to the state? Why not group the farmers, the grocers, the merchants and other business men in separate classes and require them to guarantee one another against losses?

3. It would guarantee depositors against loss, but would not guarantee bankers against losses that might be suffered at the hands of depositors who are borrowers. Why not ask all borrowers to insure all banks against losses resulting from bad loans? If this were done there would be no need of guaranteeing deposits. In the nation's banks the deposits reach fifteen billions, though there is only one and one-half billions of money. The thirteen and one-half billions' difference is purely credit. Why should the banker guarantee what he creates to foster the gigantic business of the nation?

4. It would penalize all banks and thousands of stockholders because a comparatively few people deposit their money in bad banks. Can not we trust the people to select safe banks when there are so very few bad banks? In the state of Oregon it has been eloquently said the people are capable of selecting the best men from a ticket containing more than a hundred names and of voting intelligently on thirty-two amendments and laws after having perused a two-hundred-page book. In the name of reason, if the Oregon people can do this are we to doubt the ability of Ohio people to pick one good bank? Moreover, is a whole state to suffer because of the bad judgment of a few people?

5. It would put a premium on dishonesty, recklessness and incompetency, placing them on the same plane with integrity, conservatism and ability. This would result in an increase of the former and a decrease of the latter quality in the banking business. An increase of the former and a decrease of the latter would inevitably lead to an expansion of credit through loans. A large expansion of credit through loans would mean a weakening of the investments of banks on which the safety of deposits depends. And a weakening of the investments of banks would culminate in ultimate demoralization in the financial world.

6. It would destroy millions of dollars in investment values. The stock of many banks, because of the excellence of their record, the superiority of their management and the profitableness of their business commands very high figures, the same being frequently one hundred per cent and more above book values. This difference would disappear if all banks were put on the same plane through a guarantee deposit law. Besides, what would inspire one to build fine buildings, install substantial equipments, select the best available officers and clerks and make an effort to conduct a high-grade business, if all banks would be equally safe? By way of illustration, do you think our young people would make many sacrifices to secure a thorough education, if when their work were all done they would be placed on exactly the same footing with the ignorant?

7. It would lower the business standing of a community. The business of a community is reflected by its banks. Let the banks maintain high standards and a high class of business men is developed; let the ideals of the banks be lowered and the results are soon manifest among the business men. The bank is to the community what the teacher is to the school. Study the teacher and you know the school. Study the bank and you know the community.

8. It would foster panicky times by lowering the standard of bank assets. Some people think panics result from fear that deposits are unsafe. Panics result when people suspect that bank assets have been impaired, and this suspicion developing into a complete loss of confidence, indiscriminate runs on banks start. This can be illustrated by a reference to the panic of 1907, which started on Wall street and spread over the whole country. A few speculators played fast and loose with several New York banks, the people became suspicious regarding the assets of these banks, runs began on scores of banks everywhere, deposits were withdrawn, reserves shrank, loans had to be called, the business world found it necessary to curtail its operations, thousands of men were discharged, business stagnation resulted, millions of money were lost and thousands of people suffered indescribably. Had we then had the government reserve association and the elastic currency contemplated under the Aldrich monetary plan, the damage in this panic would have been confined to the guilty alone, and the rest of the country would have serenely attended to its business. The great trouble was that business could not be fostered by renewals of old loans and the negotiating of new loans because of the withdrawals of deposits and the shrinking of reserves.

9. It would be committing a great evil to eliminate a small one, and one that will continue to grow less from year to year. When one remembers that the capital, surplus and stockholders' liability are all behind the depositor, and when one realizes that these frequently equal the whole sum of the deposits, one sees how unjust such a law would be. The capital, surplus and stockholders' liability of the First National Bank of Cincinnati are fourteen and one-half millions and the deposits twenty-five millions. In this great bank the depositor has over one and one-half dollars behind every dollar he has on deposit. The capital, surplus and stockholders' liability of the Winters National Bank, of Dayton, exceed the deposits by \$250,000. So every depositor of

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this bank has considerably over two dollars of protection for every dollar of deposit.

These are a few of the reasons why a state law guaranteeing bank deposits would be unwise. The committee on Banks and Banking decided such a proposal should not be embodied in our constitution, but recommend in its place double liability for state institutions receiving deposits, and this proposal I hope to see made a part of our organic law.

Mr. ROCKEL: Will the gentleman permit a question?

The PRESIDENT: The time of the gentleman is up. I recognize the delegate from Warren.

Mr. EARNHART: I shall speak only a few minutes. I believe it is in the interest of justice. I believe the depositors should have interest for their money when they place it in banks other than national banks. And I do not believe it will work any hardship against the banks; in fact, I believe there will be a spirit of fraternalism engendered. I mean by that that the banks will have the confidence of the patrons, and that will prevent a rumor making a run upon the banks and thereby embarrassing the banks. I am sure it will be in the interest of the bankers on that account, and I believe, while I am free to say that it does not afford absolute protection, that it goes a long way toward it. I went before the committee by invitation and I told them I was aware of the fact that there would be considerable opposition to an Oklahoma assessment plan and that I would be satisfied as the proponer to have a double liability, the same as we have in the national banks, and the committee has proceeded along that line. Now it seems to me, taking this view of the matter, and reviewing the past, that this proposal ought not to have a very great deal of opposition, because nothing wrong is being asked. It is not going to inflict any hardship, but rather a benefit upon the banks themselves and it needs no extended argument. I do not take any honor on myself for the introduction of this proposal. I want every member of the Convention to share equally with me in giving the people of Ohio the benefit of the provisions of this proposal, and I hope the Convention will consider it and pass it. If there is any amendment proposed that will strengthen this proposal it will meet with my approval. In the end I hope that we may have a measure that will accomplish the end desired.

Mr. WINN: I offer an amendment.

The amendment was read as follows:

Between the words "corporations" and "authorized" in line 7 insert the words "other than building and loan associations".

Mr. WINN: I think perhaps a mere reading is sufficient explanation, but for fear that some may misunderstand it I want to say that this amendment is only for the purpose of excluding the building and loan associations from the operation of the proposed amendment to the constitution. It will then read:

Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders or corporations other than building and loan associations

authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

Mr. DOTY: First, on the amendment offered by the delegate from Defiance. I have been in two or three building and loan associations. Those associations in this state are very useful institutions. There is not any question about that. So are banks useful institutions. They each have their sphere, but they overlap in many functions. At any rate the building and loan associations have come to overlap the banks. If you will examine into the building and loan associations you will find that by a stretch of the law any kid lawyer can show you how to start a trust company with \$5,000 in cash.

Mr. WINN: You can't do that any more.

Mr. DOTY: That is the law today. I called the roll on it up there at the desk and I know. The only thing you can not do in the building and loan associations is to honor checks; you can not do a commercial banking business, but you can do a savings bank business and the building and loan associations are run as pure savings banks. They like the building and loan association plan better than the other plan and they escape taxes with some other things.

A DELEGATE: They have heretofore.

Mr. DOTY: And they are going to yet, and if any of you think you can come here and beat out the finest lobby that you ever saw, just try it. Just propose something that interferes with the building and loan associations and they fight. Why, gentlemen, this fight this afternoon would not be in it for a minute. They have the best system of getting legislation that they want—and I don't say they shouldn't have it, but they have the best system of getting the legislation they want of any set of people you ever saw in your life. They are the finest lot of gentlemen you ever saw in your life and you can't get away from them.

Mr. JONES: Do you know of any building and loan association in the state of Ohio where the depositors have lost out?

Mr. DOTY: No; I said they were a fine lot of institutions—

Mr. JONES: No, you said they were a fine lot of gentlemen.

Mr. DOTY: I never heard of any of them losing out.

Mr. PECK: I know of several of them that lost out in Cincinnati.

Mr. DOTY: Others have information that I have not. Be that as it may, what is the crying need of this proposal? Did any of you gentlemen ever think of the real reason why ordinary people, not business people as we are, but ordinary people who walk along the street, put money in bank? Why do they put money in bank, not taking up the general proposition of saving money—but why do they go into a bank? There are many subsidiary reasons, but the only true reason is that they have the word "bank" over the front door. That may seem hard to substantiate, but I have had some practical experience. I was connected with an institution that was about to open and I put the word "Bank" on the front

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window. I put it in as big letters as I could, and it was finished about three weeks before we were ready to open, and the next day after that sign was painted, four different people walked in and laid their money down on the counter and wanted to deposit it. They didn't know whether we were in business, they didn't know who we were, but they simply saw that word "bank". That is the reason you put money in bank, and you never stop to think whether there is single liability or double liability.

The largest bank in the state of Ohio, the Society for Savings, has not any liability of stockholders—they haven't a single stockholder.

Mr. SHAFFER: It has not any stock and it is not a building and loan association.

Mr. DOTY: It is the largest bank in the state, the Society for Savings. It refuses more money than any bank in Cleveland or Cincinnati or more than the average large bank in any one year takes in, in their savings department, and they have no stockholders and never had any, and if this is passed they still would have no additional liability. What is the crying need for this proposal? Absolutely none. I don't say there is absolutely no need. I say there is absolutely no crying need.

There is much to be said in favor of double liability of banking institutions and much to be said against it, and comparatively speaking it is an unimportant subject. There is no tremendous demand on the part of the people of Ohio for any change in the stock liability of banks.

Mr. EARNHART: What opportunity have you had to find out what is the general opinion of the people of Ohio?

Mr. DOTY: I expect the same opportunities as any individual member has except what you get through the newspapers. I don't say there is absolutely no demand. The fact that the member has introduced it shows there is some demand. The fact that the member from Van Wert made the speech he did, and I suppose it was in favor of it—I didn't quite get the drift of that speech—shows that there is some demand.

Mr. EARNHART: About half of this committee are bankers, and every one on the committee is in favor of this proposition. If they are in favor of it, how can you say there is not a demand for it?

Mr. DOTY: I was in a bank once myself. I never got very far in, and the fact that the bankers do or do not advocate this would have the same effect as the support of any other business men. They are just like any other sort of business men.

Mr. ANTRIM: How did that bank that you refer to get out of having stockholders?

Mr. DOTY: It paid every stockholder in full.

Mr. ANTRIM: I heard it failed.

Mr. DOTY: No, sir; it did not.

Mr. ANTRIM: I understood that it did.

Mr. DOTY: That is like some of the rest of the information you gave us. That bank does not owe a dollar to any living man and it paid its depositors within two months.

Mr. ANTRIM: How much did it pay its stockholders?

Mr. DOTY: It didn't pay its stockholders a cent.

Mr. ANTRIM: They then lost it all?

Mr. DOTY: No; they didn't, and I can't see the drift of your inquiry.

Mr. ANTRIM: I was just paying you back for your complimentary remarks about my speech.

Mr. DOTY: I thought you made a very able speech and I said so. I was not trying to be uncomplimentary. If that is your idea of getting even, go ahead.

