

SEVENTY-FIRST DAY

MORNING SESSION.

WEDNESDAY, May 8, 1912.

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

The journal of yesterday was read and approved.

Mr. DOTY: I move that the employes of the Convention be required to go to Chillicothe tomorrow.

The motion was carried.

Mr. KNIGHT: I ask unanimous consent to introduce a resolution.

The resolution was read as follows:

Resolution No. 121:

Resolved, That this Convention when it adjourns on Thursday, May 9, 1912, shall adjourn to Wednesday, May 22, 1912, at two o'clock p. m., at which time the standing committees on Schedule, Submission and Address to the People, and Arrangement and Phraseology shall report upon such matters as shall have been referred to said committees.

Resolved, That the calendar of business for May 22, 1912, and thereafter, shall consist only of proposals for third reading and questions appertaining thereto, and no other business shall be considered except that which shall have reference to the concluding work of the Convention.

Resolved, That Resolution No. 114 is hereby rescinded.

By unanimous consent the rules were suspended and the resolution was considered at once.

Mr. KNIGHT: My reason for introducing this resolution is sufficiently apparent. Our work on second readings will be practically, if not completely, concluded today or tonight. The committee on Schedule and the committee on Arrangement and Phraseology, and especially the committee on Schedule, cannot do any of its work to completion until it knows what the Convention is adopting on second reading, and that committee has had but a preliminary meeting. The committee on Arrangement and Phraseology would like to work twenty-four hours a day if it could. It has been doing pretty near that since last Friday, and down to the present time, so far as my information now goes, has approved one-half of the proposals, and in that half are the short ones. There are still many proposals any one of which has more subject matter than all the matter that has been handled by the committee on Arrangement. If it is desired that the work of the committee shall be in the best form possible, there should certainly be more time given than until next Tuesday to accomplish the work. A third reason perhaps makes it more appropriate for me to introduce a resolution than some others on the floor; we would like to consult the convenience of a majority of this Convention who have special business be-

tween now and the twenty-first of May. Personally I do not believe there will be more than a beggarly quorum after tomorrow night whatever day we fix for the next meeting. I believe as citizens of the state of Ohio some of us who are and hope to remain citizens of the state are and ought to be interested sufficiently to allow the last ten days before the primaries to be devoted to the citizenship of the state. May 22 is the day immediately following the primary, and the intent of the resolution is that when the Convention reassembles May 22 it will work Fridays and Saturdays until we get through. I ask that the rules be suspended and that this be put on its passage.

The president here assumed the chair.

Mr. FESS: Is it the purport of your resolution that we must finish all second readings tomorrow night?

Mr. KNIGHT: Yes.

Mr. FESS: Don't you think that is unwise?

Mr. KNIGHT: If we haven't finished then we can modify it.

Mr. FESS: Will you agree to it?

Mr. KNIGHT: When the times arrives I will. We might finish today.

Mr. FESS: Suppose we cannot do it?

Mr. KNIGHT: We can control that when we come to it.

Mr. FESS: But if we cannot?

Mr. KNIGHT: We will modify it.

The rules were suspended.

The PRESIDENT: The secretary will call the roll on the adoption of the resolution.

The yeas and nays were taken, and resulted—yeas 83, nays 15, as follows:

Those who voted in the affirmative are:

Anderson,	Halfhill,	Peck,
Antrim,	Harris, Ashtabula,	Peters,
Baum,	Harris, Hamilton	Pettit,
Beatty, Morrow,	Harter, Huron,	Pierce,
Beyer,	Harter, Stark,	Redington,
Brattain,	Hoffman,	Rockel,
Campbell,	Holtz,	Roehm,
Cassidy,	Hoskins,	Rorick,
Collett,	Keller,	Shaffer,
Colton,	Kerr,	Shaw,
Cordes,	Kilpatrick,	Smith, Geauga,
Crites,	Knight,	Stamm,
Crosser,	Kramer,	Stewart,
Cunningham,	Kunkel,	Stilwell,
Davio,	Lambert,	Stokes,
Donahay,	Lampson,	Taggart,
Doty,	Leete,	Tannehill,
Dunlap,	Leslie,	Tetlow,
Dwyer,	Longstreth,	Thomas,
Earnhart,	Ludey,	Ulmer,
Elson,	Marshall,	Wagner,
Evans,	Matthews,	Walker,
Fackler,	Mauck,	Watson,
FitzSimons,	McClelland,	Weybrecht,
Fluke,	Moore,	Wise,
Fox,	Nye,	Woods,
Hahn,	Okey,	Mr. President.
Halenkamp,	Partington,	

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Those who voted in the negative are:

Beatty, Wood,	Kehoe,	Price,
Fess,	King,	Riley,
Harbarger,	Malin,	Solether,
Johnson, Williams,	Miller, Crawford,	Stevens,
Jones,	Norris,	Winn.

The resolution was adopted.

SECOND READING OF PROPOSALS.

The PRESIDENT: The question before the Convention is Proposal No. 16, Mr. Elson. The president would like to say we hope that during the last day's work endeavors will be made to facilitate the work. The roll call should not be idly demanded. It takes ten or fifteen minutes to call a roll. When a roll call is being had members should be in their seats to answer to their names and not lounging in the smoking room. We ought not to have any long speeches made or papers read. The author should explain directly his proposal, exactly what it is and what it is aimed to do.

Mr. ELSON: I expressed myself a few weeks ago on this subject. The proposal was sidetracked and now it comes up again. I hope that those who were in opposition to it at that time have since reconsidered and have looked upon the thing in its true light.

There are said to be two classes of delegates opposed to the short ballot. One is the class of politicians who are looking for political preferment. I can readily see how such might be the case. I think that we have met that condition in making this proposal go into operation not before the first of January, 1914, so that whatever the present applicants and aspirants for office may aspire to, they will not be interfered with on account of the adoption of this proposal. I hope that they will look at it in that light. As I said I do not blame anyone for aspiring to certain offices or for taking that view of the matter. However, I hope we have met that objection and will secure their support.

The other class are men who have not studied the subject and do not clearly understand what it means. If there were any of that class before I hope there are none now. There has been literature sent to members on the subject and I believe all of us are posted on what the short ballot really is and really means. The great objection of that class of men arises from the fact that they fear that it has a tendency away from instead of toward greater democracy. Such is positively not the case. It is a giving of more power into the hands of the people than the people had before.

Evidence is one of the things by which we decide cases, whether they are before a court or anywhere else. We need evidence in order to convince ourselves and if we will take a general view of the conditions of the short ballot in the United States today, we shall find all of the evidence that anyone could possibly need to convince him of the probable effect of the short ballot. For instance, Governor Woodrow Wilson, of New Jersey, is president of the national association advocating the short ballot. We know Governor Wilson is a progressive in a genuine and real sense of the word. Second, ex-President Roosevelt spoke on that subject before this Convention a few weeks ago. In clear language he said, "I am in favor of the short ballot." Why would he say such a thing if the short ballot were a tendency away from democratic government instead of toward it? What

he said on that subject has been published broadcast all over the United States.

Now I want to restate what I said before, that there are two great objects in the short ballot. One is actually to shorten the ballot so that the common voter may vote intelligently, and the other is that it concentrates power in the hands of a man whom the people can watch, and takes the power out of the hands of a political boss.

As to the first or the shortening of the ballot, let me show you a ballot voted upon by the people of Nebraska a few weeks ago in their state primary. It is nine feet long. They voted one in New York fourteen feet long. Just imagine such a thing! So that the actual shortening of the ballot is one of the objects to be obtained in passing this short-ballot measure. All over the United States there is a general comment on this subject, and men who are at the head of this movement are patriotic men, men who are not working for selfish motives. I have here hundreds of editorials from the leading newspapers of the country, all favoring the short ballot. I shall read you three or four excerpts. Here is one from a Michigan paper:

It has been well said that the stronghold of the machine politician is the long ballot. He trades on the fact that while wide publicity is given the leaders of the ticket the minor officeholders escape almost unnoticed. What we need is a short ballot, a ballot confined to the offices that really count. The man elected should be entrusted with the power to make appointments to the minor offices and could be held responsible for the selections made.

Here is one from an Iowa paper:

The long tickets of the present day will some time be looked upon as an unbelievable farce.

One from a Tennessee paper:

It is a reform that the professional politicians will fight as they fought the adoption of a classified civil-service system in the federal government, but it must come if public offices are to be filled with capable business men and not with professional politicians.

Here is one from the New York Evening Sun:

The proposal to cut down the number of our elective officers is plain common sense.

From the Chicago Record-Herald:

Friends of the short ballot are congratulating themselves with ample reason on the progress of their movement. The notion that the short ballot is "undemocratic" or incompatible with popular control of government is fading in the light of reason.

Here is one from Collier's Weekly:

No political device is gaining ground faster than the short ballot. It is perhaps the most important of the changes of government machinery now under consideration.

No other governmental device threatens the system of machine boss and corporation rule which has grown up in our cities as seriously as the short ballot threatens it.

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From the Minneapolis Tribune:

Probably it would go far alone to cure many of the evils that are attacked by more clumsy and elaborate machinery of reform.

The essence of the short ballot is confidence in the people. Its fundamental assumption is that the majority of the people will go right, if you permit them to see where the right lies.

Now, I do not want to weary you with reading all of these clippings. One of the great objects to be secured by the short ballot is just what the name signifies, shortening the ballot; because now when we go to the polls our ballots are so long and we have so many people to vote for that we really do not know anything about the candidates and we have no opportunity to learn who they are or what their fitness for the office is. We must either vote blank or blindly. We find out who the leading candidates are and as to their fitness because the newspapers will be holding them up, but the minor officers are comparatively little known. All we know about them is from a few circulars, and so we have to vote blindly or blank. You can go on the streets of Columbus or any other city in the state and ask the average voter as you meet him to name over the state officials below the governor and there is not one man in fifty who can do it, and yet he voted for or against them. He does not even know who they are.

Now the second point, the concentration of power in the hands of one man, not because we wish to give that man the power at the expense of others, but because if we so concentrate the power in the hands of one man we will keep our eyes on that man. He will be in the limelight all the time, and if anything goes wrong with his administration he will be held responsible by the people. If a state treasurer were to go wrong now, the governor might snap his finger and say, "I didn't have anything to do with putting him there." He may even be of a different political party from the governor. But suppose the governor appointed that state treasurer. Then the people would place their finger upon the governor himself and say he was responsible.

Mr. FACKLER: This proposal says "The governor and lieutenant governor shall hold their offices for two years and the auditor for four years." What is the reason for lengthening that term of office?

Mr. ELSON: As we have it arranged here you will completely divorce the state from national politics. For a long time the agitation went on to divorce municipal from state and national politics, and this has been accomplished by reason of the fact that the municipal elections are in the odd-numbered years. We all admit that greater efficiency has taken place by reason of this change. Those who believe in the short ballot believe that if city, national and state elections were divorced we would have still a better grade of men running for office. Then the voter in making his choice, instead of running down a long list of names, many of whom he never heard of before, because their positions are relatively inconspicuous, will have comparatively few names to select from. He will not be tempted to mark his cross in the circle above the name of the president he favors and you will not have the state government dominated by national politics. This we want to get

away from forever, and by the provisions in this proposal we do it.

Mr. MILLER, of Crawford: How much will such a ballot as you exhibit there be shortened—how much would the New York ballot be shortened?

Mr. FACKLER: We are not proposing the New York ballot for—

Mr. MILLER, of Crawford: You have used that as a demonstration.

Mr. FACKLER: Yes.

Mr. MILLER, of Crawford: Show us how much shorter the ballot would be.

Mr. FACKLER: The ballot would be shorter in Ohio.

Mr. HOSKINS: Is not that all made up of county committees?

Mr. FACKLER: This is for full elections.

Mr. HOSKINS: How much shorter would it be? Show us. Is not four-fifths of that ticket made up by the county ballot and are you not attempting to deceive the Convention?

Mr. FACKLER: No, sir; that is an actual ballot. I am giving you an illustration.

Mr. HARRIS, of Hamilton: Well, another way to get at it—how many names would be stricken from that New York ballot by this proposal?

Mr. FACKLER: Six.

Mr. HARRIS, of Hamilton: Then the entire shortening of the ballot would be the elimination of six names?

Mr. FACKLER: That is true. We have to start some place. We cannot shorten everywhere at one time. The legislature can then take steps to shorten it as to the minor offices.

Mr. HARRIS, of Ashtabula: You voted for the primary proposal—

Mr. FACKLER: I did.

Mr. HARRIS, of Ashtabula: Providing that all candidates shall be voted for at primaries?

Mr. FACKLER: Yes, sir. These men will not be candidates for state offices.

Mr. HARRIS, of Ashtabula: They will be on the county ticket?

Mr. FACKLER: The county ticket will be nominated by direct primary, and for the purpose of getting efficiency in that primary we want to have few men to be voted for. It has been always a game of special privilege to get a large number of officials running for office at the same time in order that the people might be confused as to the men upon whom responsibility is placed. Professor Knight, in his proposal, was aiming at that very thing. The American Book Company has always fought for large school boards because they could handle them better.

Mr. HARRIS, of Ashtabula: You are not going to shorten your primary ticket very much.

Mr. FACKLER: If we shorten the number of officials nominated at the primary, do we not shorten our primary ballot?

Mr. HALFHILL: If you have one elective official and elect delegates to a convention, it takes the same number of delegates to the convention.

Mr. FACKLER: Yes, but the convention will be a thing of the past very soon and we desire to get our government in such form that it can work efficiently.

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Now the question has been raised here about this taking power away from the people. Why, this proposition puts back into the hands of the people power instead of taking it away. The most progressive men in the United States who have been fighting for popular rights are fighting for the short ballot so that the machinery can be placed in hands that can be watched and controlled. We believe that the people with the initiative and referendum can express themselves on measures, and we believe that shortening the ballot will tend to make that expression just and right.

Mr. RILEY: As a matter of fact did not the first constitution provide for the election of only one state officer and that continued until 1851?

Mr. FACKLER: Yes.

Mr. RILEY: And the people were tired of it?

Mr. FACKLER: Yes, but how were the rest elected? By the general assembly, not by the voters.

Mr. RILEY: Why don't you provide that the senate or some one shall confirm the appointments of the governor as is done in the United States Senate when the president appoints?

Mr. FACKLER: We do not do that because we believe the people will watch their governor on appointments and it will be the aim of the governor to appoint the very best men.

Mr. HOSKINS: Mr. President and Gentlemen of the Convention: I think of all the propositions that have been presented to the Convention that are undemocratic, unrepugnant and smacking of czarism and Russia, this is the worst. I cannot conceive of anything as monstrous as this proposition ever having been introduced in a legislative body or a constitutional convention in modern times. It beats anything I ever heard of.