Now let us get down to the question of the necessity for the double liability of banks: There is no such necessity as long as the bank is running, and how many bank failures do we have?

Mr. EARNHART: Don't you remember this proposal was introduced just at the time the bank of Gallipolis went down and two other banks were pulled down with it?

Mr. DOTY: Yes.

Mr. EARNHART: Should not the depositors have some security for their deposits?

Mr. DOTY: Yes. And so ought the stockholders, but the stockholders were in about the same position as the depositors. What took down the two state banks? I don't happen to know myself.

Mr. EARNHART: I do not know that I can recall.

Mr. DOTY: Was it not the failure of a private bank that took the two state banks down and would this proposal have helped that situation any?

Mr. EARNHART: I am not talking about that. I am talking about the depositors.

Mr. DOTY: I don't think that this question is one of such vital importance that we should add it to the constitution to be submitted this fall, and I say that with all due deference to the gentleman who claimed that it ought to be a law. This is not the time to submit such amendments along with more important things in which we are interested, and I therefore move that the proposal and amendment be laid on the table.

Mr. WINN: The motion is not seconded and I ask to be recognized.

Mr. PECK: I second the motion.

The PRESIDENT: We have not been requiring seconds and I think the motion is fairly before the Convention.

Mr. EARNHART: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 14, nays 69, as follows:

Those who voted in the affirmative are:

Brattain,	Malin,	Shaffer,
Doty,	Mauck,	Shaw,
Dunlap,	Miller, Crawford,	Smith, Hamilton,
FitzSimons,	Peck,	Mr. President.
Leslie,	Peters,	

Those who voted in the negative are:

Anderson,	Crosser,	Fox,
Antrim,	Cunningham,	Hahn,
Baum,	Donahey,	Halenkamp,
Beatty, Morrow,	Dunn,	Halfhill,
Beatty, Wood,	Earnhart,	Harbarger,
Brown, Highland,	Eby,	Harris, Ashtabula,
Brown, Lucas,	Evans,	Harris, Hamilton,
Brown, Pike,	Fackler,	Harter, Stark,
Campbell,	Farnsworth,	Hoffman,
Colton,	Farrell,	Holtz,
Cordes,	Fluke,	Johnson, Madison,

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Johnson, Williams,	Matthews,	Stewart,
Jones,	McClelland,	Stilwell,
Kehoe,	Miller, Fairfield,	Stokes,
Keller,	Miller, Ottawa,	Taggart,
Kerr,	Moore,	Tannehill,
Kilpatrick,	Nye,	Tetlow,
Knight,	Pettit,	Thomas,
Kramer,	Pierce,	Wagner,
Kunkel,	Rockel,	Walker,
Lambert,	Rorick,	Winn,
Lampson,	Smith, Geauga,	Wise,
Longstreth,	Stalter,	Woods.

So the motion to table was lost.

The delegate from Defiance was here recognized.

Mr. WINN: I just want to take a few minutes of time to answer some of the arguments offered by the delegate from Cuyahoga [Mr. DOTY], or at least to attempt to answer some of them.

I am very much interested in this amendment and I do not believe that any person interested in the adoption of the proposal will seriously oppose the amendment. It is, as Mr. Doty has said, true that when persons connected with building and loan associations come to the general assembly to prevent certain legislation or to secure legislation which they think ought to pass, they come with arguments that can not be answered by members of the legislature or other persons. The reason they come thus fortified is because they come with the truth on their side. Building and loan associations are in the fullest sense of the word organizations for the benefit of the poor people in the state. Why, in the little town where I live, in a single year, one building and loan association built for the laboring men of that little city fifty-two homes, just one each week. That was a good many years ago and they have been building them ever since. The member from Cuyahoga [Mr. DOTY] inquired as to who it is that is in favor of this proposal.

Mr. DOTY: No, who demands it?

Mr. WINN: He wants to know what demand there is for this proposal. There is the simplest answer you ever heard. There are now in Ohio approximately two hundred state banks. When this proposal shall become a part of our constitution it will apply to banks hereafter organized, but it will have no application to the banks now existing.

Mr. MILLER, of Crawford: Are you sure of that?

Mr. WINN: Absolutely sure. There is a contract between the state of Ohio and every bank in existence now and that contract is binding; no lawyer will dispute the proposition that an amendment to the constitution now will not have the effect of relating back and bringing within its provisions the stockholders of institutions that have been formed theretofore.

Mr. MILLER, of Crawford: Will the gentleman permit me to make a statement?

Mr. WINN: Yes.

Mr. MILLER, of Crawford. There was a special committee on banks. The chairman of that committee was Judge Worthington and I believe what I am going to say will be substantiated, that the report was made that this law may affect alike all banks organized hereafter or existing at this time.

Mr. BROWN, of Highland: Stockholders of a state bank might get together and agree to work under the provisions of this constitution and would not it be in their option?

Mr. WINN: That is it exactly. The stockholders of a given state bank might get together and surrender their charter, and take out one under the double liability law.

Mr. BROWN, of Highland: But they will not have to do it?

Mr. WINN: No.

Mr. CUNNINGHAM: This proposal does not apply to building and loan associations unless they receive deposits, and if they receive deposits, why should not they be liable?

Mr. WINN: I do not know what the courts may say about it. Of course the building and loan associations receive the money of their stockholders and instead of issuing certificates of deposit as a bank would do they issue certificates of stock and each depositor becomes a stockholder, but that is different from becoming a stockholder in a bank. Of course, that money can not be checked against, and lest some court might say that the words "authorized to receive money on deposit" apply to building and loan associations, I desire to insert these words. They can do no possible harm and they may do a whole lot of good.

Mr. WOODS: Do I understand the member to say this would not apply to the present state banks?

Mr. WINN: I said that.

Mr. WOODS: Then stockholders of most banks now doing business were, when they were organized, responsible under the former double liability clause?

Mr. WINN: A good many of them.

Mr. WOODS: But was not that double liability taken away a few years ago?

Mr. WINN: It never affected any institution organized before it went into effect, and I just collected the double liability from a stockholder of a corporation organized before the amendment to the constitution went into effect.

Mr. DOTY: Is not the double liability, compared with single liability, a handicap to a bank?

Mr. WINN: I do not know. Generally speaking it is, and that is the reason why I say there are two hundred banking institutions in Ohio that are interested in the passage of this proposal; and I say to the member who asked me the question a while ago, and who suggested the appointment of a committee that rendered the opinion to which he refers that I am as fully and firmly convinced as on any legal proposition—and it seems to me that every lawyer will agree to it—that to pass an amendment to the constitution now, as suggested by this proposal, can not apply its provisions to existing banking institutions.

Mr. DOTY: Then would not this proposal have a tendency to prevent the starting of new banks?

Mr. WINN: That is what I had been considering when I said that there are in Ohio two hundred other banking institutions that are interested in the passage of this proposal, and they are interested because it will not affect their institutions, but will hinder the organization of any new bank.

Mr. LAMPSON: If the existing provision in the constitution which exempts them from double liability did not affect those in existence when that provision was adopted, on what theory could this provision affect them?

Mr. WINN: I do not say it will not. It will not affect any then in existence. I perhaps was at fault in saying

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there were two hundred institutions interested. I should have included as interested only the number that have been organized since the constitution was amended by taking out the double liability.

Mr. EVANS: I rise to a point of order.

The PRESIDENT: The gentleman will state his point of order.

Mr. EVANS: My point of order is that the gentleman's amendment and his remarks are totally out of order and not germane to the question. He knows, as everybody knows, that a building and loan association deposit can only be invested in mortgages, and when banks are mentioned it can not possibly have any reference to this subject.

The PRESIDENT: The remarks of the gentleman are in order.

Mr. WINN: In answer to that I want to say there is nothing in this proposal that by express terms has reference to banks. It has reference to corporations. It reads, "except that stockholders of corporations authorized to receive deposits", and that might be held to apply to building and loan associations. I hope the amendment will be adopted.

Mr. HARRIS, of Hamilton: I came in late. I caught some part of this statement and some reference was made to an opinion expressed by a sub-committee on banking of which Judge Worthington was chairman. I should like to hear what that statement was.

Mr. MILLER, of Crawford: I made a statement that that sub-committee had stated that if this proposal passed it would affect all existing state banks.

Mr. HARRIS, of Hamilton: I was a member of the committee on Banking and my recollection is that when we asked that question of Judge Worthington the answer was diametrically opposite to the statement made by you, and the conclusion was—what we drew from it as a practical question—that all the old banks would be forced to reorganize as a business proposition in competition with the new banks, because the business man would say he would deposit with a new bank on account of the double liability rather than with the old bank that has only single liability.

Mr. MILLER, of Crawford: Mr. Cunningham was a member of that sub-committee.

Mr. CUNNINGHAM: I have been trying to get the floor to make a few remarks, but I will answer this inquiry. The committee was unanimously of the opinion that it did apply at once when adopted to every banking corporation in the state of Ohio, without any question. Just three or four years ago this very question came up and they took away the double liability, and if the gentleman's view is right these corporations are still subject to double liability. Nobody claims that. More than that, the corporation is a creature of the law. It is subject not only to the laws existing then, but to any other that may be passed thereafter. That is a fundamental principle of the present constitution and every lawyer ought to know it.

Mr. Brown, of Highland, here requested recognition.

The PRESIDENT: The member from Highland wants to ask the member from Defiance a question.

Mr. BROWN, of Highland: No; I want to make some remarks.

The PRESIDENT: The member from Highland is not seeking the floor to ask a question then.

Mr. KNIGHT: I want to ask a question.

Mr. BEATTY, of Wood: Just a minute: Did the member from Defiance say there were five hundred state banks that favored this proposition?

Mr. WINN: I said they were interested in this. I don't know whether they are all favorable to it or not.

Mr. BEATTY, of Wood: The president of the bankers' association sent out over two hundred letters to the bankers and state banks of Ohio and he made the statement before the committee that he had received seventy-five replies. Thirty-five were against it and forty favored it.

Mr. CUNNINGHAM: I want to call your attention to this proposal and to the terms of it. There was a unanimous opinion of the committee that this would not apply to building and loan associations unless they received deposits. There is a large class of associations that profess to be building and loan associations, but they are doing a banking business. Go into one of their offices and you will see persons coming in and depositing and checking money. You would not know that you were not in a real bank. I was in the town of Mansfield a short time ago and went into a bank, or I thought I had gone into a bank, and it turned out to be a building and loan association. They were receiving deposits, paying out on checks and doing every thing that any bank in the state of Ohio is allowed to do apparently. Now this would apply to that kind of a building and loan association; there is no question about that, and it ought to apply to a concern of that kind. The subcommittee thought so and the whole committee thought so. The amendment to section 3, article XIII, in substance provides, first that certain corporations shall have only single liability and it gives exceptions:

Except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such corporations, to the extent or amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

That amendment was intended simply to apply to corporations receiving deposits as banks receive deposits, and it applies not at all to the ordinary building and loan associations. It has not the slightest application to them. When the gentleman talks about five hundred private banks of Ohio he is mistaken. I think there are two hundred and thirty-one and not five hundred. This proposal is for the benefit of not only depositors, but the banks themselves, because they expressed themselves to the committee—at least some of them did to me—that they felt they were somewhat under a cloud from the fact that the national banks were doubly liable to their depositors and therefore they could demand deposits which the state banks could not demand. They therefore ask for their own benefit that their stockholders should be made subject to double liability also.

Now there have been failures in the private banks in the state of Ohio and depositors have lost. If this measure goes into effect I take it that there will be

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no opportunity of loss. If there is any loss to depositors it would be in a very special case.

As to the question whether a stockholder in a bank existing now is liable, I have not the least doubt in the world that he is liable. The instant the people pass this proposal every banking corporation becomes doubly liable on their stock. They become subject to double liability, because of what? Because they are creatures of the law. They have been created by law and are subject not only to existing laws, but any law that may be passed affecting them. There is no question about that. It was only three or four years ago that the legislature submitted an amendment taking away the double liability. What lawyer holds now that the stockholders of those banks existing at the time that amendment went into effect are doubly liable still under the present amendment?

Mr. KNIGHT: If there were a creditor of any one of those banks at the time the double liability existed and this amendment you referred to changed the double liability to single liability, could that creditor be deprived of his rights under the liability against the stockholders of that corporation?

Mr. CUNNINGHAM: No; and I didn't say any such nonsense as that, because the liability had existed at the time the amendment fixing single liability was passed. But if a liability came after that amendment providing single liability was passed, they would not be doubly liable. I take it for granted that a good many others know nearly as much as I do and some may know more, but I think I know enough to say that if this law passes it affects every corporation that is receiving deposits in the state of Ohio the instant it goes into effect.

Mr. MILLER, of Crawford: Do you mean it would affect private banks?

Mr. CUNNINGHAM: No; only corporations. That matter was considered in the committee and we considered we had no power or authority to require them to be doubly liable. They don't own stock. We don't know how to reach them.

Mr. LAMPSON: What effect would this proposal, if adopted, have upon the market value of the stock of state banks?

Mr. CUNNINGHAM: I do not think it would have any effect at all, because it is as much to the advantage of the banks to have this double liability as it can be to any one else. The credit of the bank has increased. Thereby its deposits are increased, and its profits are increased. Consequently, this proposal is for the benefit of the stockholder and not to his detriment. It is also to the benefit of the depositors of the bank. By these means the depositor secures himself against loss.

I can say, since this matter has come up, I have carefully examined the laws of Ohio and the laws of the several states, and we have, without question, the best banking law in the United States applicable to private banks, and it needs only this to make it as perfect as can be. Some of the other states have the double liability, and in that respect they are better off now than we are, but if we put this in, the state of Ohio will have the best banking system in the United States beyond any question.

Mr. KRAMER: I want to ask you about the liability of persons connected with private banks as compared with the liability of those connected with state banks. Is it not a fact that the men connected with the private banks are liable for all they are worth?

Mr. CUNNINGHAM: Certainly.

Mr. KRAMER: The member from Defiance [Mr. WINN] suggested the building and loan associations had the finest lobby ever organized in the state, and that they always got their demands. I would like to ask if there were any lobbies before the Convention on the part of the building and loan associations arguing against this proposition?

Mr. CUNNINGHAM: No; the superintendent of banks, at the request of the committee, wrote to the private corporations asking them how they felt about this matter of double liability, and a great many of them wrote back saying they preferred to have it, that it would increase their business and increase the confidence in the bank, and that they were altogether in favor of it.

Mr. KRAMER: Did you get any word from the building and loan associations in any way that they were opposing the measure?

Mr. CUNNINGHAM: Not at all, because they supposed they were not liable and did not come under this proposal in any way. And I don't think they do. If they received deposits, of course, they would come under.

Mr. SHAFFER: Do you hold this would not apply to the stockholders in the building and loan associations?

Mr. CUNNINGHAM: Certainly not.

Mr. SHAFFER: Then have you any objections to the amendment of the gentleman from Defiance [Mr. WINN]?

Mr. CUNNINGHAM: I turn that question over to Mr. Earnhart.

Mr. SHAFFER: In your mind there is some question that that might apply to the stockholders of the building and loan associations?

Mr. CUNNINGHAM: It will apply if they receive deposits. There is no question about that, and we intended that it should.

Mr. SHAFFER: I mean to all borrowers of building and loan associations. They are stockholders under the law of Ohio.

Mr. CUNNINGHAM: No; I don't think so.

Mr. SHAFFER: Is not that the law on which the building and loan associations are founded, that all borrowers from the building and loan association are stockholders and stock is issued to them for the amount of loans made to them?

Mr. CUNNINGHAM: Some of them.

Mr. SHAFFER: Is not that the law of Ohio?

Mr. CUNNINGHAM: I don't think so.

Mr. SHAFFER: It certainly is.

Mr. CUNNINGHAM: I will say frankly that I do not understand the law applicable to building and loan associations as well as many of the other members of the Convention. I was in a building and loan association for five years and president of it, and I know there was no stock liability in that association.

Mr. SHAFFER: Then would you object to the amendment of the member from Defiance [Mr. WINN]?

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Mr. CUNNINGHAM: I am not objecting. If Mr. Earnhart is willing to accept that amendment I am not objecting, but I do not think it is necessary, and if they receive deposits they ought to come within the provisions of this proposal.

Mr. STOKES: What do you mean by receiving "deposits"?

Mr. CUNNINGHAM: I mean just what the word says.

Mr. STOKES: The building and loan association receiving deposits and making loans on real estate—that is not a bank.

Mr. CUNNINGHAM: Oh, no; they pay in their assessments once a month or once a week.

Mr. STOKES: Then if they receive a deposit they are not banks?

Mr. CUNNINGHAM: Those are not deposits in the meaning of the law.

Mr. EARNHART: I am not a lawyer, but my impression of the whole matter is that it does not apply to the building and loan associations unless they are using that name and doing what we properly apply to a bank, in receiving deposits. Corporations of that kind ought to come under the provisions of this proposal. I think that ought to be clear.

Mr. BROWN, of Highland: Perhaps you have not noticed it, but I have made only one or two little speeches, and occasionally put a question. I have asked several questions, but really have made few speeches. But I have almost got out of the notion of making this speech because I have been so long in getting the floor, there being so many ahead of me. I can not realize why there should be any objection to the passage of this proposal even though it will disturb the banks in their present system, which I doubt very much. Notwithstanding the opinions expressed by able lawyers on the floor, I believe the stock itself has inherent rights when the stock is bought under the charter of single liability; that stock itself has rights, and you can not change it from the conditions under the charter after the innocent purchaser is in possession of it.

But that is neither here nor there. I stated to the member from Defiance, and he pooh-poohed the idea, that the bankers who are now doing business under the state laws of single liability could come together and agree with their depositors, even though this proposal did not bind them, that they would stand for double liability and it would hold. There is no question about that, I think, because that would be an agreement which would have the same effect as a contract or gift, neither of which can be nullified by the processes of law. There would not have to be any surrender of charter or anything of the sort for that kind of a thing, provided the proposal doesn't retroact and the stockholders of existing state banks want to come under this rule.

The gentleman from Harrison stated that when the tax was taken off municipal bonds of the state it went right on and everybody had the tax off his bonds and it was effective from the beginning; that is true, but it carried with it no damage to any one. But if those bonds had been bought with exemption from taxation and any other law had attempted to place taxation upon them, after contracting with the owners of the bonds that they should not be taxed, it would be a ques-

tion of damage and a question of whether or not they would have to stand it. The state bankers of Ohio, I think, are the people who are demanding it—in answer to the question of the gentleman from Cuyahoga [Mr. Doty]—and they are demanding it because they are working at a disadvantage in competition with national banks where national banks have a double liability and all the national banks of this state, I think, have a double liability. There are some national banks that have not double liability, but the state banks are laboring under a disadvantage of an argument from the national banks that the state banks have no responsibility other than the stock they have bought and the national banks have a double liability, and, besides, the government is behind them. They work that for all it is worth to the disadvantage of the state bankers, and the state bankers themselves therefore are demanding it, and if it has a retroactive effect they will voluntarily work under its provisions. I think there is no question about that, and I do not see why any one would object to passing this. I do not think it will affect anybody but the bankers, and if the bankers are demanding it, why not give it to them? If it is not of sufficient importance for us to put it in the constitution and submit it to the people as it is, then I think we can make it right by adding the amendment which the member from Medina has prepared.

Mr. SHAFFER: What was the amendment that was offered? Was it the one with reference to building and loan associations?

Mr. BROWN, of Highland: The member from Defiance wishes me to explain that the member from Medina has an amendment—

Mr. SHAFFER: Has he proposed it yet?

Mr. BROWN, of Highland: No.

Mr. SHAFFER: Then we don't know what it is.

Mr. BROWN, of Highland: No, but if this is not sufficiently important, as suggested by the member from Cuyahoga, I think the amendment of the gentleman from Medina will make it very important, if he submits it.

Mr. HARTER, of Stark: Did you say not all of the national banks have double liability?

Mr. BROWN, of Highland: Yes.

Mr. HARTER, of Stark: I would like to ask Mr. Brown if that is true? I was under the impression that all of the national banks did have double liability.

Mr. BROWN, of Highland: There are one or two banks in New York and one in Chicago which, under an act of congress, enjoy the same privilege they enjoyed before they became national banks. This was brought about by a process of special legislation by the congress of the United States. Congress is not confined to general legislation as we are in Ohio.

Mr. WINN: But I assume when congress passed the banking law they applied to those banks specially organized after that. Is not that correct?

Mr. BROWN, of Highland: The double liability was passed before these banks came in and they were made exempt by a special act.

Mr. HARTER, of Stark: The bank in Philadelphia had a right to retain its old name, I believe, the Bank of North America.

You will find there is no mention of its being a na-

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tional bank, but I did not know that they escaped double liability. I did not understand Mr. Antrim to say that.

Mr. BROWN, of Highland: Oh, there are several banks in the United States that are not under double liability, and if Mr. Antrim stated that all national banks had double liability he was in error.

Mr. ANTRIM: There are two or three national banks in the country that were organized under special charters, and for that reason they have the same single liabilities that they had before the national banks were organized.

Mr. HARTER, of Stark: But nearly every national bank in the country is under double liability?

Mr. ANTRIM: Yes; there are just two or three that are not.

Mr. WINN: They were organized before the passage of the law?

Mr. ANTRIM: No; they were private banks then.

Mr. SHAFFER: Does the gentleman from Highland tell us that the state bankers have asked for this proposal and have recommended that we pass such a proposal?