Mr. DOTY: Is not that the same remark you made on Judge Peck's judicial reform proposal?

Mr. HOSKINS: It is not. Now you keep your seat and don't ask any more questions. I don't want you to take up my time. This is a democratic-republican form of government. The governors elected in the state of Ohio are no better than other citizens and no less affected by politics than other men are affected by politics. You have talked about the short ballot, and this short ballot meant only that you would eliminate certain elective state officers and make them appointive. That is not the idea of the men who have been advocating the short ballot at all. Why, you men who have been voting to make the primary system general and universal are voting in direct opposition here to what you advocated there. Look at the functions performed by the different state departments. Almost every legislature adds some administrative board, or board of some sort, that carries with it a vast number of employees. Now you make all the state offices appointive and you have simply added to the appointing power of the governor of the state. You have added to his power to build up a machine that it will be almost impossible to eliminate. There is no single state in the Union that provides for a four-year term of the governor that does not make that governor ineligible for re-election, and yet, if I have read this correctly, the governor may perpetuate himself in office term after term, there being no limit as to the number of times that he can be elected, and he can be elected as many times as his machine can control the state. You know what the main thing is

when it comes to fixing up election machinery out in wards. You know four-fifths of it is political machine power simply. I do not care where it comes from, it is part of that human nature that we discussed so much in the tax proposition, and you cannot tax human nature.

Now take the attorney general's department. The attorney general of the state is a member of eight different boards outside of his official duties, and he must pass upon different subjects in conjunction with the governor, secretary of state and possibly auditor of state and others. I cannot go into the details of that, but if you make the attorney general, the secretary of state and the others that are now elected by the people dependent upon the governor for their tenure of office, you will abolish every one of the boards on which these men act, because there would not be any use to have anybody on the boards except the governor, if he is to be associated only with his own appointees on these boards. Just turn the whole matter over to the governor and let him handle it all. Then you are not shortening your ballot enough to talk about. The author of the proposal said that the people of Ohio didn't know who their state officials were. If I had that opinion of the people I would not have voted for a primary. I would vote for a czar, a boss, and let him run the whole job and let the people go about their business. Do you mean to say the people of Ohio don't know who Tim Hogan is, or who Grant Denman is, or who Charlie Graves is, or who S. E. Strode is, he who is enforcing the pure food laws, or who the commissioner of common schools is?

Mr. DOTY: You cannot name him; what is his name?

Mr. HOSKINS: Mr. President, have I the floor?

Mr. DOTY: You can't name the commissioner of the common schools.

Mr. HOSKINS: I hate to apply "the short ugly word" to you. Do you know?

Mr. DOTY: I do not know.

Mr. HOSKINS: If Brother Doty doesn't know the name of the school commissioner he is not fit to move an adjournment in this Convention and he has been pretty generally usurping that privilege.

Mr. ANDERSON: What greater fame would that gentleman have if he were appointive?

Mr. KNIGHT: Is it not a fact that a majority of the Convention did not know the name of the present school commissioner until he attacked one of the very best proposals that has been offered here?

Mr. HOSKINS: That may be the case. He was against Professor Knight's proposal and I voted for it on the second reading, but I may vote against it on the third reading if you ask me many more questions like that.

It was said that the temptation of the voter was to vote a straight ticket. The best answer to that would be to ask the question whether or not the voters of the state of Ohio have been voting a straight ticket. You know the history of the last ten or fifteen years shows that the people know how to scratch a ticket and they know how to vote for the men they want in a particular office. All the voting we have had in the last fifteen years shows that the people have arrived at the point where they know how to discriminate.

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Now with reference to this long ballot. I don't desire to mislead the Convention and I know my friend from Cuyahoga [Mr. FACKLER] would not do that, but he at least overstepped the bounds of reasonable argument when he exhibited that great long ticket, all of which refers to committeemen, except the top four names, and you would be shortening that ballot just by four or five names by this proposal, and you destroy the most important functions of state government. I want to say to you you are attempting something very revolutionary.

Mr. STALTER: If the governor has the appointing power are you not forced to vote a straight ticket?

Mr. HOSKINS: Practically, yes. There is one thing certain, so far as I am concerned, I am against this entire proposal unless the proponents put in a prohibition of the re-election of the governor. That might make it a little better, but with that I would be against it. It seems strange to me that if anybody desires to pass such a proposal as this he does not prohibit the governor from being re-elected, for if he is allowed to be re-elected he can perpetuate himself in office term after term.

Now this is not a matter of present politics, or present administration, or future administration, but a question of principle. Will we undertake to put in the hands of the governor of the state of Ohio a more autocratic power than ever was conferred on any official in the state of Ohio, and, as far as I know, in the United States? The question was very pertinently asked of the proponent of this proposal why he did not put some of the safeguards in the proposal that are in our present constitution, for instance, when the governor makes these appointments that they be confirmed by the senate. That might be a safeguard, but even with that I would be opposed to it, because you take power out of the hands of the people when the intent of this Convention has been to confer upon the people of the state a greater share in their own government. I am in sympathy with every proposition we have had along that line. I am surprised that men in this Convention like the gentlemen from Cuyahoga [Mr. FACKLER and Mr. DOTY], who have voted persistently to put in the hands of the people power, are today found attempting to throttle the people, take away from them the power they have enjoyed and confer it upon the appointing power and thereby enable the appointing power to perpetuate himself in office. I appeal to all of you to be true to the four months' history you have made. Gentlemen, turn your backs on this revolutionary measure and let us unanimously put it where it belongs, let it sleep on the table.

Mr. READ: Mr. President and Gentlemen of the Convention: I admit that there is a certain convenience and some virtue in the short ballot and I also concede that there is some merit in the arguments of those delegates who have advocated that method of selecting our officials, but, while I agree with much that has been said this morning, I still contend that their remarks are far from justifying affirmative action on this proposal, which aims to have all the elective officials of the state, except the governor and lieutenant governor, appointed by the governor. That looks to me, as the gentleman from Auglaize [Mr. HOSKINS] says, like taking the power out of the hands of the people instead of conferring more direct power upon them and bringing the people and the government closer together.

Even should this short-ballot scheme prevail, it would not relieve the people of any grievous burden. I know of no demand from electors asking that they be denied the privilege of selecting their own state officials. On the other hand, I believe the citizens of Ohio generally want to continue electing their officials and are not demanding any radical reduction of their state ballot. I will agree that it is desirable and would be a genuine reform for the cities, like Cleveland, Cincinnati and Columbus, to materially shorten their municipal tickets. There is a real necessity in big cities for a shorter ballot where a great many candidates of each party, unknown to the electors, are to be selected. If these municipalities want to cut their elective officers down to two or three, let them do it and have the short ballot. But if you apply the same rule to cities and state in this respect, you may benefit the former and work harm to the latter.

The clerk of the supreme court should be appointed by the judges of that body. The board of public works will no doubt be eliminated. There is a proposal in to have the governor appoint the superintendent of public instruction. I believe that is right. After these changes we will only have to elect the governor, lieutenant governor, secretary of state, auditor of state, treasurer, attorney general and dairy and food commissioner. I have too much faith in the average intelligence of the Ohio voter to believe that he cannot exercise the discrimination and judgment necessary to make a wise selection of this number of state officials. I am in favor of reducing the frequency of the ballot one-half by electing state officials for four-year terms and have such election come midway between the presidential elections. It would be a great improvement over our present method to elect the governor for four years and have it arranged so that he would be ineligible to succeed himself. I will submit an amendment to that effect at the proper time. I do not know that I would be in favor of having all the officers ineligible to succeed themselves. The auditor of the state is already elected for four years. I do not consider it a mere bookkeeping position, as has been said, but an office that not only requires expert accounting but also a knowledge of public business and of state finance. The auditor should have talent for systematizing details and the gift, or acquired ability, for accuracy in the compilation and preservation of records. I believe it is a wise provision to have him elected for four years as he now is. That the governor should be elected for four years and be ineligible to succeed himself must be evident to all. When elected for two years much of his time and attention is too often given to scheming and planning for re-election, and at the end of two years, if he is re-elected and, perchance, becomes a candidate for the presidency, then his mind is diverted from the gubernatorial duties by the attractions of the White House. Therefore I would advise that the governor be elected for four years and be ineligible to succeed himself that he might give his whole attention to his official duties. I do not suppose any of the candidates in this Convention would be guilty of such dereliction of duty, but notwithstanding the fact that several distinguished delegates are casting wistful glances toward the governorship, the temptation to shirk present duty while aspiring for future honors should be reduced to the minimum.

Were we to make this change, it could be arranged so

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that officials elected the coming fall would be eligible for re-election in 1914, and that would give them six years to serve, but after that the length of service at one time would be limited to four years. Following the interim of four or eight years a former official could be elected again. That has been done in Pennsylvania and other states. There are about twenty-nine states to-day that elect their governor for four years. Most of them are ineligible to succeed themselves and the experience of these states with the four-year term furnishes all the substantial reasons we need for adopting the same in Ohio.

In regard to clothing the governor with more appointive power, I would like to call attention to what the governor has already in the way of responsibility and the power and opportunity he has to build a political machine: One of these appointees is the adjutant general, and he has fifty-two attaches; the department of banking, fifteen; the department of insurance, thirty-three; the railroad commission, seventeen; the department of public printing, four; labor and statistics, twenty-two; chief mining inspector, sixteen; workshops and factories, forty; state fire marshal, thirty-four; department of state board of agriculture, twenty-eight. This makes ten heads of departments intimately connected with state government and constituting the governor's cabinet. Under these ten departments there are two hundred and eighty-three employes and in addition to those there are other departments under the control of the governor, the penal and charitable institutions, the Ohio board of health department, commissioners of the sinking fund department, state board of pharmacy, board of arbitration, geological survey, highway commissioner and numerous other departments that are all under the direct control of the governor, and in addition to that you would have him to appoint the secretary of state, auditor of state, treasurer of state, attorney general, and you add about one hundred and ninety more employes, making in all over seven hundred employes under the direct control of the governor. Do you want to make him a monarch? What would we gain by giving the governor any more power than that he already has?

Mr. RILEY: Is it not a fact that all the election machinery of the state is in the hands of those employes?

Mr. READ: Well, there is much truth implied in your question and that condition too often leads to the subordination of state service to political work.

Mr. DOTY: You were there and you ought to know.

Mr. READ: But I am speaking from observation and not from personal experience. I hope the delegates will consider this carefully. I am not opposed to a shorter ballot, but this proposal does not shorten the ballot where it needs shortening, but aims rather at centralization of power, and all remarks made this morning favoring a short ballot have been irrelevant to this proposal. It proposes to take away from the people their right and opportunity to select, control and advise their own officers. Let them be appointed by the governor and they will no longer be responsive to the desires and will of the people.

Mr. PIERCE: I offer an amendment.

The amendment was read as follows:

In section 2, in line 10, strike out the period and insert a comma, and add: "all such officers shall be ineligible to a successive election."

Mr. MILLER, of Crawford: I move that the proposal and the pending amendment be laid on the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 57, nays 47, as follows:

Those who voted in the affirmative are:

Beatty, Wood,	Hoffman,	Partington,
Brattain,	Holtz,	Peters,
Brown, Pike,	Hoskins,	Pettit,
Collett,	Johnson, Williams,	Stalder,
Colton,	Jones,	Riley,
Cordes,	Kehoe,	Roehm,
Crites,	Keller,	Rorick,
Cunningham,	Kilpatrick,	Shaw,
Davio,	Kunkel,	Soletcher,
Donahey,	Lambert,	Stalter,
Dunlap,	Ludey,	Stokes,
Dwyer,	Malin,	Tallman,
Earnhart,	Marshall,	Tetlow,
Farrell,	Miller, Crawford,	Thomas,
Fox,	Miller, Fairfield,	Ulmer,
Halenkamp,	Miller, Ottawa,	Wagner,
Halfhill,	Norris,	Walker,
Harris, Ashtabula,	Nye,	Watson,
Harris, Hamilton,	Okey,	Wise.

Those who voted in the negative are:

Anderson,	FitzSimons,	Mauck,
Antrim,	Fluke,	McClelland,
Baum,	Hahn,	Peck,
Beatty, Morrow,	Harbarger,	Pierce,
Beyer,	Harter, Huron,	Read,
Bowdle,	Harter, Stark,	Rockel,
Brown, Highland,	Henderson,	Shaffer,
Brown, Lucas,	Hursh,	Smith, Geauga,
Campbell,	Kerr,	Stevens,
Crosser,	King,	Stewart,
Doty,	Knight,	Taggart,
Dunn,	Kramer,	Tannehill,
Elson,	Lampson,	Weybrecht,
Evans,	Leslie,	Woods,
Fackler,	Longstreth,	Mr. President.
Fess,	Matthews,	

So the motion to table prevailed.

Mr. ELSON: I just wish to say as a matter of personal privilege, that when a question of such great importance is before the Convention and there is no intention of consuming any more time than we have today, and it is being managed as best it can be by those interested in it, for any one to get up and make a motion of this sort and force it to a vote is a contemptible, mean trick, and I want everybody to know it.

Mr. DOTY: I move that the language of the member be stricken out.

The PRESIDENT: The language is improper.

Mr. HARRIS, of Hamilton: I had a splendid speech that I did not get to deliver, but it is ready anyway.

Mr. MILLER, of Crawford: I want to justify myself in making this motion: There are twelve proposals on the calendar to be disposed of today, under a resolution of the delegate from Franklin, and I opposed that resolution because I thought it was not possible to do that. The gentleman from Athens [Mr. ELSON], the author of this proposal, voted for that resolution. How are we going to dispose of the eleven other propositions if we do not cut off debate?

The PRESIDENT: The member's conduct [Mr. MILLER, of Crawford] is perfectly proper and needs no defense. The next matter is Proposal No. 15.

Mr. FESS: I want to raise my voice in protest against this manner of proceeding, which you can evidently see the end of. You propose to deal with the

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next twelve proposals in order to get rid of them, and I want to say it is absolutely out of order and most reprehensible for us to end this Convention like a legislative body, the errors of which may be corrected in two years, while our errors cannot be corrected except by the people. It is an outrage upon this body of men for you to undertake to call off debate upon important measures and thwart the will of the people by this sort of procedure. It is going to be done on every proposal and there seems to be only one thing sought and that is to get rid of this business now. I am going to stay right here and fight for the rights of these people as long as I have breath, and I am going to see that they get them.