Mr. BROWN, of Highland: I didn't make it as strong as that, but, being connected with a state bank myself, I have talked with a good many state bankers. I looked for this proposal to come up and I have consulted with a number of persons connected with state banks. I have asked them what position they would take on it, should it come up, and they said they were perfectly indifferent to it, some of them, and others said they would favor the proposal because they have no fear of the double liability and it would benefit them in their business.

Mr. SHAFFER: Was there any suggestion made that this would be a better proposition for them than having the state guarantee the deposits?

Mr. BROWN, of Highland: No banker has any thought of indorsing such a wild-cat scheme as that.

Mr. SHAFFER: I know no banker would, but do not some people?

Mr. BROWN, of Highland: Nobody who really knows anything about the situation would advocate such a thing.

Mr. SHAFFER: Have not some of the states indorsed it?

Mr. BROWN, of Highland: Yes; and every one to their great regret and sorrow, and for the real and absolute destruction of the integrity of their banking business.

Mr. SHAFFER: Have not some of the states had this inaugurated and has it not proved successful?

Mr. HARRIS, of Hamilton: Never.

Mr. SHAFFER: Has not the state of Kansas?

Mr. HARRIS, of Hamilton: It has just gone through with it.

Mr. SHAFFER: Is it not satisfactory?

Mr. HARRIS, of Hamilton: No, sir; it is not.

Mr. SHAFFER: Is there any movement on foot to repeal that law?

Mr. HARRIS, of Hamilton: I don't know, but I know from the bankers of Kansas that they think it is an utter failure.

Mr. FLUKE: Have you any knowledge of any depositor having lost any money in Oklahoma?

Mr. HARRIS, of Hamilton: No; and I haven't any knowledge of any depositor having lost any money in Nebraska or any other of those states.

Mr. CUNNINGHAM: With reference to double liability, of course that doesn't apply to contracts before the law was passed, but it does adhere to all liability incurred after the law?

Mr. HARRIS, of Hamilton: Of course that is all I have contended for.

Mr. BEATTY, of Wood: I hadn't intended to speak on this matter, but I want to correct some things that have been stated.

It has been stated that the state banks of Ohio favor this proposal and want it to become a part of the constitution. Mr. Earnhart introduced a proposal which I believed in thoroughly. I spent four years in Oklahoma and know the working of the guarantee law there as well as any man, because I investigated it thoroughly, but I do not believe in Ohio, where we are lending money at five, six and seven per cent, we want the same laws that they do where they are lending money at ten, fifteen and twenty per cent, although I believe firmly in the guaranteeing of deposits. However, as I suggested to Mr. Earnhart, I do not believe the guaranteeing of deposits will work in the state of Ohio, and the best thing would be to get double liability. This suggestion was not from the state bank, but from the committee. I am interested in national banks and also state banks, and therefore I know whereof I am talking. I am also interested in national and state banks of Oklahoma, and I know what I am talking about there.

Now we have heard a good deal said about this being a detriment in Oklahoma. Go out there and you will find it different. I have been there when banks failed and I have investigated failures.

Mr. WINN: I don't understand, and I wish you would repeat the result of the workings of the guarantee law in Oklahoma?

Mr. BEATTY, of Wood: It would take too long for you to sit and listen to it. I saw four banks fail and there was not one of the stockholders lost a dollar, and three of the banks are still in existence. The first bank was the State Bank of Bartlesville. Then there was a Tulsa bank, which is still running, and one in Oklahoma City where the depositors were paid every dollar. There was not any run on any of the three banks when they failed three years ago. It was announced in all the papers of the state of Oklahoma that these banks had failed. The Bartlesville bank was reorganized and is now a national bank. There was no run at all, and only \$15,000 was drawn out.

Mr. WINN: I want to know whether the statement of the member from Highland to the effect that the people of Oklahoma are in sackcloth and ashes because of the passage of the guarantee law is confirmed by your experience?

Mr. BEATTY, of Wood: I can answer that question very thoroughly. I have seen reports in the newspapers that they were, but you could not find a stockholder or depositor out there who agrees with those reports. I have seen in the papers that the banks were dissatisfied in paying those assessments and that the committee had over \$1,000,000 out on mortgages, which upon investigation proved incorrect. As Mr. Brown said, the papers did

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make that report all over the state of Oklahoma, but the people of Bartlesville and Tulsa are not dissatisfied as claimed.

Now, as to the attitude of the banks of Ohio on this matter of double liability. As claimed in the committee, we called in the president of the Bankers' Association of the State of Ohio and asked him if the state banks would stand for this, and he sent out over two hundred inquiries to the banks. He received seventy-five replies and thirty-five were against double liability and forty favored it.

Mr. BROWN, of Highland: You stated a minute ago that the bank you had previously referred to had now become a national bank—I mean the one out at Bartlesville, Oklahoma.

Mr. BEATTY, of Wood: Yes.

Mr. BROWN, of Highland: Is it not true that, on account of the guarantee, a large percentage of state banks have become national banks in order to get out of being required to make all the wild-cat institutions of the state good?

Mr. BEATTY, of Wood: I believe in the last year there have been forty-five banks merged into national banks. It was reported last January that the assessment was too high, but it was not because of wild-cat banking but because of the failure of four banks.

Mr. BROWN, of Highland: Under that guaranty system is it not possible for any kind of a wild-cat bank to start business and have credit and standing on account of the high class banks?

Mr. BEATTY, of Wood: I don't think any more so than here.

Mr. BROWN, of Highland: Are you familiar with the failure of the—

Mr. BEATTY, of Wood: Yes, I know the president, Mr. Norton, very well. He was a personal acquaintance of mine and he is now on his way to the penitentiary.

Mr. BROWN, of Highland: Didn't that cause a tremendous draft on the guarantee fund, one that the state has never recovered from?

Mr. BEATTY, of Wood: No, and I know, for I was right there. I know that Mr. Norton, the president, went to Wellsville, New York, and brought back \$900,000.

Mr. BROWN, of Highland: Did not the stockholders lose something?

Mr. BEATTY, of Wood: I think they did, but Mr. Norton went to Wellsville, New York, negotiated \$900,000 and paid that into the bank three days after the failure and kept it running.

Mr. BROWN, of Highland: Didn't that failure depreciate and deplete the guaranty fund so the state of Oklahoma has never recovered from that failure? Is not that the reason the state banks are going out and becoming national banks?

Mr. BEATTY, of Wood: No; I don't think the guaranty fund paid much money into that. Mr. Norton made it good himself. We went to Wellsville, New York, and borrowed \$900,000. I don't think that was what depleted it. I think it was another one.

Now, I have forgotten just where I was when they interrupted me. I believe I was talking about the statement that the bankers of the state of Ohio favored this proposition. A lot of those banks were organized under double liability and that has been changed to single lia-

bility. We went to the president of the bankers' association, as I stated, and he sent out circulars, and out of seventy-five replies thirty-five were against the double liability and forty in favor of it. Then the committee was appointed to draw this substitute bill to provide double liability. That committee made a report back, and as far as the building and loan associations were concerned they made a statement, drawn up by five lawyers, and Mr. Worthington was chairman of that committee. That statement was in substance that this proposal didn't affect any building and loan association except those that did a banking business, which we know some of them are doing. It is only those that are receiving deposits that are checked out that will be affected. We were in two or three in Mansfield that were doing a banking business and there are others in Cincinnati, and these attorneys framed the proposal so it would affect the building and loan associations that do a banking business, but not those that are engaged strictly in the building and loan association business.

Mr. Doty said, "I have been up against the building and loan association lobby", and, like him, I say it is the finest lobby I ever went against in my life. I have seen the senate chamber so crowded with building and loan association men that you could hardly get through and it was the finest lot I ever went up against. I have only made this statement to clear off the effect of the statement that the state banks were wanting this bill. It was not suggested by the state banks, but by the committee, because we didn't want to apply in Ohio the guaranteeing of bank deposits by law.

Mr. KNIGHT: With the trend the discussion has taken we are in danger of losing the especial purpose of this proposal, namely, that it is in the interests of the people, of the depositors, and not in the interest of the banks themselves. We haven't been talking about the people. All the talk has been directed toward the banks and whether they were in favor of it. The proposition is in the interest of a majority of the people instead of the banks. It is for the people who are not stockholders, but who may sometimes become depositors. A bank acts in a fiduciary capacity and receives other peoples' money on deposit, and it may fairly be required to give better security than that of a single liability on the stock. Down to 1903 the incorporated banks of this state were like all other corporations of the state—the stockholders were subject to double liability. In the modification of the constitution at that time the banks were relieved of the double liability by what I think was a mistake. They should not have been relieved and other corporations should have been.

Now, it is another fact that single liability state banks in comparison with the national banks are under a handicap. The people of the state of Ohio in attempting to organize state banks as compared with national banks are handicapped, so there is a handicap on our people by the single liability, whether they are bankers or depositors. I fully agree with you about the bankers having no objection, and in fact some of them having a desire to have this passed so they can get deposits on the same plane as the national banks.

As to the building and loan associations, there are many of them which receive deposits and do a banking business under the guise of building and loan associa-

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tions, and there is absolutely no reason why the stockholders of a few of these building and loan associations, that really do a banking business and take money on deposit subject to withdrawal upon checks or upon expiration of the time certificate, should escape liability. They are doing a banking business and receiving deposits within the purview of the provision, and I do not see why the stockholders of such an organization should not be subject to double liability.

As to the desirability of the measure at this time, it seems to me it is one of the most important practical measures in behalf of the people of the state that has been suggested here since we were called together, and after we have disposed of four or five propositions I do not think we should turn everything else loose. I think this proposition is a highly meritorious one and it should be passed.

Mr. JONES: I was a member of the Banking committee and a member of the sub-committee to investigate the question which the member from Defiance [Mr. WINN] raised in the discussion of this matter. Judge Worthington was also on that committee.