Mr. HOSKINS: I want to —

Mr. FESS: You have had your say twice upon this measure and I was not allowed to speak.

Mr. HOSKINS: I want to ask you a question.

Mr. FESS: What do you want to ask?

Mr. HOSKINS: Now smile.

Mr. FESS: No, I will not smile.

Mr. HOSKINS: Let me remind you that you had me hot the other day and not smiling, and now you are the same way.

Mr. MAUCK: I rise to a point of order. There is nothing before the Convention to justify this colloquy and I demand the regular order.

The PRESIDENT: The point is well taken and the next matter before the Convention is Proposal No. 15 by Mr. Riley. The proposal has been read a second time and the question is on the adoption of the proposal.

Mr. RILEY: Some of the members who remained here last Friday heard some discussion of this question. A good many were not here and some explanation of the proposal should be made to them. The proposal is No. 15. The amended proposal is in front of the original proposal. This is a proposal to amend the bill of rights, article I, section 10. One of the provisions of the bill of rights is that a criminal accused of crime shall be confronted by his witnesses. The language of some constitutions is "brought face to face with the witnesses." Now for a long time, perhaps ever since the criminal was permitted to testify, he has been permitted to take depositions, but there has been no provision for taking depositions on behalf of the state. That never appealed to any one, certainly, as a square deal or as a fair thing: If it is proper to prosecute crime at all it is proper to give society and the state some chance as well as the defendant. This proposal provides that the legislature may provide for taking depositions of witnesses on behalf of the state when the presence of the defendant can be secured at the place with his counsel. Now it seems to me that no argument ought to be necessary to show that that is reasonable and just and is not needlessly expensive, because the state would probably pay the expenses as it does for the witnesses in general.

Now another change in this section of the bill of rights was introduced by the gentleman from Hamilton [Mr. BOWDLE] and incorporated in this proposal by the Judiciary committee. I should say that this proposal has the indorsement of the Judiciary committee—whether all of them or not, I am not advised.

Mr. TAGGART: Would not your proposal be strengthened in line 21 by inserting before the word "opportunity" the words "means and," so that it would

read "always securing to the accused the means and opportunity to be present in person," etc.?

Mr. RILEY: If the gentleman prepares that amendment I shall be glad to accept it. There will be no sort of objection to it. The "opportunity" carries with it that idea. If he didn't have the means he couldn't have the opportunity. However, if he is under arrest the state will be compelled to defray the expenses.

Mr. TAGGART: But if he were on bond he could have an opportunity and not have the means?

Mr. RILEY: There may be an objection there. I shall have no objection to your amendment. Now as to the other matter introduced on the suggestion of the gentleman from Hamilton [Mr. BOWDLE].

The present constitution says that no prisoner shall be compelled, in any criminal case, to be a witness against himself. To this language is added "but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel." The rule has been ever since defendants were permitted to testify in a felony case that if he fails to testify no reference to his failure to do so shall be commented upon by counsel or referred to in any manner, and if it is, the verdict is set aside.

Realizing that you are anxious to get along today, I shall content myself with what I have just said and what I said last week.

Mr. KERR: I want to ask the gentleman, if this is put in wouldn't it require a man to prove himself innocent?

Mr. RILEY: No, sir; there is nothing of that sort. It seems to me that is not a fair way of putting it.

Mr. KERR: It amounts to that.

Mr. RILEY: I do not think so. I leave that to the Convention.

Mr. TAGGART: I offer an amendment. The amendment was read as follows:

In line 21 before the word "opportunity" insert the words "means and."

The amendment was agreed to.

Mr. PECK: This proposal was recommended by the Judiciary committee and it has been discussed to a considerable extent in this Convention, though a good many members were absent at the time of the discussion. I only rise to say that it has received a lengthy and careful consideration in the Judiciary committee. We put our best efforts on it and at one time nearly everybody in the committee took a hand in the discussion. Finally it comes here with pretty near the unanimous support of that committee. I hope it will be adopted. I think it is to the public interest and I think something should be done to strengthen the hands of those who are attempting to punish the criminals of the state. The prosecution of criminals is in a deplorable condition in the state of Ohio. There is nothing that needs righting worse than that.

Mr. HALFHILL: I offer an amendment.

The amendment was read as follows:

In line 12, strike out "the general assembly" and insert "law."

The amendment was agreed to.

Mr. KNIGHT: It seems to me that this is one of the proposals which ought, after the careful study the members of the committee have given to it, to commend itself

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without any need of argument. The people at large have, ever since the state of Ohio has been in existence, been at a disadvantage in ascertaining the facts in the case of a person charged with an offense against all of them. All that the major part of the proposal undertakes is to say that all of the people in our collective capacity, society as a whole, shall have an equal chance with the accused person in getting at the facts.

It is well known that for illness or for other reasons, or through the spiriting away of witnesses, it is difficult often to obtain the needed testimony to set forth the facts in order to convict a man when there is no way by which, in the absence of witnesses outside of the state, it is possible for us as a community or as society to get at the facts in the case charged against one of us of having committed an offense against the rest of us, and this undertakes to provide against that, with proper precautions, and to allow the taking of testimony outside of the state which may bear against the testimony of the accused, just as he has an opportunity now to get that testimony in his own behalf against the rest of us.

Mr. HOSKINS: I would like to ask how the indigent defendant who is charged with crime could afford or what means will be provided for him to face the witnesses?

Mr. KNIGHT: The gentleman from Auglaize has at times lapses or he would know that within five minutes an amendment has been put in providing that he shall have the means and the opportunity.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

In lines 18 and 19 strike out the general assembly may provide" and insert "provision may be made."

The amendment was agreed to.

Mr. DOTY: This proposal has been debated in this Convention more than three hours and as there seems to be no well-defined opposition to the proposal—

Mr. HOSKINS: You say this has been debated three hours?

Mr. DOTY: Yes, sir; last Friday, when the member was not here.

Mr. HALFHILL: There is an amendment injected that has not been considered by the Convention to any extent. While I am in favor of the proposal in general terms as reported by the committee I want to be heard on it.

Mr. DOTY: I move that the vote be taken finally on the passage of this proposal at eleven o'clock.

The motion was carried.

Mr. HALFHILL: In lines 24, 25 and 26 there are amendments offered now which will make that part read as follows: "No person shall be compelled in any criminal case to be a witness against himself, but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel."

Mr. PECK: That was discussed for about an hour by you and me and others.

Mr. HALFHILL: This last part of it, I think, was not part of the original proposal.

Mr. PECK: Yes; here it is in the report of the committee. That amendment was offered by Mr. Woods.

Mr. RILEY: That was incorporated in the proposal

in the Judiciary committee and it has been printed three weeks and it was debated by yourself and Judge Peck thoroughly last Thursday.

Mr. HALFHILL: The whole question was debated in a general way.

Mr. PECK: The whole thing, and you debated that. You can refer to your argument and you are simply repeating that all the time now.

Mr. HALFHILL: No, sir; I am not. I have not yet said anything. I haven't got started and therefore I have not repeated anything.

Mr. PECK: Well, go ahead.

Mr. HALFHILL: We had a short talk by the distinguished chairman of the Judiciary committee in support of that portion of the amendment, and I have here now a letter just received from a very eminent judge in our portion of the state that was written to me without any solicitation. Judge J. J. Moore of Ottawa, Ohio, has had as many years' experience on the bench as probably any judge in Ohio, and he has also been a practitioner at the bar both before and since his judicial career, and I desire to give the Convention the benefit of his observation because I consider him to be a man wise in the administration of justice. Judge Moore says:

Mr. Matthews has handed me a proposition reported by the Judiciary and Bill of Rights committee in which, if upon trial of an accused person the defendant fails to go upon the witness stand, his failure may be considered by the court and jury and made the subject of comment by counsel. I had always supposed that a party accused of crime was to be convicted by the evidence adduced by the state, and not by the comment of unscrupulous prosecuting attorneys on what might be done. You can convict an accused without sufficient evidence by loud and long appeals because the defendant did not testify. I have in my general practice both prosecuted and defended accused persons and fail to see any merit or justice in the proposition. Many defendants in criminal cases are uneducated and ignorant, and, although innocent, their counsel feel it is not safe for them to be placed upon the witness stand to be annoyed and badgered by unscrupulous prosecuting attorneys seeking to establish popularity by securing convictions.

I regard the opinion of Judge Moore, as expressed in that letter, as being of very great weight and importance.

Mr. PETTIT: Is he not a little bit partisan in his views, don't you think?

Mr. HALFHILL: I do not know. He is a good Jacksonian democrat.

Mr. PECK: The letter reads as if he had in mind a case where he didn't want his client to testify.

Mr. HALFHILL: I submit that is an unjust observation, because this gentleman is not taking any active interest in the prosecution or the defense of criminals. He is an old man, but in the full possession of his intellectual powers.

Mr. PECK: He has evidently become fossilized.

Mr. HALFHILL: I am opposed to that method of injecting observations into debate, for it is not argument. In the discussion of this proposal I stated in effect

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that where you can strengthen the criminal procedure so that it reaches to those that belong to the criminal class, without taking away safeguards of innocent men that they ought to have and ought to be entitled to in any civilized community, I am for it.

Mr. PECK: How can you make a law that doesn't apply to all alike?

Mr. HALFHILL: You cannot make a law that will not apply to all alike, and therefore the wise and humane declaration of the law is that it is better that ninety-nine criminals escape rather than that one innocent man be punished, and that maxim is just as true now as when it was first uttered.

Mr. MAUCK: Judge Moore's proposition seems to be that all testimony should be affirmative against the accused. Is it not true that under the present rule we have a vast amount of negative testimony used against the accused, that the man was arrested under suspicious circumstances, which should be explained?

Mr. HALFHILL: Does not that now have to appear to the jury as testimony?

Mr. MAUCK: No, not clearly, as you put it, not as a club in the hands of the state to badger an innocent person. I am just referring to Judge Moore's letter wherein he says that the testimony is affirmative and I point out that under existing rules of evidence all testimony is not affirmative and so far as that is concerned this is not an innovation.

Mr. HALFHILL: A great body of proof is not affirmative. The court instructs the jury that they can observe the witnesses, and the defendant and his demeanor and various things that go to make up a conclusion in weighing evidence. It is part of the proof but it is not testimony. Testimony, ordinarily considered, refers merely to the oral and written evidence.

Mr. WINN: What would you think of the proposition that after one has been indicted for a crime he is taken away from his family, his wife and children needing attention, carried to California and kept for several weeks, may be for a month, against his will, in order that he might be present at the taking of the depositions?

Mr. HALFHILL: That is opening up a question we debated last week. I expressed my view at that time.

Mr. RILEY: Do you see anything of that sort in this proposal.

Mr. WINN: Yes.

Mr. HALFHILL: I do not know that I can see that exactly, but I see nothing in the proposal that guards against that.

Mr. ANDERSON: The fact that the person would not come back from the foreign jurisdiction guards against it.

Mr. WINN: Did you hear the very able argument of the member of Franklin [Mr. KNIGHT] insisting that this amendment is asked for in order that the prisoner may be taken out of the state?

Mr. HALFHILL: That has been part of the argument urged in favor of it. I submit that it is not because I have defended more criminals than I have prosecuted that I am opposed to this change, for, as I stated last week, I have by appointment of the court assisted the prosecuting attorney in important cases, and I try to look at the rights of the prisoner and I try to look at the rights of the state, and I want to consider the

rights of all the people. I am in favor of law enforcement, but there are certain rights of the individual that must not be overridden by the state under general law.

Mr. RILEY: A point of order; the gentleman has spoken ten minutes.

Mr. PECK: The trouble is there is nobody to answer him. He is consuming all the time.

Mr. HALFHILL: That is unfortunate. But I have been shouldered into so many pockets in this Convention by other gentlemen that I just exercised my rights on this occasion.

Mr. HOSKINS: I move that the time for voting be fixed at 11:15 o'clock.

The motion was lost.

Mr. BOWDLE: Give me two minutes of your time. I want to speak a minute or so.

Mr. HALFHILL: I am not intending to occupy the time just to occupy it, but I am glad to allow other gentlemen to get in a little argument.

Mr. BOWDLE: I feel a peculiar interest in this proposal because I introduced the two lines under discussion by the member from Allen, my desire being in this Convention to help the administration of criminal justice to get ahead a little. The legal profession is very curious in this, that whenever you meet lawyers in a legal convention all weep over the archaic conditions of the criminal law and deplore tremendously the failure to convict, but when they get to a constitutional convention there is a peculiar metamorphosis. We are always met with a cry and a sob on behalf of the "weak-eyed, weak-kneed" criminal as described by the gentleman from Defiance—"taken away from his wife and his home" and who sits in a court room with a face like a cherub or a madonna—which finishes its description. Why, if you want to start a sob just commence talking where lawyers are present about the criminal.

The best argument that can be adduced for this proposal is that the whole Judiciary committee agreed that the time had come to get rid of this condition. The legal profession is in a curious position. Lawyers want to get ahead, but when you suggest something progressive their attitude reminds you of the admonition of the mother to the child: "Mother can I go out to swim?" etc. They want to get ahead, but when you suggest something tending ahead the water becomes dangerous. Here is a proposition, attacked by the gentleman from Allen, for whose opinion I have great respect, a proposition which is an effort to get rid of the old ox-cart in our criminal jurisprudence and substitute something that has rubber tires and ball-bearings to help us move down the pike towards something respectably progressive in the administration of justice. But he says let us wait, wait, and "it is better that ninety-nine guilty men should escape than one innocent man should be punished." I want to say, it would be a good deal better that ninety-nine criminals be convicted, and occasionally an innocent man sent up too, for it might be a good thing for a penitentiary to have a real innocent man once in a while. I want to see a system of justice that will get the ninety-nine even though in the process it occasionally convicts an innocent man. Why, his reward in heaven will be immeasurably greater.

Mr. HOSKINS: Do you mean what you say?

Mr. BOWDLE: Precisely.

Deposition by the State, Etc., in Criminal Cases — Jurisdiction of Probate Court.

Mr. LAMPSON: How would you like to be that innocent man?