Judge Worthington, when the question was first raised in the committee, expressed as his first impression of the question just what Mr. Harris, of Hamilton, has stated in your hearing. It did not strike me that way on first blush and I expressed a contrary opinion, and that is the reason probably why I was appointed on that sub-committee. Judge Worthington made a thorough investigation and submitted the result of his labors in a written memorandum. I did the same, and the conclusion that both of us reached was that there was no doubt that this provision, if enacted, would apply to existing banks the same as to banks that should hereafter be organized. It only takes a little reference to some fundamental principles to make that apparent. As suggested by one member a charter issued by the state in favor of a corporation sounds in contract, and on first impression one would say that such a contract can not be changed at the will of one of the parties, that it takes two to consent to the change of the contract just as it took two to make the contract; but we found when we came to examine the question that all cases decided by our supreme court that had arisen under the constitution of 1802, had repudiated that doctrine upon the theory that the people, being supreme, the state making the corporation had a right to unmake it, that that was power belonging to the people, and the legislature could not surrender it. Therefore, the supreme court of Ohio held, notwithstanding there was no constitutional provision to that effect, that the legislature could unmake and modify these charters. We found also in the case of the Piqua Branch of the State Bank of Ohio vs. Treasurer of Miami Co., 16 Howard, 369, that it was organized under a special statute enacted in 1845, which gave it certain privileges, among which was the right to be taxed, not as other persons were going to be taxed, but it was to pay as taxes six per cent on its net earnings, I believe, and there were some other provisions in its favor. An act was passed in 1851, requiring the property of the bank to be taxed by a different rule. In the litigation which followed, the contentions of the Piqua bank that the legislature could not change its charter were decided against it by

the supreme court of Ohio, and the bank carried the case to the supreme court of the United States. That court held that the charter issued by the state was in the nature of a contract between the corporation and the state, which the state, without the consent of the corporation, could not change. There were a number of other cases in which the same question had been raised. When the constitutional convention of 1851 met there was a provision put in the constitution to meet that situation. That was one of the principal things that induced the incorporation of the provision I am about to refer to in the constitution of 1851. The supreme court of the United States, having held that a charter was in the nature of a contract and could not be altered or abridged without the consent of the corporation, it was provided in section 2 of article XIII as follows: "Corporations may be formed under general laws, but all such laws may, from time to time, be altered or repealed." Therefore if gentlemen will take the pains to examine the decisions since 1851, they will find in every single one of them the court has held that there is a reservation of legislative power over those charters of corporations created under the authority of the constitution and the laws that might be enacted under it, to revoke, repeal or recall the charters at any time the legislature saw fit. So it has resulted since then that every corporation coming into existence does so with the knowledge that its rights under its charter may be changed, or that they may be entirely taken away from it. In other words, there is no longer any contractual relations between the state and the corporations such as existed prior to 1851 under the decision of the supreme court of the United States.

I can not take the time now to cite to you the cases in support of the proposition, but it is a mere matter of running them down. That being the case, every bank or other corporation that is now in existence receiving money on deposit, will be affected by this proposed amendment. The language "receiving money on deposit" was taken from the banking statutes of Ohio and the national banking act, because "receiving money on deposit" has many times received the construction of the courts and has a well-defined and definite meaning in law. It simply means a corporation which is receiving money with the expectation of paying it out on demand or at an agreed time. A corporation such as a building and loan association which issues stock and receives money from time to time merely as payments on that stock does not come within the definition of a corporation "receiving money on deposit." It is only those corporations that receive money under an implied or express contract that they will pay it out on demand or at a specified time that will come within the provisions of this amendment.

As has been suggested here, national banks have double liability. All those who are interested in private banks, and there are about as many of them as there are state banks, have unlimited liability. A man who has a share of stock in a joint stock company engaged in the banking business is liable for every dollar he is worth, and it was thought that state banks should at least be on the same footing as national banks. This matter did not come from the state banks. There was no demand from that source, and there can not be any reason why

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they should want it, such as suggested by the gentleman from Defiance. The depositors are the only ones primarily interested in the matter. The argument to the committee for asking this amendment was that the interest of the depositors were liable to suffer by having men permitted to engage in the banking business under the special privileges allowed by statute and be entirely relieved from any personal responsibility. I think if it could be done—and I concede that under the existing sentiment on the question it can not be done—but if it could be done, I would make every man that engages in the banking business either as a corporation or as an individual, liable without limit for the debts of the bank. I do not think the state should grant either a partial or entire exemption from liability to those who receive the money of the people on deposit in banks. This certainly would be in the interest of the depositor. There can be no objection to having the man who is a stockholder in a state bank at least fully liable with a stockholder in a national bank. As has been suggested here, no state banker should have any objection to double liability.

Mr. MILLER, of Crawford: Would you have any objection to placing private banks under the supervision of the banking department?

Mr. JONES: That is a matter that has no relevancy to the question at issue, but speaking on the question of liability, there can not be any complaint against the private banker, because he is liable for every dollar he is worth. He is not asking any special privileges. He is not doing business on any different footing from the merchant or the manufacturer. He is not asking any favors of exemptions or any privileges. He says to you, "I am willing that you depositors shall take every dollar I am worth to pay the debts of the business I am conducting," but the situation is different with reference to state banks. They ask special privileges. They are asking exemptions.

As I say, I do not think the state bankers as a rule will object to this double liability. Those that I have talked to say, "Certainly we are not objecting to it." Some of them were much in favor of it because it will prevent a criticism that is now sometimes directed against the state bank by those interested in national banks, that the national banks have more liability behind their concerns than the state banks have. Therefore, most of the state banks would not object to this liability, and certainly no depositor would object to it. Nobody, I think, could say for one moment that this provision would not be in the interest of the depositor. One gentleman on the floor asked, "Who is demanding this?" Everybody who has lost money in a corporation engaged in the banking business when there was double liability would certainly demand it, and everybody liable hereafter to lose money by reason of complete exemption from liability will demand it. A good many banks have failed in Ohio where depositors lost heavily. I know one within ten miles of our county seat which recently failed and wound up with a loss to the depositors of about \$70,000, even after the double liability of the stockholders was enforced. There was a double liability upon \$25,000 worth of stock and every stockholder who could respond paid up and it saved the depositors that much. That is one instance, and quite a number of others could be cited. It takes no stretch of imagina-

tion to see that in cases that may come, as they have come heretofore, when a large number of banks might fail, that it would be a protection to every depositor to have this double liability against the stockholders of state banks. In view of the fact the state banks themselves are not opposing it and the depositors can't oppose it, because it clearly is in the interest of the depositor, I think it certainly should be adopted.

Some objection is made on behalf of the building and loan associations. There can not be any objection on the part of the building and loan association that is conducting merely a building and loan association business. If a building and loan company is engaged in the banking business, is receiving money on deposit and is liable to have to pay it out on demand or at a specified time, it is doing a banking business and not doing a building and loan association business. It is securing money from depositors and giving the depositors in lieu of that money nothing but a contract obligation to repay it, just the same as a depositor in a state bank or in a national bank receives, and when a building and loan corporation puts itself in the attitude where it wants to substitute its promises to pay in lieu of hard cash, I submit there ought not to be any hesitancy about saying that a stockholder in such a corporation should be doubly liable. It certainly is not asking much to have them merely doubly liable upon their stock the same as stockholders will be in other corporations that are asking people to exchange hard cash for a mere promise to pay.

The delegate from Brown county [Mr. KEHOE] was here recognized.

Mr. THOMAS: I have been on the floor asking for recognition every time a speaker has yielded the floor, and I want to object to being overlooked by the president.

The PRESIDENT: The member from Cuyahoga has no rights superior to those of any other member.

Mr. THOMAS: But I have equal rights and I want them.

The PRESIDENT: The member from Brown has been recognized.

Mr. THOMAS: I have been on the floor every time trying to be recognized and I insist on my rights.

The PRESIDENT: The member from Cuyahoga county is out of order.

Mr. KEHOE: I, like the member from Highland [Mr. BROWN], am a little bit shy about sticking in my oar when the other members are talking. We are modest in our part of the state anyhow. But, gentlemen, I happen to be a member of this committee on Banking and I know something about this proposal and the way it came before this body. I offered Proposal No. 116, which contained the principal idea that is embodied in this proposal. The member from Warren [Mr. EARNHART] had in our committee a proposal something along the guarantee line, but we, of the Banking committee, in order to ease that down somewhat, concluded we would take the material we had offered and had in stock and give the Convention something that would be of an easy nature as compared with the original articles. Hence we have reported this Proposal No. 93. The proposal is simple. All that there is of it is good. I do not believe there is anything dangerous or harmful in it. If it were left to me I could stand it stronger

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than it is. In fact, I could stand for the bank guaranty. While some of my banker friends may cross their hands in horror, yet I absolutely believe if it were incorporated in the national banking laws today we would have the safest plan we would ever have and would be away ahead of the Aldrich plan, but I don't believe it would be a proper thing for the great state of Ohio to encounter the opposition that would come from everywhere if we were to adopt such a thing. That is the trouble with Oklahoma, Nebraska, Kansas and every other state that has attempted it. They are fighting the combined influence of the money power of the banks that oppose it all over the United States, and in those states where it is proposed as a remedy. Yet I say if it were in the national bank act and the national banks were under such a regime the whole United States, all the banks of the United States, would soon be under that system, and I can conceive of nothing better in the United States today than that. Do you know that you can not get a dollar of the state's money or the money of a township, county or municipality into any bank unless the bank absolutely guarantees its safe return? Why in the name of common sense, is it that the people's money—the money of the poor people—is not treated in the same way that the bigger money concerns are treated? It is not fair and it is not right. Although I am a national banker and interested in national banking and am running one I would be glad to see such a condition. I would be glad to see released that reserve now held intact in a bank, doing nothing—only remaining there. There are millions stored up in national banks, not in circulation and not in use, just standing there as a reserve against anything that might come along. Now, if we have an absolute guaranty there would be no run, there would be no panic and there would be no need of a surplus lying idle in our banks. In some large institutions the reserves are sealed up from the time the bank examiner comes around until he returns. If the seal is not open, he knows it is in there still untouched. All that money lies idle there for emergencies that might arise. I went through the panic of 1907 and I should not like to run into one oftener than every ten years.

Mr. HOSKINS: If you will yield for a minute I would like to send an amendment to the desk and you can discuss it.

Mr. KEHOE: No, I don't want to yield. I don't want any proposition to that effect in the state of Ohio. I don't want the state of Ohio to attempt to carry such a proposition. I do not want the state of Ohio to encounter the opposition that Kansas and Nebraska are encountering and be held up as a radical all over the country. I think the proposition is all right myself and I believe in it, but I have feeling for others. I am not the only pebble on the beach.

Mr. ANDERSON: I want to ask a question to find out how to vote. I see this language employed in the proposal "not one for another". As it is now would the depositors be better protected if this became a part of the constitution with "not one for another" in it? Would not the depositors receive less security with that language than they do now?

Mr. KEHOE: That language is copied from the national banking act.

Mr. ANDERSON: I don't care where it comes from. I want to know what it means.

Mr. KEHOE: That means that each stockholder stands for his own liability. I believe it is incorporated in the state constitution as a protection to the depositors, and as far as I can learn it is the wish of the state banks to comply with it. It puts them on the same footing as the national banks, and they will be in a position to compete equally and fairly with the national banks. The statement is constantly heard that the national banks are good for double their stock while the state banks are good only for single liability and that gives the national bank a little more prestige. There is also a feeling throughout the country that Uncle Sam looks after the national banks pretty carefully and that that has a tendency to make the stockholders and officers of the bank stand straight and do the proper kind of thing, although sometimes they do go wrong on the inside. Conversing with the superintendent of banks in this state, I find that he is highly in favor of this proposal to apply to state banks. It puts them in a better light in comparison with the national banks.

Mr. SHAFFER: What is your attitude toward the amendment of the gentleman from Defiance, excepting the stockholders of the building and loan associations?