Mr. BOWDLE: Of course, I would not, but I tell you, gentlemen, if you are going to have a system of criminal jurisprudence that allows ninety-nine guilty men to escape you are going to have a situation that borders on anarchy.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 66, nays 33, as follows:

Those who voted in the affirmative are:

Anderson,	Henderson,	Peck,
Antrim,	Hoffman,	Peters,
Beatty, Morrow,	Holtz,	Pettit,
Beyer,	Johnson, Williams,	Redington,
Bowdle,	Jones,	Riley,
Brown, Highland,	Kehoe,	Rockel,
Cody,	King,	Roehm,
Colton,	Knight,	Rorick,
Cordes,	Kramer,	Shaw,
Crites,	Kunkel,	Smith, Geauga,
Cunningham,	Lambert,	Solether,
Dunn,	Lampson,	Stalter,
Dwyer,	Leete,	Stevens,
Evans,	Longstreth,	Stewart,
Fess,	Ludey,	Stokes,
FitzSimons,	Mauck,	Taggart,
Fluke,	McClelland,	Tannehill,
Hahn,	Miller, Crawford,	Ulmer,
Harbarger,	Miller, Fairfield,	Wagner,
Harris, Ashtabula,	Miller, Ottawa,	Walker,
Harris, Hamilton,	Okey,	Woods,
Harter, Huron,	Partington,	Mr. President.

Those who voted in the negative are:

Beatty, Wood,	Halfhill,	Nye,
Brown, Pike,	Harter, Stark,	Pierce,
Campbell,	Hoskins,	Shaffer,
Crosser,	Hursh,	Stilwell,
Davio,	Keller,	Tallman,
Donahay,	Kerr,	Tetlow,
Doty,	Kilpatrick,	Thomas,
Earnhart,	Leslie,	Watson,
Farrell,	Malin,	Weybrecht,
Fox,	Marshall,	Winn,
Halenkamp,	Moore,	Wise.

So the proposal passed as follows:

Proposal No. 15—Mr. Riley. To submit an amendment to article I, section 10, of the constitution.—Relative to bill of rights.

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:

ARTICLE I.

SECTION 10. Except in cases of impeachment, and cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and in all offenses for which a punishment less than imprisonment in the penitentiary is provided, no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury and the number of persons to constitute such grand jury and the concurrence of what number thereof shall be necessary to find such indictment shall be determined by law.

In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and

cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance cannot be had at the trial, always securing to the accused the means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court.

No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and the same may be made the subject of comment by counsel.

No person shall be twice put in jeopardy for the same offense.

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

The PRESIDENT: The next order of business is Proposal No. 315 — Mr. Smith, of Geauga, for second reading.

The proposal was read the second time.

Mr. SMITH, of Geauga: In some of the counties there is a juvenile court that takes charge of all of the dependent and helpless people, old or young. In our state our constitution only provides for the probate judge's appointing guardians over minor children, etc. As has been shown from my experience, jurisdiction should be conferred in all such cases in the probate court where they have no juvenile court. In Geauga county they have such a juvenile court. I thought it was better that the probate court should be charged with the special duty of enforcing these laws, because the poor and dependent have no way of protecting themselves.

Mr. MAUCK: I do not like to be opposed to anything that the venerable member from Geauga proposes, but in lines 8 and 9 of the proposal, which repeat the language of the constitution as it now stands, you will read, in addition to the enumerated powers, "such other jurisdiction in any county, or counties, as may be provided by law." These words expressly give to the general assembly the power of increasing or altering the jurisdiction of courts. It is manifestly statutory, because expressly made so by the constitution, and it seems to me a constitutional amendment that is wholly unnecessary.

Mr. PECK: It is so manifestly useful that I think it should go everywhere and that all over the state there should be some court charged with the duty of caring for and taking charge of destitute children. I think the proposal ought to pass.

Mr. KNIGHT: May I suggest that in my opinion the general assembly has already passed a law that authorizes this?

Mr. PECK: I never heard of it.

Mr. KNIGHT: That is the present law for the entire state.

Jurisdiction of Probate Court—Abolishing Prison Contract Labor.

Mr. PECK: Somebody refer me to it. If it has been passed this won't hurt.

Mr. SMITH, of Geauga: There is no such law at present.

Mr. PECK: Mr. Smith says there is no such law at present, and he is good authority on probate matters. I want to fix it that these children may be taken care of in the smaller counties as well as in the larger counties. We want it all over the state. That is a good thing.

Mr. WINN: I think the suggestion of one of the speakers was not wholly understood, so I want just a minute to comment on that. The present constitution provides, as was suggested by the member from Gallia [Mr. MAUCK], that the probate courts shall have such jurisdiction as the legislature shall provide. My county has jurisdiction in foreclosure cases, partition cases, divorce suits and other jurisdiction that does not prevail in all the counties. That is because the general assembly may confer upon any probate court just such jurisdiction as it sees fit. The supreme court held this law to which I refer to be constitutional. So, under the present provisions of the statute, the general assembly has power to do all that is sought to be done by the italicized lines in this proposal, and the italicized lines contain the new matter. The general assembly has not only authority to do it, but the general assembly has proceeded and it is the law. The probate court of Defiance county is the juvenile court; so the probate court in every county which has not a juvenile court is the juvenile court by statute. The juvenile court has authority to do everything authorized by those italicized words. It is statutory and there is no occasion for this provision.

Mr. SMITH, of Geauga: The court should be charged with the responsibility and duty of enforcing these laws with regard to these minor dependent children.

Mr. CAMPBELL: Will the member from Geauga [Mr. SMITH] state what is his understanding of this expression in the proposal: "Such probate court shall have jurisdiction in all matters pertaining to minors, orphan children, and all dependent persons?" Does that mean in any matter pertaining to that class? Has the court civil and criminal jurisdiction in every matter pertaining to minors, orphan children and dependent persons?

Mr. SMITH, of Geauga: In matters pertaining to those helpless people who have no one to look after them I would give the probate court jurisdiction just as in the juvenile court.

Mr. CAMPBELL: But how broad does the gentleman understand his proposal to be in that regard? What kind of matters will the court have jurisdiction of?

Mr. PECK: The last two lines explain what kind of matters. In construction you must take the whole thing together.

Mr. WATSON: I move that the proposal be tabled. The motion was carried.

Mr. STILWELL: Some two weeks ago a matter under consideration in the Convention was referred back to the committee of which I have the honor to be chairman. The committee was given leave to report the matter out at any time. I desire to make the report at this time.

The report was read as follows:

The standing committee on Labor, to which was referred Substitute Proposal No. 34—Mr. Thomas, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all after the word "Proposal" and insert the following: To submit an amendment to the constitution relating to prison labor and the sale of prison made goods:

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:

Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same are conspicuously marked "Prison made". Nothing herein contained shall be construed to prevent the general assembly from providing that convicts may work for and that the products of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof.

Mr. THOMAS: In my former remarks, when this proposal was before the Convention, I tried to make my remarks very brief, with the idea that the membership understood this question. But I have come to the conclusion that a number of the members do not understand very much about the question. I want to be as brief as possible on the subject today, but I want to explain the provisions so that the members can understand.

Organized labor for thirty years has been trying to abolish contract prison labor in Ohio. It is not abolished yet, despite the fact that in 1892 a bill passed the legislature providing for its abolition. In 1906 a similar bill was passed and we are still fighting, trying to get contract prison labor abolished. Before I say anything on the subject I want to read a letter from the National Free Labor Association, with its headquarters at New York, composed entirely of manufacturers in New York in business competition with prison labor, and I point out to you that in New York they had the same difficulty in abolishing contract prison labor as we have had in this state:

In view of the progressive character of the majority of the delegates to the Constitutional Convention, why not make a strong fight for the passage of a constitutional amendment prohibiting contracts for convict labor or sale of convict-made goods on open market, some such provision as we have had in our state constitution since 1894?

Abolishing Prison Contract Labor.

And this provision which we are offering you is a copy of the New York provision except the clause about exposing prison-made goods for sale. The letter continues:

Conditions are far more favorable in Ohio for this than they were then in New York. We had legislation almost every year for years over the contract system, but it was really not killed till this constitutional provision put it out of the power of the legislature to revive the abuse. We earnestly hope you will give this suggestion your consideration.

Now on the matter of competition I want to call the attention of the members of the Convention to the fact that in the year 1910, the latest reports that we have on the contract prison labor in Ohio, there were manufactured \$1,878,029.58 of goods in Ohio. The wages paid for making these goods was \$262,104.62. You can look over the census report, or the reports of any manufacturing industry in Ohio or any other part of the country, and you will not find any such proportion that is paid for the value of the product of labor. The census report shows about one-tenth—one-fourth to one-tenth—and it is no wonder that the contract system is opposed by both labor and capital.

A question has been raised that this is purely a legislative matter. I want to call your attention to the fact that if congress acts on the matter it is still necessary that our constitution should retain some provision, so as to conform to the bill that has passed the house of representatives and will pass the senate at this session. This bill reads as follows:

Be it enacted, etc., That all goods, wares and merchandise manufactured wholly or in part by convict labor, or in any prison or reformatory, transported into any state or territory, or remaining therein for use, consumption, sale, or storage, shall, upon arrival and delivery in such state or territory, be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though such goods, wares and merchandise had been manufactured in such state and territory, and shall not be exempt therefrom by reason of being introduced in original packages or otherwise.

The report was agreed to.

The PRESIDENT: The question now is, Shall the proposal pass?

Mr. DOTY: I offer an amendment correcting some words:

In line ten strike out "the general assembly from" and insert "the passage of laws to".

In line 11 strike out "providing" and insert "provide".

The amendment was agreed to.

Mr. HARRIS, of Ashtabula: I ventured a few remarks on this proposal on this original presentation. It was referred back to the committee with the privilege to report when they secured recognition, and the substitute is before us now.

The member from Cuyahoga [Mr. THOMAS] has

called attention to the fact that a bill is being attempted in congress that is expected to break down the barrier which is supposed to be interposed by that provision of the constitution which prohibits interference with interstate commerce as I understand it. Now I am wholly of the opinion, as I was two weeks ago, that this is a legislative matter. I think it would be ample time for the legislature of Ohio to deal with it when the federal congress has provided in fact, and not in anticipation, for our handling the convict labor goods of other states. The question in its essence is not changed in any degree by the alteration of the wording. All of the original clause still remains. I always did object a little to gentlemen who represented organized labor posing as leaders in this particular movement, because I do not think they represent all the labor there is in the country. I have never heard of any of them objecting to the use of prison labor in agriculture. They suggested the other day that that could be done without interfering with anybody. There are probably other things, but any of them will interfere with some man's work, because no work can be found that honest men cannot do and will not do. I do not want to curtail the debate and I don't want to move to lay on the table because I presume there are others who want to speak.

Mr. McCLELLAND: I spoke two weeks ago against this proposal and I don't see how anybody can speak in favor of it now. Look at that provision preceding the first semicolon. As it appeared in the proposal book it was a prohibition of contract labor. Now there are some things that I oppose. I do not oppose the prohibition of convict labor, but unless we are more cruel than even capital punishment we must give them something to do. The first part of the sentence provides that the legislature shall furnish something for them to do, but after the first semicolon it provides that "no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation wherein or whereby his work, or the product or profit of his work, shall be sold." Now if he can't do any of those things—

Mr. THOMAS: Read the rest.

Mr. McCLELLAND: It is not necessary to read the rest.

Mr. THOMAS: Yes; it is.

Mr. McCLELLAND: It provides it shall not be sold, farmed out, contracted or given away. Now if you cannot part with the product by selling it, what is the use? The next part of it, "And goods made by persons under sentence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same are conspicuously marked 'prison made'." You have already provided that you can't sell the product of the labor. What is the need of marking it "prison made" if you prohibit the selling of it? If you cannot sell the product of his labor, why are you going to mark it prison made? It seems to me that the two parts of the proposal are contradictory.

Mr. HARTER, of Stark: Could we not use those prisoners out of doors in agricultural pursuits, and couldn't we have state farms?

Mr. McCLELLAND: No doubt.

Mr. HARTER, of Stark: There is no doubt that

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they interfere with the product of legitimate manufactures?

Mr. McCLELLAND: There is no doubt of that, but any labor interferes with competition. We farmers are willing to bear our share if the penitentiary can be moved outside of the city and produce vegetables and farm products, but so long as that is not possible we see no objection to their coming in competition with some other trade-union besides the farmers.

Mr. HARTER, of Stark: Do you think penitentiary labor would interfere with agriculture if a good portion of it were used in that line?

Mr. McCLELLAND: Just to the extent it was used. Just whatever of the labor of the convict is used on the farm—whatever he produces—that doesn't have to be bought from outside people.

Mr. HARTER, of Stark: Is there any competition there? Don't we come in competition with the great West?

Mr. McCLELLAND: Yes; we cannot eliminate competition.

Mr. HARTER, of Stark: This is not a question that I expect to demonstrate or anything of that kind, but I am going to ask you whether the employment of all of our prisoners, say 5,000 prisoners in the state of Ohio, would make any particular difference to the farmers of Ohio—whether we don't have to contend with the great West and other parts of the country in competition with free labor, not prison labor—whether that doesn't injure the farming interests of the state of Ohio much more than the employment of part of our prisoners would?

Mr. McCLELLAND: As I understand the gentleman from Stark, he objects to competition in manufacturing industry by our convicts and yet thinks it does not affect at all the competition of the farmer. I don't know how much it would; I can't tell how much it would, but it would come in competition and there is no doubt about that.

Mr. THOMAS: Does not the member understand that this section applies to goods manufactured outside of the state and sold in Ohio? The proposal provides that there can be no goods manufactured for sale on the open market in Ohio, so that there is no competition so far as that is concerned. It is all manufactured for state use. The other provision is against the sale of prison-made goods unless marked "prison made," and there are more goods sold from outside the state of Ohio, convict made, than are manufactured in Ohio, because manufacturers make it their business to sell in other states than in their own states.

Mr. McCLELLAND: I am sorry, but I don't think that explanation explains. Then after the second semicolon the design is to prevent the importation of prison-made goods from outside of the state unless distinctly marked so that objection to the other provision does not entirely obtain as to this. It seems to me that that thing should be straightened out and made plain.

Mr. TALLMAN: I will offer an amendment.

The amendment was read as follows:

Strike out of line 6 the word "sold".

Mr. TALLMAN: The idea is not to prevent the sale of goods made in the penitentiary, but to prevent the selling or farming out of the labor of the convicts.

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

The motion was carried.

Mr. KRAMER: I would rather like to vote for a proposition like this, but I do not want to put any provision into this constitution that is so absolutely uncertain as to its meaning. If this provision is adopted I doubt whether either the products of prison labor or the prisoners themselves can be employed on the roads, and if there is anything that I think prison labor should be used at it is on the roads. "And no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away." Suppose we were to employ the labor of a particular penal institution in manufacturing the products for our roads; suppose the state wanted to give the product of those prisoners to a contractor or it was to be sold to a contractor to be used upon the roads, how could we do it with that provision in our constitution?

Mr. THOMAS: Back of the insane asylum in the quarries the state at present is quarrying material for good roads under the Wertz law and Franklin county is buying that.