Mr. KEHOE: That was discussed in the committee too. We think the plain building and loan associations, where they do not go into the banking business, are not included in this at all, but there are some building and loan associations that are doing business today, receiving deposits and holding them subject to check, and we think they should be under the same law as banks.

Mr. SHAFFER: In view of the large number of stockholders in the building and loan associations throughout the state, would it not add popularity to this proposal if we specifically except from the double liability the building and loan associations?

Mr. KEHOE: There is no objection to their being exempt where they do not attempt to do a banking business, but where they do attempt to do a banking business they should not be exempt and each member of the building and loan association—stockholder or shareholder—is the one that assumes the responsibility or liability.

Mr. SHAFFER: Where they borrow and thus become stockholders, to that amount under this proposal they will become liable?

Mr. KEHOE: Yes; if they are doing a banking business, but if they are doing straight building and loan association business they would not.

Mr. PECK: Does not this proposal make them liable for the face of their stock?

Mr. KEHOE: Yes.

Mr. PECK: Suppose a man takes stock for \$1,000, to be paid in in the ordinary manner and on this he has paid \$50 or \$100; is he to be assessed on the face of his stock if the concern fails?

Mr. KEHOE: He would not be assessed at all unless the association was doing a banking business.

Mr. PECK: Does not that stock represent a liability rather than an asset? Is not that the trouble—that he has stock, but it is something he has to pay on? The stock doesn't amount to anything like stock in a bank.

Mr. KEHOE: No; there is a question whether it would come under that proposal.

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Mr. PECK: That is it. You had better exempt it. You will raise a hornet's nest if you don't. You will wish you had never been born.

Mr. STOKES: Any company can take advantage of the sixty days' notice and they don't have to pay on demand.

Mr. KEHOE: That is the law.

Mr. STOKES: They don't have to pay on demand. They are entitled to sixty days.

Mr. KEHOE: Yes, and whenever they get in a close place they use that.

Mr. STOKES: But a bank has to pay on demand or close its doors.

Mr. KEHOE: Oh, no.

Mr. STOKES: I am not talking about savings banks, but about general banks. They have to pay out the money or close their doors, while the building and loan associations are entitled to sixty days' notice and you can not get your money in less than sixty days.

Mr. KEHOE: No, the national banks are not closed for refusing to pay. I know of a case where a depositor said, "You must pay or I will close you up," and they said, "Proceed; it takes sixty days or more to get action under the law, and by that time the whole trouble will be over." I know that some banks did that in the city, but we in the country didn't do it. We paid every depositor who asked for his money from day to day.

Mr. STOKES: But if you had refused to pay your depositors they could have closed you up?

Mr. KEHOE: Not except at the end of a process that would take about two months, but we didn't care to take advantage of that.

Mr. HALFHILL: This proposal seems to be one that deserves consideration of this Convention for the very good reasons that have been stated here, and if we do not take some step of this kind we are liable to be soon confronted in some form or manner with some attempt along the same line as in Oklahoma to get a state guaranty bank deposit law.

Mr. PECK: Do you think that will be a calamity?

Mr. HALFHILL: I think the adoption of a state guaranty bank deposit law in Ohio would be a calamity.

Mr. PECK: Well, I will put Mr. Kehoe's judgment against yours.

Mr. HALFHILL: I am not talking to you particularly, and I am not caring whether I can convince you or not. I am talking to the Convention, and the purpose of my address is to impress upon the Convention that if it passes this you will not be subjected to, or have to meet a state guaranty bank deposit law. I think for the reason suggested by Mr. Beatty, and all of us who are acquainted with him in northwestern Ohio know that he is a good business man, that a state guaranty bank deposit law in Ohio would be a calamity, because the rates of interest here are very low. It is only where you have speculative rates of interest and where our legal rate of interest can be exceeded two or three times, as it is in some of the western states, that such a thing can become necessary in the first instance, and you could not make the business of banking worth while in the state of Ohio if you had liability here by way of contribution to that sort of an indemnity fund. Here are the national banks, and there is a double liability of stockholders on them; here is the state bank with the single liability;

here are the building and loan associations, and if they are doing only building and loan association business, and not engaged in banking this proposal does not apply to them, and it ought not to apply to them; but I can not see any good reason—at least there has been no good reason furnished that I have heard—why, if a building and loan association is doing a banking business, it would not properly be within the purview of this proposal.

Now, I know, and I am certain some of the rest of you know, that building and loan companies in many places are conducting banking business. It is true, they don't conduct commercial banks in the sense that you write checks on them, neither do they discount bills, or do a regular commercial business, but they do take deposits of money and they do issue time certificates, and they do state on the time certificates that they will pay you certain rates of interest, which increases proportionately if you leave the money there a certain number of months. If you leave it there as much as six months they will pay you five per cent interest. That becomes an obligation and the contract is binding upon all the property of that building and loan association and is secured thereby, and every depositor or holder of such certificate knows that he has a first and best lien against all the property of such association, including the surplus or any assets it has.

I take it that practically every building and loan association that is doing anything like an extensive business in the larger cities is organized so that it can and does conduct a savings bank business, and when it conducts a savings bank business then it takes advantage of the sixty days after demand for payment, which the law has provided, if it is hard cramped for funds; and it could not be forced into liquidation or compelled to pay instanter, and to that extent it comes in just as an ordinary savings bank would come in under the same law. You can organize a savings bank or savings department under the same law. You take an ordinary commercial bank, a bank of loan and discount, and you can organize a savings department there and this savings department would come under the savings bank law, just as it is applied to the building and loan associations, which can organize a savings bank in connection with its business; so that the savings bank law applies to building and loan associations just the same as any other bank, and if they are doing a savings bank business why should not this proposal apply? That is what I want to know.

Now, it has been suggested that by this proposal the building and loan stock you own becomes a liability rather than an asset. It certainly does not become a liability rather than an asset, unless you are engaged in a business more hazardous than the regular building and loan business, and the only other business that is more hazardous in which you can engage as such an association is the savings bank business, or receiving money on deposit. You can run a building and loan association as a building and loan business and that was the idea when it originated under the laws of the state of Ohio; and they have been very beneficial and have helped many poor people to get a home; and if you are running them legally as building and loans the officers will find it practically impossible to lose anything for the security is first mortgage on real estate; but if you are engaged in bank-

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ing along with the building and loan business, it is possible to lose money. Therefore, if they are engaged in the banking business they ought to come within the purview of this proposal.

Mr. WINN: May I ask a question?

Mr. HALFHILL: When I get through with the remarks I am making I will try to answer any question that is put to me.

I think it was pretty thoroughly explained here, at least I believe it was, that this particular proposal would apply to existing banks. I think there can be no doubt about that. You have heard—many of you who are not of the legal profession, at least have heard—of the famous case of the trustees of Dartmouth College vs. Woodward, reported in fifth Wheaton, in which Daniel Webster was of counsel, and in which case the supreme court of the United States laid down the doctrine that a charter issued direct by a state legislature was a vested right, and that the state could not repeal it or modify it as an ordinary corporate contract created under general laws. That was just what happened in the early days of Ohio under the first constitution, and that is exactly why this great big bank in the city of Cleveland, referred to here in debate, the Society for Savings, is in existence now and not subject to any particular control, because it got its right to start in the first instance by a special charter issued by the legislature under the old constitution, and it is kept alive under that old charter, by virtue of the law laid down in the case of the trustees of Dartmouth College vs. Woodward; and I am informed there are a few insurance companies doing business in Ohio which got their charters under the old constitution and they consider them very valuable.

But as was explained here by a member of the banking committee, this proposal applies to existing banks which undoubtedly come within the purview of a corporation created under general law, and such a corporation the legislature at all times under the present constitution reserves the right to control, for such general laws may be altered or repealed; and it is not impairing the obligation of any contract to enact a fundamental law of this kind. So far as the liability that attaches after the enactment of this fundamental law is concerned, it most assuredly will apply to every existing corporation in the state of Ohio, notwithstanding the declaration of Mr. Winn. I do not think that he had considered this carefully at the time any more than I had at that moment. It was thoroughly new to me when the proposal came up for discussion here tonight.

Mr. ANDERSON: Will the gentleman yield for a question?

Mr. HALFHILL: When I get through—the time is so limited. I am therefore in favor of this proposal. I believe it will work well with the banking corporations of the state of Ohio. I have had several letters and several interviews about it, and I have had no objection, except from one man who is counsel for a state savings bank and trust company, and I don't think the reasons given by him are valid. I personally am interested in just the kind of institution that he was talking about, a state savings bank and trust company, and I am perfectly agreeable, so far as I am personally concerned, for this proposal to become a part of our organic law. I think it will be a benefit and create added confidence for state

institutions to be put upon a par with the national banks as to double liability of stockholders, so I hope this proposal, without any amendment, will be passed by the Convention.

Mr. WATSON: I want to ask a question purely for information. You spoke a while ago about the liability of stockholders of a building and loan association that becomes insolvent—

Mr. KING: I rise to a point of order—the gentleman directing the question should rise to his feet.

The PRESIDENT: The point is well taken.

Mr. WATSON: If a building and loan association doing a banking business breaks up, will that carry with it the laboring man who has borrowed money from the building and loan association? Will his property become part of the assets?

Mr. HALFHILL: I think whenever the building and loan association undertakes to carry on a banking business every stockholder in it, whether a laboring man or a rich man, or whoever he is, becomes responsible. His responsibility is fixed by law.

Mr. WATSON: Does he become a stockholder when he has a loan in the building and loan association?

Mr. HALFHILL: I do not see how he could be otherwise. From the very theory of the organization of building and loan companies, when he subscribes for shares and becomes a borrower he becomes a stockholder.

The PRESIDENT: The member's time has expired.

Mr. HOSKINS: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 93 as follows: At the end thereof insert the following: "And the legislature is hereby authorized to establish a system of guaranteeing deposits in state banks."

Mr. HARTER, of Stark: I move that the amendment be laid on the able.

A DELEGATE: The member from Auglaize has the floor. Will the member yield for a motion to recess?

Mr. HOSKINS: Yes.

DELEGATES: No.