Mr. KRAMER: Suppose you put this in the constitution and the question is brought before the court as to whether they can manufacture that, and the Wertz law is before the court, what will the court say?

Mr. THOMAS: This enforces the provision and makes it continuous. Read the last clause.

Mr. KRAMER: "Nothing herein contained shall be construed to prevent the passage of laws to provide that convicts may work for and that the product of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof." It is the state. The state has the convict, and suppose the state desires to get that material into the hands of some contractor. The state cannot build the roads. It must build the roads through a contractor. The state is manufacturing material by prison labor. Now if the state manufactures the material and cannot give the material away or sell the material to any contractor, pray tell me how that material is going to get on the roads.

Mr. THOMAS: Every county will buy material direct from the state and the contractor will contract for the labor.

Mr. KRAMER: The only way that this can be done at all is either to make the state or county go into the business of building roads. In ninety-nine cases out of a hundred neither the state nor the county can go into the business.

Mr. HARRIS, of Hamilton: Could not the state itself build a road in this way: The state asks for bids on five miles of state roads and says that the bids must exclude the stone. Would not that be a simple proposition?

Mr. KRAMER: What does the state do? The state gives the contractor the stone?

Mr. HARRIS, of Hamilton: I think this clause would not prevent that.

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Mr. KRAMER: If we could see that the product of prison labor could be used on such roads—I don't see how it is.

Mr. DUNN: I have been highly honored by the president by being made a member of the Labor committee although I am a farmer and a preacher. The laboring men have no better friend in the state of Ohio than myself. I know what it is to labor and this Convention wants, I am sure, to be a reform convention, and we should be anxious to do any thing we can in a just way to help labor. I do not need to argue that the contract system in the prisons of this country has been degrading to a great degree in some states and it ought to be abolished. We ought to find some way by which the laboring men of this state must not be in any way degraded by being compelled to work against the contract system in the penitentiary or against convict labor. It seems to me there is a very plain road out of this trouble. I heard it said that it is impossible to have these convicts work without coming in competition with some form of labor. Suppose that under our present plan of building roads in Ohio we go forward under a bond issue and build the roads in the regular way, will there not be a great many roads in the state of Ohio that cannot be built in this way and that will not be built? Why not employ the convicts of the state of Ohio in building those roads that cannot be built in any other way? How can there be any competition in such a case? The farmers need the roads, the whole state of Ohio will be greatly blessed if you will put the convicts on the roads, and I am sure that the legislature can find some plan to set the convicts at work.

Mr. ULMER: I move the previous question. The main question was ordered.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 68, nays 35, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Read,
Beatty, Wood,	Harter, Stark,	Redington,
Beyer,	Hoffman,	Riley,
Bowdle,	Hoskins,	Rockel,
Brown, Highland,	Hursh,	Roehm,
Cassidy,	Keller,	Shaffer,
Cordes,	Kerr,	Smith, Geauga,
Crosser,	Kilpatrick,	Solether,
Davio,	King,	Stalter,
Donahey,	Kunkel,	Stevens,
Doty,	Lambert,	Stilwell,
Dunn,	Lampson,	Stokes,
Dwyer,	Leete,	Tallman,
Earnhart,	Leslie,	Tannehill,
Fackler,	Longstreth,	Tetlow,
Farrell,	Malin,	Thomas,
FitzSimons,	Marshall,	Ulmer,
Fluke,	Miller, Crawford,	Watson,
Hahn,	Moore,	Weybrecht,
Halenkamp,	Okey,	Winn,
Halfhill,	Peck,	Wise,
Harbarger,	Pierce,	Mr. President.
Harris, Hamilton,	Price,	

Those who voted in the negative are:

Baum,	Crites,	Holtz,
Beatty, Morrow,	Cunningham,	Johnson, Williams,
Brattain,	Dunlap,	Jones,
Brown, Pike,	Elson,	Kehoe,
Campbell,	Evans,	Knight,
Collett,	Harris, Ashtabula,	Kramer,
Colton,	Henderson,	Ludey,

Matthews,	Norris,	Shaw,
Mauck,	Nye,	Stewart,
McClelland,	Peters,	Wagner,
Miller, Fairfield,	Pettit,	Walker.
Miller, Ottawa,	Rorick,	

So the proposal passed as follows:

Proposal No. 34—Mr. Thomas. To submit an amendment to the constitution, relating to prison labor and the sale of prison-made goods.

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:

Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories of the state; and no person in any such penal institution or reformatory shall be required or allowed to work while under sentence thereto at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory, either within or without the state of Ohio, shall not be sold within this state unless the same are conspicuously marked "Prison made". Nothing herein contained shall be construed to prevent the passage of laws to provide that convicts may work for and that the products of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state or any political division thereof.

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

The PRESIDENT: The next proposal in order is Proposal No. 152—Mr. Brown, of Highland. The proposal was read the second time.

Mr. BROWN, of Highland: This proposal is in the interest of cheaper living to the people of the cities. Legislatures and presidents and governors and kings all over the world are now instituting investigations as to the reason for the increased cost of living and the general consensus of opinion is that the price of things to eat depends upon the expensiveness of distribution. Investigating upon my own part the elements of the high price of distribution, I have discovered that every city in Ohio almost, and every town of any respectable size, has passed an ordinance in the interest of organized dealers in the villages prohibiting in effect anything like free trade in the products of the table. When I went to see the solicitor in Columbus and asked him for the ordinance he said, "If you cut that out you will do more to cheapen the price of the table than anything that has been done in this state." The solicitor told me that a few weeks ago, and I also learned at the same time that there was so much money made in the distribution of farm products to the housewives of this city that the persons who have the right under the authority of the city to occupy the stalls in the markets have sublet those stalls, in some instances, at a premium of \$3,000 annually. The price

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at which they distribute it is absolutely exorbitant contrasted with the price to the producer.

Mr. MAUCK: Does this proposal prohibit the municipalities from charging for the stalls?

Mr. BROWN, of Highland: No, sir. It permits people to distribute articles of food without having to pay for the privilege to do it. In our town we have three meat dealers and forty-eight hundred consumers. We have an ordinance that will prevent a farmer coming in with meat to sell unless he has raised it himself, and the prohibition consists in an ordinance charging him \$15 per day.

Mr. MAUCK: Why does not Hillsboro repeal its ordinance, if it does not want it?

Mr. BROWN, of Highland: Because it is controlled by persons who are not interested in the welfare of the general consumer.

Mr. MAUCK: Do you seriously contend that a constitutional convention of the state of Ohio ought to do what you think might be done and ought to be done by the village council of Hillsboro?

Mr. BROWN, of Highland: I think if all the village councils in the state of Ohio refused to do it some constitutional convention or some central power, in the interest of the consumer and in the interest of bringing down the high price of living, should force them to do it.

Mr. KING: Will not this proposal prevent the passage of such an ordinance as requiring inspection of butter and eggs and milk and other food products?

Mr. BROWN, of Highland: No, sir. Now I want to read something from a publication in Baltimore. It is headed "Public Ownership of Public Markets:"

A week after the appearance in this journal of a comprehensive article describing the profits of direct selling certain persons made an offer to the city of Baltimore for its market houses. The article described these particular markets because Baltimore is the only city that has an exclusively municipal system by which the farmers may drive into market and sell their own produce. A thousand of them do it every week. There were a few mild criticisms, mainly about the lax management, the need of more cleanliness, and the evils of private control of stalls. The persons mentioned offered a large sum and pledged the building of new market houses of the finest type.

If, however, they regarded themselves as philanthropists they were soon undeceived. The people rose in protest. The market men and those who dealt with the market men, the farmers and the customers of the farmers, declared in no uncertain language that they objected. The feeling was so strong that no public official or politician dared to give the offer serious consideration. At the very time when the need of public markets is being so strenuously urged it is gratifying to know that those who enjoy the advantages of such markets are willing to fight for them.

A farmer will come to Columbus to distribute his goods for fifteen per cent profit. The organized dealers make from one hundred to one hundred and twenty-

five per cent profit for the distribution to the consumer. Now I leave this matter with you. I do not care personally whether you pass it or not. It is in the interest of cheaper living for the people and that was my object. So far as I am concerned I am a grocer in addition to some other things. I have a half interest in a house that is a member of an organized society of dealers in my town and when we pass this proposal my house will suffer, but I am doing this in the interest of the consumer, because I am thoroughly convinced of the necessity and good of it. I have watched it for years and I have concluded that the real trouble is in the distribution. I have been a distributor and I know what it costs to distribute.

Mr. ELSON: Will not this be a great advantage to farmers who wish to market their products?

Mr. BROWN, of Highland: It certainly will be, because when the farmer has his own market, he can deliver the goods at any time he pleases. Otherwise he must sell to an organized dealer whenever the organized dealer pleases. The consumer here has the opportunity to buy direct from the farmer without the added cost of organized distribution.

Mr. DOTY: I live in a city where we do not have any trouble in running our own affairs.

Mr. BROWN, of Highland: Cleveland, I want to say, is the only city in Ohio that does not prohibit by ordinance the free distribution of her food products.

Mr. DOTY: We must draw a line somewhere. We have been doing almost everything and now we are asked to be a city council. The city council of Hillsboro could attend to this matter if they wanted to. I therefore move that the proposal be tabled.

Mr. BROWN, of Highland: How is that in order? I have the floor.

The PRESIDENT: The president understood that the gentleman had yielded the floor.

Mr. DOTY: He had and I was recognized. But it makes no difference.

Mr. BROWN, of Highland: I don't care whether this passes or not, but I know it is in the interest of the people and I know that a man who votes against it votes against a very worthy measure. I move the previous question and demand the yeas and nays on it.

Mr. DOTY: I rise to a point of order. The gentleman has not the floor to make the motion.

The PRESIDENT: The motion is out of order.

Mr. BROWN, of Highland: Why is the motion out of order?

The PRESIDENT: The motion to table had been made.

Mr. BROWN, of Highland: But he hadn't the floor to make that motion. I think the president inadvertently recognized him by nodding at him.

The PRESIDENT: The president will say that the motion was made to table and we will now take the vote on it.

The yeas and nays were demanded, but the president took a vote on a division and the motion to table was lost by 38 yeas and 41 nays.

The PRESIDENT: That illustrates how the time of this Convention will be saved if members will not needlessly demand the roll call.

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Mr. BROWN, of Highland: I see. Now I demand the previous question.

The PRESIDENT: The president would like to recognize the member from Williams before that motion is put.

Mr. JOHNSON, of Williams: Mr. President: I hope this amended proposal, No. 152, will not pass. The proposal was first referred to the committee on Agriculture, and after thorough consideration by the committee its indefinite postponement was unanimously recommended, but before the report could be presented to the Convention the author of the proposal, who had been given every opportunity to be heard and who was heard by the committee, asked to have the committee discharged from its further consideration. The proposal was again referred to the committee on Agriculture with the understanding that it would be amended by the author and then considered by the committee and reported back to the Convention. No such proceeding took place, but instead the author of the proposal asked the committee to report it back to the Convention with the recommendation that it be referred to the committee on Judiciary and Bill of Rights. The argument was made before the committee on Agriculture that the adoption of this proposal would reduce the cost of living and that it would be in the interest of both the farmer and the consumer. In my opinion it would be detrimental to both these classes, but before I enter into a discussion along that line I wish to say that there is absolutely no necessity for this amendment to the constitution. Everyone in this Convention knows that the legislature has full authority to pass such a law, not only in regard to the sale of foodstuffs, but also in regard to the sale of all other products of commerce. There is now a first-class law on the statute books in regard to this subject. Why should this proposal, both in its original as well as in its amended form, refer only to the products of the farm? It looks as if the author wishes to curry favor with the farmers. Let us examine the language of the proposal: "The business of buying, selling or handling foodstuffs shall not be subjected to any license or other charge by any municipality." Why not strike out "foodstuffs" and insert "any article of merchandise?" Notice the clause, "Shall not be subjected to any license or other charge by any municipality." That means that there shall absolutely be no inspection or regulation whatever in regard to the sale of foodstuffs, but the sale of other products might be regulated. Why hold out this pretended sop to the farmers of Ohio? Why attempt to curry favor with them by means of an absurdity like this? There is an excellent law in regard to this subject at present. I refer to section 3672 of the General Code, which, among other things, provides for licensing hawkers, peddlers, auctioneers of horses and other stock, and which reads in part as follows: "But no municipal corporation may require of the owner of any products of his own raising or the manufacture of any article manufactured by him, license to vend or sell in any way by himself or agent any such article or product."

There is no demand for this proposed amendment to the constitution and if it is made a part of the constitution it can do no good, but on the other hand it will

have a tendency to weaken or destroy the pure-food laws of the state. The farmer can now sell the products of his farm in any market in Ohio without a license or any other restriction whatever, and in that respect he is placed alongside of the manufacturer, who has the same privilege. This gives the farmer an opportunity to sell direct to the consumer if he desires to do so, and this enables him to get the best market price and at the same time furnish the consumer with fresh products direct from the farm. But why should farm products—foodstuffs, if you please—many of which deteriorate rapidly, be sold by the farmer to an irresponsible stranger and that buyer be permitted to sell them in any village or city in this state without any restrictions whatever, simply because such articles are "foodstuffs?" Such a result would be absolutely preposterous. It would be worse than that, it would be a crime, and I for one shall not be a party to it. A person does not need a very active imagination to suppose a case like this: I am very busy on my farm; along comes a stranger and I sell my first-class butter, eggs and vegetables. He gathers more of this class of goods together and in a day or two takes them to the village or city and sells them without any restrictions whatever, simply because they are products of the farm. That is absolutely wrong and I think that every member of this Convention knows it to be so.

But suppose that my conclusions are wrong and that such things should be permitted. Even then this proposed amendment should not pass, as it is not needed. All of this can be done under the present constitution. Why cripple the efficiency of the dairy and food department of the state, which has done the producer and the consumer more good than any other department of the state government? The legislature has full authority at present to make all necessary provisions for the buying and selling, not only of farm products, but of all other articles of merchandise. Good and wholesome laws have been passed and will be passed in the future for the protection of the farmer and the consumer. Every voter is a consumer of farm products and it is his desire to have these products clean and fresh and as cheap as he can get them, so far as is consistent with the public good. The farmer does not come to this Convention asking for special favors; all he wants is justice. This proposal will not give him even that. The legislature of Ohio passed a law protecting the farmer and the manufacturer against the irresponsible dealer and now it is proposed by this amendment to deprive the farmer of that protection under the guise that it will be a benefit to him. If this amendment prevails the farmer personally, or through his responsible agent, will be compelled to compete with the irresponsible, unknown huckster, who can sell in competition with him without any restriction whatever. I hope that this proposal will not pass.

The question being "Shall the proposal pass?" The yeas and nays were taken, and resulted—yeas 28, nays 68, as follows:

Those who voted in the affirmative are:

Brown, Highland,	Crites,	Earnhart,
Campbell,	Cunningham,	Eby,
Cassidy,	Donaher,	Elson,
Collett,	Dunn,	Hursh,

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Jones,
Kerr,
Lambert,
Leete,
McClellana,
Miller, Ottawa,

Moore,
Okey,
Peck,
Pettit,
Pierce,
Riley,

Shaw,
Stilwell,
Winn,
Woods.

Those who voted in the negative are:

Antrim,
Baum,
Beatty, Morrow,
Beatty, Wood,
Bowdle,
Brattain,
Colton,
Cordes,
Crosser,
Davio,
Doty,
Dunlap,
Dwyer,
Evans,
Fackler,
Farrell,
Fluke,
Fox,
Hahn,
Halenkamp,
Halfhill,
Harbarger,
Harris, Ashtabula,

Harris, Hamilton,
Harter, Huron,
Harter, Stark,
Hoffman,
Hoskins,
Johnson, Williams,
Keller,
Kilpatrick,
King,
Knight,
Kramer,
Kunkel,
Lampson,
Leslie,
Ludey,
Malin,
Marshall,
Matthews,
Mauck,
Miller, Crawford,
Miller, Fairfield,
Nye,
Price,

Read,
Redington,
Rockel,
Roehm,
Rorick,
Shaffer,
Smith, Geauga,
Solether,
Stevens,
Stewart,
Stokes,
Tallman,
Tannehill,
Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,
Watson,
Weybrecht,
Wise,
Mr. President.

So the proposal was lost.

The Convention then recessed on motion of Mr. Doty until 1:30 o'clock this afternoon.

AFTERNOON SESSION.

The Convention met pursuant to recess and was called to order by the president.

The PRESIDENT: Proposal No. 240 has been read and the question is, "Shall the proposal pass?"

Mr. Anderson was recognized.

Mr. DOTY: What are the rights of the gentleman in the debate? He has spoken once on the measure and time is very precious.

The PRESIDENT: He has fifteen minutes.

Mr. ANDERSON: Mr. President and Gentlemen of the Convention: This matter was before you once a few days ago, but at that time in the hurry of trying to get everything off the calendar this was put upon the table and it was afterwards taken from the table. It is Substitute Proposal No. 240. It reads as follows:

The right of action to recover damages for injuries resulting in death shall not be abrogated and such damages shall not be subjected to any statutory limitation as to amount, but the recovery must be for the full amount of all damages so sustained.

The committee recommends its passage and it is signed by Judge Peck, Mr. Stilwell, Judge Winn, Mr. Leete, Mr. Cassidy, Mr. Brown, Judge Smith, Mr. Tetlow, Judge King and Mr. Kilpatrick.

Mr. TAGGART: What is the force and effect of the words "shall not be abrogated"? Would that affect the employers' compensation law?

Mr. ANDERSON: No, sir. I am glad you asked the question. New York put into her constitution in

1894, article I, section 18, those exact words. The general assembly passed what was a workmen's compensation law. That was then taken to the court of last resort and there declared unconstitutional, but the question that you have raised was entirely disregarded by everyone connected with the case. In other words, no one believed that this provision in the New York constitution in any way prevented a workmen's compensation law, but the workmen's compensation law was declared unconstitutional by reason of the federal constitution. However, I am perfectly willing that any amendment should be made if there is any question about it.

Mr. TAGGART: Would it not be sufficient and better if the words "shall not be abrogated" were stricken out? Would not that permit compensation to employes?

Mr. ANDERSON: I want to suggest that there is more constitutional authority for Proposal No. 240 than for any other proposal that has come before the Convention. State after state has since that put this proposal in their constitutions and besides those states there are others that have similar laws. Pennsylvania since 1873 has had this provision. New York since 1894.

Now I do not care to answer any more questions. I want to cover this matter in the time I have to do it in.

In the first place, the right to recover for wrongful death does not exist in common law. It is entirely created by statute. Consequently, I presume that was in the minds of the constitution makers when they placed these words preventing the abrogation of the rights of recovery for wrongful death in the constitution.

Now, in reference to the limitation clause. In 1851 the legislature of Ohio provided that the limit for recovery for wrongful death should be \$5,000. That remained the same until 1872, when the legislature increased it to \$10,000. You must remember that it does not mean so many dollars shall be given to the widow and the children for a husband or father wrongfully killed, but it means that they shall receive a certain number of bushels of potatoes, barrels of flour, stuff to live on. It means schooling for the children.

As the purchasing power of a dollar decreased, the amount, although it may remain the same, decreases, because it means fewer bushels of potatoes, fewer barrels of flour, fewer school books and not such a good place to live in, and the object of this statute is to prevent the children of men wrongfully killed from becoming public charges. After all, it falls back on society. The question comes up, What protection would they have? It would be the same protection as in the other states where they have like provisions. They have found not a detriment a like provision in the constitution of New York, where they have a great many more men employed and consequently more deaths happen, and if it is not a hardship there, there would not come any hardship in Ohio.

Mr. WATSON: Will the gentleman yield to a question?

Mr. ANDERSON: Not now. I did not get through the other day because I yielded to so many questions.

The point I want to demonstrate under the laws of Ohio is that no hardship can arrive; I mean with the limitation being taken off. You try your case before the jury. We will assume that the jury cannot be trusted. We will assume that the jury by reason of sympathy and prejudice will not be fair and they will return an exces-

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sive amount. Under our statutes it is provided that if an amount indicates passion or prejudice the judge must give a new trial, and if the common pleas judge fails to do his duty it goes to three learned gentlemen who constitute the circuit court now, or, under Judge Peck's proposal, the court of appeals. Those three cannot be influenced by any passion or prejudice. They have a right to give a new trial and the common pleas judge has a right, if he thinks the amount is too large and that it indicates prejudice—he is supposed to deal justly with both sides, and he can cut down the amount to any figure he pleases. Then it can go to the court of appeals where the three judges are sitting. Two of them may cut down the verdict of the jury that is influenced by passion or prejudice if they conclude that it is too large, and they can cut it down to any figure they want. I maintain that is all the protection the individual gets and it is all the protection any corporation ought to have. No harm can come under the many safeguards—and I ask pardon of a certain gentleman for using the word—under certain safeguards now always present without any limitation being fixed. Now let me give you what the jury must take into consideration: "In arriving at the total amount of damage in such cases, the jury should consider the pecuniary injury to each separate beneficiary, not found guilty of contributory negligence, but the verdict should be for a gross sum, not exceeding ten thousand dollars."

In other words, the jury must take into consideration, where the husband or father has been killed, the loss to the widow, and in determining that they consider the amount of money he was making, etc. Then the jury, under the authority I have read, must take into consideration the loss in money to each one of his children. Say there were eight children; that would make nine people who have lost by reason of the wrongful killing of the father, and under the authority of 55 O. S. the jury takes all of them into consideration and must return a verdict for a gross amount. I insist, under that authority, if you please, the amount of \$12,000, as the law is today, when you take into consideration the high cost of living, is ridiculously small.

Mr. WATSON: You said something about the loss going back upon society. Is not that the right place for the loss to fall?

Mr. ANDERSON: On society?

Mr. WATSON: Yes.

Mr. ANDERSON: The reason I am in favor of workmen's compensation laws is this: If the husband or father is killed and if the widow is strong enough to make a living at the washtub for her family and herself, then the whole burden of the loss falls upon the family. If, on the other hand, she cannot make a living for herself and children, the widow and the children become public charges and all burden falls upon the innocent public. Under workmen's compensation laws and proper liability laws the burden falls upon the corporation, and if it does not fall upon the corporation, if they choose to put it back on the consumer, it falls upon those who purchase from the corporation. The burden must fall somewhere. It falls on the family, the community, the corporation or upon those who buy the products of the corporation.

Mr. WATSON: The gentleman misunderstood the

point of the question. I was looking toward the latter end—that is, the expense of running the manufacturing establishment, including the loss of life, goes out on society as a whole.

Mr. ANDERSON: It goes out on the consumer.

Mr. KERR: I understand you to say this proposal permits the court to set aside a verdict?

Mr. ANDERSON: No, sir; they have that authority now. I will read it to you.

Mr. KERR: I would suggest that that be added at the end.

Mr. ANDERSON: It wouldn't interfere with any of the rights of the jury or judge now, and they have ample power to protect everybody.

Mr. CRITES: Mr. Anderson seems always to be calling attention to corporations. We are not all corporations doing business in this state and they are not all big corporations who are doing business. This Proposal No. 240 has in it no limitation. It says that the amount of recovery shall not be subject to statutory limitations. Take some small manufacturing concern, organized by a man of small means. Say a man has been working twenty or thirty years and he has made \$5,000 or \$10,000. He goes into a manufacturing business and after running a few weeks he may have an accident, not from his own negligence, but still the case may be decided against the manufacturer, and it will take every dollar that man has earned for twenty or thirty years. It would bankrupt him. I don't think that we should put everything through that comes up here against the manufacturers. The manufacturers have not come in here and asked a single thing up to this time, and there have been labor proposals put through entirely against the manufacturer. The manufacturer said nothing. I think this is a wrong proposal to be put in the constitution and I hope the delegates will help out the manufacturers by tabling this proposal. I move that this proposal be laid on the table.

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

The yeas and nays were taken, and resulted — yeas 30, nays 59, as follows:

Those who voted in the affirmative are:

Antrim,	Fox,	Malin,
Beatty, Morrow,	Halfhill,	Matthews,
Brattain,	Harter, Stark,	McClelland,
Campbell,	Holtz,	Miller, Ottawa,
Collett,	Kehoe,	Redington,
Crites,	Keller,	Riley,
Cunningham,	King,	Rorick,
Dunlap,	Knight,	Shaw,
Evans,	Kramer,	Stalter,
Fess,	Longstreth,	Watson,

Those who voted in the negative are:

Anderson,	Dwyer,	Kunkel,
Beatty, Wood,	Earnhart,	Lambert,
Beyer,	Elson,	Lampson,
Bowdle,	Fackler,	Leete,
Cassidy,	Farrell,	Ludey,
Colton,	Halenkamp,	Marshall,
Cordes,	Harbarger,	Mauck,
Crosser,	Harris, Ashtabula,	Miller, Crawford,
Davio,	Hoffman,	Nye,
Donahay,	Hursh,	Okey,
Doty,	Johnson, Williams,	Miller, Fairfield,
Dunn,	Kilpatrick,	Moore,

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Peck,
Peters,
Pettit,
Pierce,
Read,
Rockel,
Roehm,
Smith, Geauga,
Solether,
Stevens,
Stewart,
Stilwell,
Stokes,
Taggart,
Tallman,
Tannehill,

Tetlow,
Thomas,
Ulmer,
Wagner,
Walker,
Weybrecht,
Winn.

So the motion to table was lost.

Mr. WINN: Gentlemen of the Convention: I, along with ten or eleven other members of the Judiciary committee, after a thorough consideration of this question recommended the passage of this proposal. I heard some little discussion of the proposition on the floor of this Convention since then and I have heard some discussion elsewhere. So far nothing has been said that causes me to change the opinion I entertained at that time, and I shall briefly state my reasons for favoring the proposal. I do not regard the provisions of this proposal that have attracted the closest attention as of much importance. The proposal is that the general assembly may not limit by statutory provisions the amount of recovery. I believe that the statutory limit is now \$10,000 in case of death. I do not regard the constitutional provision against such limitation as of such great importance, but the statute also provides that one suing in case of death may recover for the actual pecuniary loss and nothing more.

A case was lately decided in the common pleas court growing out of the wrongful death of a young man who was nineteen years of age. Under the rule that obtains, the amount of recovery to the father suing on behalf of himself and of the brothers and sisters of the deceased was \$200. That was the amount of the actual pecuniary loss they were able to show. Just a few days afterwards I tried a case growing out of an assault. One man struck another and knocked a tooth out and precisely the same amount was given.

A DELEGATE: Your client had the best lawyer.

Mr. WINN: No, it was not that. I brought an action against a railroad company for wrongful death of a young girl of Putnam county. She was eighteen or nineteen years old and attending the high school in the village of Continental, living a few miles out in the country. The death was wrongful and the alleged negligence was on the part of the Clover Leaf Railroad in backing a train, which resulted in her death. The case was moved to the federal court and knowing what I would be against, in the face of the rule that my client could recover for the next of kin the actual pecuniary damage and no more, I was obliged to take \$300 in settlement. I was glad to forego charging the usual fee in the case.

I am here to say it is wrong for the legislature to pass any statute saying that in case of wrongful death the party suing for the beneficiaries can recover only actual pecuniary loss; and for that reason this proposal becomes a proper subject of organic law. It is a province of the Constitutional Convention to put into the organic law those things which it believes the legislature should not do. Therefore I hope that this proposal will be adopted.

Mr. JONES: What is there about this proposal that abrogates this rule about which you have been speaking, limiting the recovery to actual pecuniary loss?

Mr. WINN: I say the legislature should not be able to enact a law limiting the amount of recovery.

Mr. JONES: Is it limited now?

Mr. WINN: Yes; it is confined to actual pecuniary loss.

Mr. JONES: Has not that always been the law?

The vice president here assumed the chair.

Mr. WINN: No, sir; it has not. It is a statutory provision and it should be actual damage, not measured in dollars and cents only. Let me give you another concrete case. Today Judge Roehm told me of an instance where he brought a suit growing out of the killing of a little child eight or nine years old, and the only ground upon which that mother could recover anything at all was that she was able to prove at the trial that her little child each morning carried a pail of milk to a customer, thus earning two or three cents. Had it not been for that little service she would not have recovered anything.

Mr. HALFHILL: There is a number of things that happen in society for which there is not and cannot be any redress. There can be no redress for the bereavement following the loss of a relative. It is mere sentimentalism to argue on that point.

This is so plainly statutory that I do not think it should pass. The legislature now has fixed the amount at \$10,000. It is perfectly competent for the legislature to fix the amount of \$20,000 or \$30,000, in which event a good portion of the argument about decreasing the purchasing power of a dollar would vanish by action of the legislature. This is so plainly a statutory right, fully existing and provided for under the present constitution, that I can see no reason whatever, and I have not been furnished with any valid reason, why it should be put into the constitution.

Mr. ANDERSON: Will you permit me a question?