Mr. HOSKINS: I am not going to discuss the merits pro and con of the original proposition. It has been thoroughly discussed and well presented and the merits of the case on both sides are before you. The double liability for state banks is probably only a substitute for the real thing, the thing that ought to be. The money of the nation or the money of a state is the life-blood of that nation or state. It is the circulating medium of the state. All of our prosperity depends upon this thing we call money. We take that to the bank and deposit it. What is the present situation in Ohio? We say to the depositor—the laboring man or the farmer or anyone else who deposits funds in the bank—that the state examines these banks, that they are under state supervision, and that fact is advertised. We give, in other words, a guaranty by our law to the depositing public that these banks are examined by the state banking department just as the national banks are examined by the national banking department. Now, when we say this to the public, that creates an obligation upon the part of the state, a moral obligation to make that examination good, to make that implied guaranty that we hold out to the people good, and I believe that any subterfuge

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of actually making that guaranty good is falling short of the real remedies the people demand at the hands of the legislature or at the hands of this Convention. Now if our state treasurer has millions of dollars of state money and he receives bids in the shape of the payment of interest for that money, and he awards it to the one offering the highest interest, he doesn't take that down and deposit it as an ordinary depositor without security. The laws of the state of Ohio compel that bank or association to put up municipal bonds or government bonds as a guaranty of the deposit of the state money, and yet the bank that receives such deposit of state money will put on its window "State Depository." They will put that on their letter heads, conveying the impression that the state of Ohio is trusting them as a depository of state funds, when the state of Ohio is not trusting them at all, but is requiring an iron-bound contract for the return of the money. Those desiring to become customers or depositors of the bank are simply fooled by this advertisement upon the front window and letter heads which says the government has chosen that bank as a depository for its money, when in fact the state government has exacted from them the most absolute guaranty for the return of the money. Really the public has been misled by the advertisements and signs. A man will say: "If the state can put its money in this bank I can," and on the face of this he walks in and makes the deposit without one single safeguard for that deposit. This amendment I have submitted simply puts the matter up to the legislature to devise a system for the guaranty of deposits in state banks. I believe that is the real true remedy for the situation.

Mr. ELSON: What is your idea as to where the authority shall be, where the money shall be to reimburse the depositors?

Mr. HOSKINS: That is a question of detail, but I can give you my idea. My idea is that when we are subjecting the banks of the state to supervision that a very small tax be placed upon the deposits or upon the stock of a bank or some other equitable means might be devised, and let this go into the guaranty fund. I think you will find out, if you take the failure of every national bank in this country for fifty years and figure out the losses to the depositors of those banks and calculate the amount of the assessment that should be put on each bank to make good the losses, that that assessment would be so small that the banks would not miss it. Some one a while ago spoke of wild-cat banking, that this would encourage wild-cat banking. Wild-cat banking is the last thing on earth it would encourage, because, first, when you organize a bank you must put \$100,000 into the the capital stock, and there is not one cent going out of the guaranty fund until that \$100,000 is exhausted. Why should a set of officers or directors in a bank be supposed to start out on any such idea as that, that they will lose \$100,000 of their own money to get a chance to take advantage of this guaranty fund?

Mr. BROWN, of Highland: What is there to hinder one who has charge of it from taking the paid-up capital stock and running away with it before he does any business at all and leaving it to the other banks to settle?

Mr. HOSKINS: Did you ever know of such a case as that?

Mr. BROWN, of Highland: No, but there is nothing to prevent it.

Mr. HOSKINS: If you properly organize your bank, that man who is going to run away with the funds will be under proper bond before he gets his hands on a dollar. What prevents the national banker from running away?

Mr. WINN: What is there hindering a cashier or any other officer having charge of a bank, state or national, from running away?

Mr. HOSKINS: Not a thing.

Mr. BROWN, of Highland: Who specifies the amount of the bond an officer of a bank shall give?

Mr. HOSKINS: No one but the directors as a rule.

Mr. BROWN, of Highland: They can make it larger or smaller according to prearrangement.

Mr. HOSKINS: It seems to me you are attempting to make an argument instead of asking a question.

Mr. HARRIS, of Hamilton: Do you think it sounds economic for the state of Ohio to guarantee the credit of those who loan money and not guarantee the credit of any other particular line of business, such as selling merchandise?

Mr. HOSKINS: I think whenever the state of Ohio undertakes to supervise the man who lends money before it authorizes that man to lend money or engage in the business it can and should guarantee him. It doesn't regulate or control the man selling goods.

Mr. HARRIS, of Hamilton: Is not the authorization to do business police regulation?

Mr. HOSKINS: No.

Mr. HARRIS, of Hamilton: There is no difference in the principle between that and the state doing anything else?

Mr. HOSKINS: Yes; there is. The bank is an artificial person which the state under law permits to be created. The state undertakes to supervise and the state ought to be responsible.

Mr. HARRIS, of Hamilton: The political subdivisions undertake to supervise anything.

Mr. HOSKINS: Under police regulation.

Mr. HARRIS, of Hamilton: That does not change the principle of the thing, whether you call it police regulation or anything else.

Mr. HOSKINS: It does not undertake to supervise natural persons.

Mr. HARRIS, of Hamilton: Whether artificial or natural it makes no difference.

Mr. THOMAS: The amendment offered by the member from Auglaize is a simple amendment.

The PRESIDENT: Has the member from Auglaize yielded the floor? If he has not he still has the floor.

Mr. ANDERSON: I would like to ask the member from Auglaize a question: The only objection you have to Proposal No. 93 is that it does not go far enough and give depositors enough protection?

Mr. HOSKINS: I think that is so.

Mr. ANDERSON: If your amendment fails are you in favor of Proposal No. 93?

Mr. HOSKINS: I never said I was opposed to it.

Mr. ANDERSON: If your amendment fails you are in favor of it?

Mr. HOSKINS: I signed the report to bring it out.

Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. ANTRIM: Can you name one single successful precedent for guaranteeing bank deposits?

Mr. HOSKINS: That would necessitate going into a discussion of Oklahoma.

Mr. ANTRIM: There were a great many failures before that.

Mr. HOSKINS: There have been failures in the national banks too.

Mr. ANTRIM: I mean the failure of the plan in New York and Michigan—

Mr. HOSKINS: You can make your speech, you will have fifteen minutes to do it in.

Mr. THOMAS: The amendment I desired to offer on the question is simply the one that has been offered by the member from Auglaize. I do not think any better argument can be made for that amendment than has been made by the distinguished commoner of Nebraska who addressed us on the subject a few weeks ago, and the members who heard that argument made on behalf of guaranteeing bank deposits should not need any other argument to make them vote for it. It is the poor man who suffers, the working man who suffers from the bankrupt bank, and not as a rule the middle man. About one-half of the business men and the corporations that have money in that bank get some sort of inkling, either through the stockholders or some one else, that there is something liable to happen; they get their money away and it is the poor devil who is saving enough to keep him during his old age or to pay for a little home that suffers every time. He deposits his money in a bank because it does business under a state charter, and in some way he imagines, because the banks are doing business under a national or state charter, that the nation or state is guaranteeing him that he will get his money back, and yet the laws governing the banking business permit men to go into the banking business and fleece the people of a particular community deliberately, as was done in the case of the South Cleveland Banking Institution when they loaned nearly if not quite a million dollars to another banking concern and took the lifetime savings of scores of poor people for the purpose of holding up that institution. That is not the only instance that can be mentioned, but there are others, and there were just as many bankrupt banks under double liability of stockholders as there have been since that was changed to single liability. It is not a bit different. I insist that the time has come when the state of Ohio in granting charters to men who are doing banking business should guarantee the depositors that their savings, when they are needed, can be gotten back, so that the poor man will have a chance, as he should have, in the closing days of his life.

Mr. LAMPSON: Will the gentleman yield for a question?

Mr. THOMAS: Yes.

Mr. LAMPSON: Is not a bank failure a method of dividing up the poor man's savings?

Mr. THOMAS: But the trouble is it is always dividing up the poor man's savings with the other fellow; there is never any divide coming to the poor man.

Mr. LAMPSON: They simply don't all get in on it.

Mr. ELSON: I want to make a motion, but I want to say a word first. It seems to me that it is just as impossible for the state to guarantee deposits in a bank

as it is for the state to guarantee stock in a business. There are many businesses that have charters in the state outside of banks, and no one seems to want us to guarantee those other businesses. The fact has been referred to that the government in depositing money in a bank guarantees itself. That is true, but the government is simply an outside agency—the government is the whole people organized. It is true that the government could afford to lose better than any individual or class of people, but the government's money is in the hands of certain officials and it is those officials who give bonds to make good in case of loss, and it is on that ground that the government must guarantee itself. That is a kind of responsibility of these particular officials. It is not the government exactly as in the state guaranty scheme. It is merely a coercive mutual insurance. I believe in mutual insurance and in coercive insurance. I move to lay this amendment on the table.

Upon which the yeas and nays were regularly demanded, taken, and resulted—yeas 53, nays 40, as follows:

Those who voted in the affirmative are:

Antrim,	Halfhill,	Miller, Crawford,
Baum,	Harris, Ashtabula,	Miller, Ottawa,
Beatty, Morrow,	Harris, Hamilton,	Nye,
Brattain,	Harter, Stark,	Peters,
Brown, Highland,	Holtz,	Redington,
Brown, Lucas,	Johnson, Madison,	Rockel,
Campbell,	Johnson, Williams,	Rorick,
Cassidy,	Jones,	Shaw,
Collett,	Kehoe,	Smith, Hamilton,
Colton,	Kerr,	Stalter,
Cunningham,	Knight,	Stevens,
Earnhart,	Kramer,	Taggart,
Eby,	Lampson,	Tallman,
Elson,	Longstreth,	Walker,
Fackler,	Ludey,	Weybrecht,
Farnsworth,	Matthews,	Wise,
Fess,	Mauck,	Woods.
Fox,	McClelland,	

Those who voted in the negative are:

Beatty, Wood,	Harbarger,	Pierce,
Bowdle,	Henderson,	Roehm,
Brown, Pike,	Hoffman,	Shaffer,
Cordes,	Hoskins,	Smith, Geauga,
Crosser,	Keller,	Stewart,
DeFrees,	Kilpatrick,	Stilwell,
Donahey,	Kunkel,	Stokes,
Doty,	Lambert,	Tannehill,
Dunlap,	Malin,	Tetlow,
Farrell,	Moore,	Thomas,
FitzSimons,	Okey,	Watson,
Fluke,	Peck,	Winn,
Hahn,	Pettit,	Mr. President.
Halenkamp,		

The motion was agreed to.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

At end of proposal strike out the period and insert comma and add: "and provided further, no person, partnership, association or corporation, not organized under the laws of this state or of the United States, shall use the words 'bank' or 'banker' as a designation or name under which business may be conducted in this state, unless they first submit to inspection, regulation and examination as provided or may be provided under the banking laws of this state."

Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. Woods was recognized.

Mr. PECK: Will the gentleman yield to a motion to recess?

Mr. WOODS: Yes.

Mr. PECK: I move that the Convention recess until tomorrow morning at ten o'clock.

The motion was lost.

Mr. PECK: All right; good-night, I am going.

Mr. WOODS: This amendment means just what it says. You all know there are three kinds of banks in this state: First, national banks, which are examined under the laws of the United States; second, state banks, subject to the inspection and regulation under the laws of the state of Ohio; third, private banks. The number of these banks is just about the same in the state of Ohio. The private banks are not regulated by any law of any kind. I have a right to stick up over any door of any place that I own or rent "Farmers Savings Bank", or "Woods 'Savings Bank'", or any other kind of a "bank" I see fit. This amendment provides that before I commenced doing business as a banker, unless I have a charter from the state of Ohio or the United States, I must submit to an examination, inspection and regulation under the banking laws of this state, and I could not use the word "bank" or "banker" in doing any such business unless I do so submit. This is simply to make me, or any other man who goes into the banking business, do business under my real name and not under some other name. It will not hurt anybody unless he is trying to do business under a name that he should not bear. I am not trying to put anything over on anybody, but I want the people of the state to face the music and do business in their own names. I have a right to lend money, but I ought not to be permitted unless I am inspected by the state or United States to use the word "bank" or "banker".