Mr. HALFHILL: Not until I get through. I have not the time. When you start into a manufacturing business, whether you are an individual or a big corporation, one of the fixed expenses incident to that business is the carrying of all kinds of insurance that you can get. One of this kind frequently carried is casualty insurance. What insurance company can write casualty insurance except at an exorbitant premium, where there is no limit to the possible liability? It is argued there is a limit against excessive liability because of the power of the court to cut down verdicts.

Mr. ANDERSON: Will you permit a question?

Mr. HALFHILL: Not until I get through with my argument, for the time is limited. What court would have the courage to cut down verdicts to a point where they correspond with the actual damages incurred? Now the situation is this, that under the existing statute that rule of law permitting a court to reduce the verdict, quoted by the gentleman on the other side, plainly does obtain; but I should like to know what court there is in the state of Ohio that would have courage enough to cut down a verdict that was rendered in a case of wrongful death, when there was not any statute in the state of Ohio that fixed any limitation, and when the fundamental law said there should not be any? What court would have the courage to do that; and furthermore, what court would have any right to do it when you change the fundamental law upon which those rules rest which say

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that the court can cut down the verdict? Then you take out the foundation of the rule and another rule obtains. Now I think there is no question that my interpretation is correct of what the rights of the courts under such a new rule would be, and that the old rule immediately vanishes and would be supplanted by the constitutional inhibition.

Another thing: This question of workmen's compensation laws is a new thing in this country. It was met and settled twenty-five years ago in Continental Europe, and there is not a state in this Union up to this time that has passed a full, free, comprehensive workmen's compensation law which is on the line of what they have done in Continental Europe, save and except perhaps the state of Washington. All the rest are experiments. The whole theory and basis of workmen's compensation laws are that there is a fund created which shall be administered as an insurance fund, and it is intended that the injured workmen or bereaved family shall be able to apply to the commissioners of that fund direct and be paid direct according to a fixed, ascertained and definite schedule, so as to obviate all civil court procedure. That is the correct theory of an approved workmen's compensation law. Now in the state of New York the workmen's compensation law passed there conflicted with the constitution and it was declared void by the courts, not however by reason of a conflict with the original of this proposal, which the author of the proposal says is practically taken from the constitution of New York. But I call your attention to the fact that under workmen's compensation laws the commissioners that control that fund have to be governed by the same theory that casualty insurance companies are governed by, and they have premiums of a certain amount in certain kinds of factories, according to the class of the risk. Where the risk is great, the premium would be higher; where the risk was less, the premium would be less, so that you absolutely throw down the bars so far as safeguards are concerned and take away the foundation rule which permits the court at the present to cut down verdicts if excessive, and you have established a rule whereby the commissioners of the workmen's compensation fund are not able to figure and to make a right premium. I don't know whether or not that objection has occurred to any of those gentlemen advocating this proposal, but I submit it now for the careful consideration of all of you. I contend that you are so arranging the constitution that there cannot be a perfect workmen's compensation law passed.

Mr. ANDERSON: Do you not know that the more corporations go into the workmen's fund or under workmen's compensation laws the more drastic the liability laws are, and consequently every act of this kind is a benefit to workmen's compensation laws instead of a detriment?

Mr. HALFHILL: I expect and hope that we shall live to see the time when there will be the most thorough and approved kind of a workmen's compensation law in effect in the state of Ohio, and that it will be so thorough that every corporation and every body employing workmen will have to come under the operation of that law. That is a thing that I am in favor of unreservedly. I hope the time will come when it will be impossible for any casualty insurance to be written on any factory in

Ohio, and that the law of the land will be broad enough so that all casualties will be taken care of under that law.

Mr. ANDERSON: You stated a while ago that the rate in industrial casualty insurance would go up to such an extent that it couldn't be taken. Don't you know that in Pennsylvania and New York the rates are not way up?

Mr. HALFHILL: I do not know that and I don't care.

Mr. ANDERSON: Why did you argue it?

Mr. HALFHILL: I argued it for this, if anybody has wit enough to follow it: I took the insurance law as the premise upon which to base the argument for the workmen's compensation law.

Mr. ANDERSON: Another question.

Mr. HALFHILL: Not until I finish this — because that is necessary. You have to observe the very same rule in administering the workmen's compensation law as a casualty company uses now in fixing its casualty rate, and we haven't got that kind of workmen's compensation law now in Ohio; and what I am arguing or intending to argue is that this in my judgment conflicts with the workings of an approved workmen's compensation law. Now if the worthy proponent cannot in some way amend it to meet that objection, I cannot bring myself to think that it should pass.

Mr. ANDERSON: Here is an amendment that will meet that objection. Now just one other question: You stated if this became part of the constitution of the state of Ohio then the common pleas judge or the higher court would not cut down the amount. Do you not know that in Pennsylvania and New York and in every other state, and there are many that have similar provisions in the constitution, the judges there just as freely cut down a verdict rendered by a jury as in any other state?

Mr. HALFHILL: You cite no authorities, but are stating matters that I do not know anything about.

Mr. ANDERSON: I thought you did not.

Mr. HALFHILL: And it is easy to deal in general principles and make general statements, but I do say that the authorities in Ohio which you have cited and to which I am directing attention, will vanish, because the foundation for these authorities will be removed, and they will be supplanted by the direct inhibition of the fundamental law.

Mr. BOWDLE: I expect to assist this provision with my vote. I should like to see a man made more valuable in human society than mere property. Today in the state of Ohio it is far more profitable for a negligent corporation to kill a man outright than to injure him. It is said by the distinguished member from Allen [Mr. HALFHILL] that damages cannot be given for sentiment. That is not in my judgment technically true. The law is a very curious science. Occasionally you see it and occasionally you do not. If there is anybody here who does not believe that the law does not give damages based on sentiment let him, if he be unmarried, engage himself to a young woman and then proceed to break the engagement. He will find a heavy charge given to the jury that this young woman is to be compensated for her trousseau and for her lacerated affection and for her outraged feelings. She must be compensated for the damage to her prospects in life, and

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I can assure that young man that a huge section of his fortune will be transferred from him.

Mr. ANDERSON: Do you not know that that rule does not apply in personal injury cases?

Mr. BOWDLE: When you come to a personal injury case involving death sentiment counts for nothing. The loss to society is counted for naught. Only pecuniary loss counts. I have a little girl at home, ten years old. If the traction company were to kill her I could not recover anything. Sentiment goes for nothing except in a breach of promise case. I should like to see some kind of rule of reason adopted in cases of personal injury causing death; but if my little girl were killed I couldn't recover one cent. I could not ask the court to charge the jury that the jury should take into consideration the fact that I have cared for that daughter from infancy and for ten years, and that the average cost would be \$200 a year.

Mr. ANDERSON: Do you not know that the circuit court of Lucas county held that a judgment for \$1,000 for a girl nine years old was not excessive and sustained the verdict?

Mr. BOWDLE: I never heard of it, but I take your word for it. I think we should see to it that this proposal is incorporated in the constitution so that those who are left may in some fair way be compensated for those who have been taken away. Under the present condition it would be very much more profitable for a motorman busily engaged in serving his employers, whenever he saw there was no reasonable chance for one imperilled to escape, to turn on power and kill the person rather than injure him. I do not believe that the present law is what it ought to be, and I feel that everyone who is in favor of justice ought to support this proposal.

Mr. KING: I cannot support the proposal in the form in which it now stands. My objections to it are several. In the first place, there is nothing in it that is not purely statutory and which the legislature can not take care of.

In the second place, resorting, as we naturally do, to our experiences, I say that so far as my personal experience reaches, which is only thirty-nine years in the practice of the law, I have prosecuted innumerable cases of personal injury and defended almost as many more; I have listened to the hearing and reading of records in almost as many more, and I never have known a case in which the jury went to the present statutory limit in case of a death. I have heard of a great many cases in the larger cities, and usually damages given by the jury are higher there than those given in the country. So I say there is no necessity for it.

In the third place, I say that this provision, as written by the proposer, will interfere with workmen's compensation laws in another manner than that stated by the gentleman from Allen [Mr. HALFHILL]. It provides that the right to recover damages for injuries resulting in death shall not be subject to any statutory limitation as to the amount of recovery. The workmen's compensation law is an act of the legislature, designed to permit the injured party to secure damages for injury or death resulting therefrom, and the authority is given in the act to the commission created by it to fix

the amount of damages that shall be payable either in injury not resulting in death or in one resulting in death. This proposal interferes with the right of the legislature to provide for workmen's compensation laws and to provide a fund out of which to compensate the injured person.

Mr. PECK: Does not the act fix a limit to the amount that can be recovered?

Mr. KING: Very likely.

Mr. PECK: Of \$3,500?

Mr. KING: I do not remember, but if it does this constitutional provision repeals it.

Mr. PECK: It ought to be repealed. That is what we are after.

Mr. KING: It gives the legislature the power to do that or to delegate that power to a commission, so that you strike a blow at the very heart of workmen's compensation acts by a constitutional provision.

Mr. WINN: Then if the section of the statutes fixes a limitation and the constitution says there shall be no limitation, the compensation laws would drop?

Mr. KING: Yes.

Mr. WINN: Do the compensation laws depend for their existence on the fact that the statute contains a limitation of the amount of recovery?

Mr. KING: No, sir; the law will fix the compensation or delegate the power to fix it.

Mr. WINN: Do you not know that the amount recovered under compensation laws is purely a matter of contract and not of statute at all?

Mr. KING: It is not an involuntary but a voluntary law, where the employer and the employe must enter into it, but there are those cases where it is absolutely involuntary.

Mr. WINN: But the amount recovered under the workmen's compensation act is a matter of contract.

Mr. KING: In a way.

Mr. WINN: Do you tell this Convention that if there should be written into the constitution this provision a person cannot thereafter contract to receive \$3,500?

Mr. KING: Yes; because the legislatures of some states have taken away entirely the contract feature and it may be found before we get very far that it ought to be eliminated.

Mr. ANDERSON: What difference is there between the liability laws and rules—do you not know that this in no way can interfere?

Mr. KING: I would not have said so if I had known it. I said I thought it did and that it might receive that construction.

Mr. ANDERSON: You had the same opinion in the committee?

Mr. KING: No, sir.

Mr. ANDERSON: You signed this out and recommended its passage.

Mr. KING: If I did I announced at the time that I would not support the measure, except to report it in. Now I am going to offer an amendment.

Mr. PECK: Will the gentleman explain the difference?

Mr. KING: It takes away entirely any question of compensation under the compensation laws.

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The amendment was read as follows:

Strike out lines 4, 5, 6 and 7 and insert the following:

"No limitation shall ever be imposed by statute on the amount of damages recoverable by civil action in the courts of this state for an injury resulting in death caused by the wrongful act, neglect or default of another."

Mr. ANDERSON: I accept that amendment.

Mr. PECK: One of the pleasures of this Convention to me has been the ability to get back and consider things worthy to essential justice. Every lawyer knows that in court whenever we try a case, or anywhere that we consider a case, we discuss it or try it in a court of review or in the court having the final passage on questions of law; we find it is all controlled by prejudice and we hardly ever get really to consider a thing simply in the light of its natural justice. Now I want to try this section that way. We are here making a foundation law upon which this people shall proceed, and I for one want to base our fundamental laws upon the eternal precepts of justice, without regard to any judge's decision or precedents established by any court. We can draw light from those things, but we are establishing a foundation and we are not bound by them.

This right to recover for wrongful death is a matter of modern legislation. There came a time when the sentimental human race had advanced in its progress to that point where it said to any one who had wrongfully caused the death of another, "You shall compensate the people who are dependent upon him and who are closely related to him for that death." The common law of England gave no such action. If you go back to Anglo-Saxon times you will find it was fundamental to them. When you come down to the books, you will find there was no such action until about 1850 when the parliament of England, under the lead of Lord Campbell, then lord chancellor, passed an act providing that anyone who caused the wrongful death of another should be liable in damages not to exceed five thousand pounds. In transferring that law over here the five thousand pounds was transferred as \$5,000. There is a tremendous difference there. Five thousand pounds means \$25,000. So it was first introduced in the state of Ohio as statutory law that anyone who wrongfully caused the death of another should be liable to the next of kin to the sum of \$5,000, and that was afterwards raised to \$10,000. I believe it is now \$12,000. It never reached the level of natural justice. Would not natural justice say that whoever causes the wrongful death of another shall compensate those who have lost by his wrongful act? What does compensation mean? It means pay, and that would be the amount lost. Now we know there are some deaths for which there cannot be any compensation, but there are many others in which there can be compensation, and the question is how shall it be fixed. No statutory limitation can be fixed which will authorize persons bringing that kind of an action to recover the amount they ought to recover—in other words, enough to repay them for what they have lost by the death of that relative.

Now it may be that the law compensation sometimes will be very small and the courts have been inclined to

consider the loss only temporary, but there are phases of the situation in which the sentimental aspect of which Mr. Bowdle speaks has come in and could not be kept out, when a man is injured and sues for compensation and he recovers compensation for his suffering. It is a suggestive matter. His feelings, his sufferings, his pain, his internal injuries—for those there would be no recovery. There should be a recovery which would fully compensate for every sort of injury, for the loss of companionship, the loss of good advice, the loss of friendly assistance and a thousand and one things that an affectionate relative can render to another. These are things that the jury can estimate, and to say that the damage should be limited to only the pecuniary loss is to say that full compensation is not to be made.

I want to say in the light of natural justice whoever has deprived one of a relative should give full and complete compensation. That is all we want. I am not bothering about the statutes. They will be fixed. Let us fix the foundation and fix it good and strong in natural justice. I tried the case of a little girl twelve years old and I tried the case of a young boy sixteen years old, a young man killed by a railway engine, and in both cases very low verdicts were rendered. In the little girl's case the court sustained a verdict of \$1,200. They said there could only be compensation granted and I thought the verdict might not be sustained, but the court did not set it aside. They showed the feeling there is in these matters. There is no use in talking about confining the matter simply to pecuniary injury. The law of justice requires full and complete compensation for the loss of that person, including all of those innumerable things that are implied in it. Let us fix the fundamental law firmly on the foundation of justice, and the legislature can do the rest about the workmen's compensation law.