Now this can not be taken care of any place in the constitution except here. I was a member of the house when we passed the bank inspection bill, but we couldn't take care of the private banks. The people of this state—the ordinary individuals—never stop to think there is a difference between a state, national and private bank. They see "Bank" over the front door and they go in there and leave their money. Some private banks are all right and there won't be any trouble about standing the inspection from banks that are all right. It is those that are not all right that can't stand the inspection. I am now a receiver in bankruptcy of a private bank where a man went to Texas with about \$60,000 of the money of the people in my county. All the money he left was two counterfeit silver dollars. If there is any good we can do for the people of this state it is to stop the people from doing business under names of this kind when they ought not to do it. They can still do a banking business under this; it won't prohibit them from doing that, but it will prohibit them from using the words "bank" and "banker".

Mr. HALFHILL: Do I understand the gentleman to say that the legislature could not make the provision that nobody could use the word "banker"?

Mr. WOODS: I think that is right.

Mr. HALFHILL: It certainly is within the legislative power to do that.

Mr. WOODS: We tried and we came to the conclusion we could not do it.

Mr. NYE: I am a member of the Banking committee. This whole matter of private banks was considered by the Banking committee and it was thought best that this Constitutional Convention ought not to put anything into the constitution that would recognize the private banks, and therefore we left it out. I therefore move that the amendment be laid on the table.

Mr. WOODS: And on that I demand the yeas and nays.

The yeas and nays were taken, and resulted—yeas 26, nays 67, as follows:

Those who voted in the affirmative are:

Bowdle,	Hoskins,	McClelland,
Brattain,	Johnson, Madison,	Nye,
Cassidy,	Johnson, Williams,	Pierce,
Cordes,	Jones,	Redington,
Cunningham,	Kehoe,	Smith, Hamilton,
Eby,	Kerr,	Stalter,
Halfhill,	Knight,	Stevens,
Harris, Hamilton,	Malin,	Wise.
Harter, Stark,	Matthews,	

Those who voted in the negative are:

Anderson,	Fluke,	Peters,
Antrim,	Fox,	Pettit,
Baum,	Hahn,	Rockel,
Beatty, Morrow,	Halenkamp,	Roehm,
Beatty, Wood,	Harbarger,	Rorick,
Brown, Highland,	Harris, Ashtabula,	Shaffer,
Brown, Lucas,	Henderson,	Shaw,
Brown, Pike,	Hoffman,	Smith, Geauga,
Campbell,	Holtz,	Stewart,
Collett,	Keller,	Stilwell,
Colton,	Kilpatrick,	Stokes,
Crosser,	Kramer,	Taggart,
DeFrees,	Kunkel,	Tallman,
Donahey,	Lambert,	Tannehill,
Doty,	Lampson,	Tetlow,
Dunlap,	Longstreth,	Thomas,
Earnhart,	Ludey,	Walker,
Elson,	Mauck,	Watson,
Fackler,	Miller, Crawford,	Weybrecht,
Farnsworth,	Miller, Ottawa,	Winn,
Farrell,	Moore,	Woods,
Fess,	Okey,	Mr. President.
FitzSimons,		

So the motion to table was lost and a further vote being taken the amendment was agreed to.

The PRESIDENT: The question is on the amendment of the delegate from Defiance.

The amendment was not agreed to.

Mr. TALLMAN: I have an amendment.

The amendment was read as follows:

After the word "shares" at the end of line 11 insert the following: "provided that the stockholders of building associations, that do a banking business, shall be liable in an amount equal to the amount paid in on their stock, in addition to the amount so paid in."

The PRESIDENT: The question is on the adoption of this amendment.

Mr. STOKES: I move that the amendment be laid on the table.

Mr. TALLMAN: I have the floor. I have not yielded it yet, and the gentleman making the motion to table it is not in order.

Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. President and Gentlemen of the Convention: The representatives of state banks we have here who are engaged in the banking business have said they are in favor of double liability being imposed on their stockholders because it gives additional credit and solidity. It puts them more upon a par with national banks. It therefore has a tendency to draw business and depositors to their institutions.

Those who borrow money from them are required to give security, and it is certainly right that the depositor who deposits his money in a state bank (often without any interest) should have for his security not only the assets of the bank, but the personal liability of the stockholders as well, to the extent of the stock owned by them.

Why should any exception be made of building and loan associations who do a banking business? The stockholders in these associations should be subject to a double liability, to the amount at least that they have paid in on their stock. The association receives money on deposit, very frequently without paying any interest at all, and sometimes a mere nominal interest. The money so received, the association lends to home builders (often at seven per cent) and takes a mortgage security upon their property, requiring the home builder to pay the cost of furnishing an abstract of his title in addition. The profits derived from the loan of money deposited in these associations by persons who are not stockholders and who have no interest in the association is shared by the stockholders of the association, just the same as in the case of stockholders of state banks. Now there is no difference. This Convention proposes to make a difference. To discriminate against one and favor the other, to burden the stockholders of one that does a banking business with a double liability and let the stockholders in the building and loan associations that do a banking business go free, no matter how extensive the banking business such associations may do, is not just. It is not proposed by this amendment to make the stockholders of building and loan associations liable for any double liability except for deposits made with it, or for money borrowed by it, to be reloaned again at a higher rate of interest, and I confess that I am not able to see the propriety of saddling this double liability upon the stockholders of all corporations doing a banking business except one. On the contrary, the double liability should apply to all corporations that do a banking business.

Mr. WALKER: I move the previous question.

Mr. WINN: I demand the yeas and nays.

Mr. ELSON: Let us take a rising vote on it.

The PRESIDENT: Who joins in the demand for the yeas and nays? The yeas and nays are not demanded. All those in favor of ordering the main question will rise to be counted and the contrary will rise.

The main question was ordered by a vote of 74 to 7.

Mr. WINN: It requires a two-thirds majority.

Mr. LAMPSON: It requires two-thirds of those voting.

The PRESIDENT: The motion for the previous question is carried and the question is first on the adoption of the amendment offered by the member from Belmont.

A vote being taken the amendment was not agreed to. The PRESIDENT: The question is now on the adoption of the proposal as amended.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 66, nays 23, as follows:

Those who voted in the affirmative are:

Anderson,	Fluke,	Miller, Ottawa,
Antrim,	Fox,	Nye,
Baum,	Hahn,	Peters,
Beatty, Morrow,	Halenkamp,	Pettit,
Beatty, Wood,	Halfhill,	Redington,
Bowdle,	Harbarger,	Rockel,
Brown, Highland,	Harris, Ashtabula,	Rorick,
Brown, Lucas,	Harris, Hamilton,	Shaw,
Brown, Pike,	Henderson,	Smith, Geauga,
Campbell,	Holtz,	Smith, Hamilton,
Collett,	Hoskins,	Stewart,
Crosser,	Johnson, Williams,	Stilwell,
Cunningham,	Keller,	Taggart,
Donahy,	Kerr,	Tallman,
Dunlap,	Kilpatrick,	Tannehill,
Earnhart,	Knight,	Tetlow,
Eby,	Kunkel,	Thomas,
Elson,	Lambert,	Walker,
Fackler,	Lampson,	Watson,
Farnsworth,	Ludey,	Weybrecht,
Farrell,	McClelland,	Wise,
Fess,	Miller, Crawford,	Woods.

Those who voted in the negative are:

Brattain,	Jones,	Roehm,
Cassidy,	Kehoe,	Shaffer,
Cordes,	Longstreth,	Stalter,
Doty,	Matthews,	Stevens,
FitzSimons,	Mauck,	Stokes,
Harter, Stark,	Moore,	Winn,
Hoffman,	Okey,	Mr. President.
Johnson, Madison,	Pierce,	

The roll call was verified.

So the proposal passed as follows:

Proposal No. 93—Mr. Earnhart. To submit an amendment to article XIII, section 3, of the constitution.—Relative to the protection of bank and other deposits.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value, thereof, in addition to the amount invested in such shares, and provided further, no person, partnership, association or corporation, not organized under the laws of this state or of the United States, shall use the words "bank" or "banker" as a designation or name under which business may be conducted in this state, unless they first submit to inspection, regulation and examination as provided or may be provided under the banking laws of this state.

Petitions and Memorials.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Indefinite leave of absence was granted to Mr. Leete.

Leave of absence for the remainder of the week was granted to Mr. Dwyer.

Leave of absence for Thursday and Friday was granted to Mr. Tallman.

Leave of absence for Wednesday was granted to Mr. Ludey.

PETITIONS AND MEMORIALS.

Mr. Matthews presented the petition of Mrs. L. C. Thomas and one hundred four other citizens of Putnam county, asking for woman's suffrage; which was referred to the committee on Equal Suffrage and Elective Franchise.

Mr. Anderson presented the petition of J. J. Hill and sixty other citizens of Struthers, protesting against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Anderson presented the petition of Mrs. J. H. Bowden and other members of the Clio club, of Youngstown, relative to reading the Bible in the public schools; which was referred to the committee on Education.

Mr. Campbell presented the petition of J. L. Cailey and other citizens of Henry county, protesting against licensing the liquor traffic; which was referred to the committee on Liquor Traffic.

Mr. Bigelow presented the petition of the Hartwell Literary club, relative to women being appointed to of-

fice in institutions where women and children are involved; which was referred to the committee on Legislative and Executive Departments.

Mr. Antrim presented the petition of W. H. High and seventy-eight other citizens of Van Wert, protesting against the manufacture, sale and distribution of cigarettes; which was referred to the committee of the Whole.

Mr. Bigelow presented the petitions of the Seventh-Day Adventist churches, of Bellefontaine; of Columbus; of Mansfield; of Leesburg; of Cincinnati; of Chillicothe; of Piqua; of Mt. Vernon; of Medina; of Derwent; of New Philadelphia; of Akron; of Waterford; of Defiance; of Lake View; of Alliance; of Locust Point; of Newark; of Wheelersburg; of Canton; of Walnut Grove; of Zanesville; of Charloe; of Killbuck, protesting against the passage of Proposal No. 321; which were referred to the committee on Education.

Mr. Bigelow presented the petition of the United Shoe Workers of America, relative to private detective agencies; which was referred to the committee on Miscellaneous Subjects.

Mr. DOTY: I move to adjourn.

Mr. LAMPSON: I move that we recess until 9:30 o'clock tomorrow morning.

Mr. DOTY: I move that we adjourn until 10 o'clock in the morning.

The motion to adjourn was carried, and the Convention adjourned until tomorrow morning at 10 o'clock.