Mr. TALLMAN: I am opposed to the amendment of the delegate of the member from Erie. It is really a substitute amendment for the one that we have been discussing. My objection to that is that it takes away any limitation. I do not regard the matter of limitation as being very important, especially relative to death, but I do regard this one thing of importance, and that is the power of the legislature to take away from the next of kin the right of action in case of the death of a child or of an unmarried man. You take the law as it now exists with reference to a man who works in a mine, and he may be under age or he may be an adult and in neither case does his next of kin, father, mother, brothers or sisters, have a right of action, and the amendment of the gentleman from Erie leaves to the legislature the power to pass a law of that kind. I want to say that the legislature has passed that law, and I want to say further that the court of common pleas and the circuit court have held that law to mean just what I say, that is, that an unmarried man, adult or minor, working in a mine and who is injured by the wilful violation of the mining act—if he is killed his mother, his father, his sisters or his brothers have no right of action. His mother may have to pay the expenses of his funeral and of a long siege of confinement after his injury before his resulting death; she may have to buy his coffin and shroud, but not one cent can she recover from that mining corporation. That is already the law of the state of Ohio as passed in the mining act, and it has been so construed by the court of

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common pleas and the circuit court of Belmont county. Four judges have decided it that way. That was one reason why I wanted the supreme court to have jurisdiction in cases where the construction of a statute was brought in question. But my friend from Hamilton county, of whom I think so much, the chairman of the Judiciary committee, would not have it that way. It was Judge Worthington's amendment. The case to which I call attention is now in the supreme court to construe that statute, the two of them linked together, and the construction of one involves the construction of both. It is in the supreme court and if the supreme court follows the decision of the courts below and the legislature is content to let it remain that way, then there is nothing on earth that can give a right of recovery in a case such as I have mentioned where death results and no wife or children survive. I object to the King amendment because it leaves the legislature the power to do that.

Mr. DUNN: Just a word on this subject. It seems that this proposal is another one in the direction of genuine reform. It is a proposition somewhat in favor of the individual and of the rights of the common people in opposition to the advantages of the corporations as heretofore exercised. It is a fact that some of the railroads would rather kill a person than wound that person because the damages would be far less. This proposal it seems to me is rising above the mere question of money, the mere question of the advantage of a person killed to his relatives, to the question of affection and love. I had a friend who in the exercise of his duty, was cut in two by a railroad train. Three friends went to the company and asked for damages for his wife and infant daughter and they were told, "If we paid for every man we killed we would break up the company." That daughter is now a young lady who has lost for all of her young life the affections of a father, and her whole character has in a great measure been changed from the lack of influence of that father and the lack of a home. The mother worked with her for years and finally it resulted in her own death. The railroad company would not pay one cent. I am strongly in favor of anything that is in the direction of reform and in favor of the individual.

Mr. REDINGTON: I desire to go on record as against the proposal and this amendment. I do not understand that master and servant are the only persons who are interested in this question. Wrongful death often results where neither of the parties, the master or the servant, has anything to do with it. There may be a third person.

Now I think it is all wrong, this setting aside the rules of evidence and allowing the jury or the court to speculate upon what was the actual damage in any particular case. For at least twenty-five years I have been interested on both sides of personal injury cases. In our county we have a great many of them, and I know from observation and experience that nine out of ten of wrongful-death cases are settled and do not get into the court. First we bluff settlements in a good many of the cases. We try to get by the court. We nearly always trust the jury if we have the other side and we try to block everything so as to let it get by the court. The purpose of this whole proceeding is for some attorney who has the side against the corporation or persons blamed. This is wanted to make a bluff for a great big settlement so that

a small corporation or an individual who has been sued would rather pay a larger amount of money than to take the chances of a jury trial. Besides, since being a member of this Convention I have settled three cases and I have bluffed everyone of them through, and if you give me that law I will go out and bluff every corporation. They dare not take a chance of getting before a jury. They dare not take a chance of my getting by the court, for if I do I will skin them every time.

Do you want to wipe out corporations? No one wants to kill people. I never knew an official of a corporation wanting to kill any employe. If you put this thing in you will break up a good many institutions attempting to do a legitimate business. Today we have certain definite rules to follow in determining the damages in any particular case. Under these rules the employer can get insurance and, as well stated, no insurance company would dare to take the hazard under this provision that is now offered, or if they did take it they would want to raise the rates.

Mr. ANDERSON: A question please.

Mr. REDINGTON: Just a moment. I know if you will give us this provision you and I can go out and do a lot of bluffing. I think it is wrong. I believe in receiving fair compensation where there is a wrongful death, but the moment you go beyond the actual damages sustained and attempt to show loss of affection and love and all that kind of sentimental stuff in fixing value you reach the point where danger begins. No one will know what the damage would be, and such fellows as Redington and Anderson would go out and make barrels of money by it, but I say it is not right. That is all.

Mr. MAUCK: This question has been very thoroughly debated on two different occasions and I feel justified in demanding the previous question upon both the original proposal and the amendment.

The PRESIDENT: The vote will be upon the amendment.

The amendment was agreed to.

The question being, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 68, nays 30, as follows:

Those who voted in the affirmative are:

- | | | |
|------------------|--------------------|----------------|
| Anderson, | Henderson, | Read, |
| Beatty, Wood, | Hoffman, | Rockel, |
| Bowdle, | Hursh, | Shaffer, |
| Brown, Highland, | Johnson, Williams, | Shaw, |
| Cassidy, | Kerr, | Smith, Geauga, |
| Colton, | Kilpatrick, | Solether, |
| Cordes, | King, | Stevens, |
| Crosser, | Kunkel, | Stewart, |
| Davio, | Lambert, | Stilwell, |
| Donahey, | Leete, | Stokes, |
| Doty, | Leslie, | Taggart, |
| Dunn, | Marshall, | Tannehill, |
| Dwyer, | Mauck, | Tetlow, |
| Earnhart, | Miller, Crawford, | Thomas, |
| Elson, | Miller, Fairfield, | Ulmer, |
| Evans, | Miller, Ottawa, | Wagner, |
| Fackler, | Moore, | Walker, |
| Farrell, | Nye, | Watson, |
| Fess, | Okey, | Weybrecht, |
| Hahn, | Peck, | Winn, |
| Halenkamp, | Peters, | Wise, |
| Harbarger, | Pettit, | Woods. |
| Harter, Huron, | Pierce, | |

Damage for Wrongful Death—Abolishing Board of Public Works.

Those who voted in the negative are:

Antrim,	Halfhill,	Malin,
Beatty, Morrow,	Harris, Ashtabula,	Marriott,
Brattain,	Harter, Stark,	McClelland,
Brown, Pike,	Holtz,	Price,
Campbell,	Jones,	Redington,
Collett,	Kehoe,	Riley,
Crites,	Keller,	Roehm,
Cunningham,	Kramer,	Rorick,
Dunlap,	Longstreth,	Stalter,
Fox,	Ludey,	Tallman.

So the proposal passed as follows:

Proposal No. 240—Mr. Anderson. To submit an amendment to article I, of the constitution.—In relation to damages for wrongful death.

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:

No limitations shall ever be imposed by statute on the amount of damages recoverable by civil action in the courts of this state for an injury, resulting in death caused by the wrongful act, neglect or default of another.

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

The PRESIDENT: The next business is Proposal No. 331—Mr. Walker, which the secretary will read. The proposal was read the second time.

Mr. WALKER: I think the simple reading of this proposal will inform every delegate as to its object and we can dispose of it in a very little time. The constitution as now provides for the creation of a board of public works, to have supervision of the public works of the state. The only public works the state has are the canals. Large parts of them have fallen into disuse, and of the canals we still have two which reach across the eastern and the western parts of the state and the state has vested rights to the extent of \$15,000,000. It is too valuable an asset to permit to be passed by and leave to the disposition of future members of the general assembly to do as they see fit. The proposal provides for caring for any situation as it may arise. If you are in favor of shortening the ballot this is one method of doing it, by cutting out all of these super-numerary officers.

Mr. BROWN, of Highland: Is there any provision to do away with the board of public works?

Mr. WALKER: This drops section 12 and 13 of article VIII.

Mr. KING: Those sections provide for the election of the board of public works and in your proposal you do not say whether the officers shall be elected or appointed.

Mr. WALKER: I purposely put it in this brief way so that it can be left to the wisdom of the Convention.

Mr. PECK: I offer an amendment.

The amendment was read as follows:

Amend Proposal No. 331 by inserting in line 8 thereof after the word "public works" the words "appointed by the governor for one year."

Mr. WALKER: I have no objection to that. The amendment was agreed to.

The PRESIDENT: The question is on the passage of the proposal.

The yeas and nays were taken, and resulted—yeas 97, nays 1, as follows:

Those who vote in the affirmative are:

Anderson,	Harter, Huron,	Peck,
Antrim,	Henderson,	Peters,
Beatty, Morrow,	Hoffman,	Pettit,
Beatty, Wood,	Holtz,	Pierce,
Bowdle,	Hursh,	Price,
Brown, Highland,	Johnson, Williams,	Read,
Brown, Pike,	Jones,	Redington,
Campbell,	Kehoe,	Riley,
Collett,	Keller,	Rockel,
Colton,	Kerr,	Roehm,
Cordes,	Kilpatrick,	Shaffer,
Crites,	King,	Shaw,
Crosser,	Knight,	Smith, Geauga,
Cunningham,	Kramer,	Solether,
Davio,	Kunkel,	Stalter,
Donahay,	Lambert,	Stevens,
Doty,	Leete,	Stewart,
Dunlap,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Taggart,
Earnhart,	Malin,	Tallman,
Eby,	Marriott,	Tannehill,
Elson,	Matthews,	Tetlow,
Evans,	Mauck,	Thomas,
Fackler,	McClelland,	Ulmer,
Farrell,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Moore,	Weybrecht,
Hahn,	Nye,	Wise,
Halenkamp,	Okey,	Woods,
Harbarger,	Partington,	Mr. President.
Harris, Ashtabula,		

Mr. Winn voted in the negative.

So the proposal passed as follows:

Proposal No. 331—Mr. Walker. To submit an amendment to article VIII sections 12 and 13, of the constitution—Relating to the board of public works.

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:

ARTICLE VIII, SECTIONS 12 AND 13.

Strike out sections 12 and 13 of article VIII, and in lieu thereof insert the following:

So long as this state shall have public works which requires superintendence, there shall be a superintendent of public works appointed by the governor for one year whose duties and powers shall be defined by law.

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

Mr. ANDERSON: I move that the usual number of copies of Proposals No. 240 and No. 331 be printed.

The motion was carried.

The PRESIDENT: The question now is, Shall the motion by which Proposal No. 25 was indefinitely postponed be reconsidered?

Mr. BROWN, of Highland: I move to lay that motion on the table.

The motion was carried.

Outdoor Advertising—Registering and Warranting Land Titles.

The PRESIDENT: Proposal No. 333—Mr. Peck. The proposal was read the second time.

Mr. PECK: I hope you will not put the skids under this. I do not think any proposition has come before the Convention which is so completely the work of myself as this. On Proposal No. 184, which you kindly passed, I had the assistance of a great many able men, but this is the work of my own unbridled genius, though it was instigated by a great many people in Cincinnati. I was continually asked by social and business clubs, women and men both, why we didn't do something to stop the billboard nuisance. I had investigated a little and they explained to me a little, and I understood why they thought it was up to us to do something about it. They said every time they tried to enforce any regulation or do away with the billboard evil before the police court or in various courts to stop their operations of defacing the landscape of the state, the offenders had always taken refuge in their claim of the constitutional right of property. I have a right to put as many billboards on my property as I please. I have a constitutional right. Therefore nothing could be done. So here is the only place that we can correct it. This nuisance is a great one. It is being talked about all over the United States. Everywhere they are seeking to remedy it. I have seen a large convention, much greater than this Convention, debating on that one subject, and as this is the only place where it can be corrected in Ohio I am earnestly in favor of this proposal and hope it will be adopted.

The question being "Shall the proposal pass:

The yeas and nays were taken, and resulted—yeas 68, nays 28, as follows:

Those who voted in the affirmative are:

- | | | |
|--------------------|--------------------|----------------|
| Anderson, | Harter, Huron, | Okey, |
| Antrim, | Harter, Stark, | Peck, |
| Beatty, Morrow, | Hoffman, | Peters, |
| Beatty, Wood, | Hursh, | Pettit, |
| Beyer, | Johnson, Williams, | Redington, |
| Brown, Highland, | Jones, | Rockel, |
| Collett, | Kehoe, | Roehm, |
| Colton, | Keller, | Rorick, |
| Cordes, | Kerr, | Shaffer, |
| Crites, | Kilpatrick, | Smith, Geagua, |
| Crosser, | King, | Solether, |
| Cunningham, | Kunkel, | Stevens, |
| Davio, | Lambert, | Stewart, |
| Donahey, | Lampson, | Stilwell, |
| Doty, | Leete, | Stokes, |
| Dwyer, | Leslie, | Tetlow, |
| Eby, | Longstreth, | Thomas, |
| Elson, | Mauck, | Ulmer, |
| Farrell, | Miller, Crawford, | Weybrecht, |
| Fess, | Miller, Fairfield, | Winn, |
| Hahn, | Miller, Ottawa, | Woods, |
| Halenkamp, | Moore, | Mr. President. |
| Harris, Ashtabula, | Norris, | |

Those who voted in the negative are:

- | | | |
|-------------------|-------------|----------|
| Brattain, | Knight, | Pierce, |
| Campbell, | Kramer, | Price, |
| Farnhart, | Ludey, | Read, |
| Evans, | Malin, | Riley, |
| Fox, | Marriott, | Shaw, |
| Halfhill, | Matthews, | Taggart, |
| Harbarger, | McClelland, | Tallman, |
| Harris, Hamilton, | Nye, | Wagner, |
| Holtz, | Partington, | Watson, |
| Hoskins, | | |

So the proposal passed as follows:

Proposal No. 333—Mr. Peck. To submit an amendment to article XV, section 10, of the constitution.—Relative to the use of property for display advertising.

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:

Laws may be adopted regulating and limiting the use of property on or near public ways and grounds for the public display of posters, bill boards, pictures and other forms of advertising.

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

The PRESIDENT: The next order of business is the reading of Proposal No. 334—Mr. Jones.

The proposal was read the second time.

Mr. JONES: Mr. President and Gentlemen of the Convention: I endeavored to make this proposal one without any legislative features whatever. Its purpose is simply to clear the way for the adoption in Ohio of what is known as the Torrens system of land titles. I want to be as brief as I can on this matter and I promise not to occupy more than ten minutes. I want to explain to those who have not given any thought to this matter the salient features of it. This system involves the registering of titles and in order that they may be registered the titles must be passed upon by a court of competent jurisdiction and only titles that are found to be good can be registered. A title, so registered, imparts absolute indefeasibility; in other words, a title registered can never be attacked for any cause. It is absolutely good for all purposes in law. The transfer of title thereafter is made as simple as the transfer of a certificate of stock in a corporation or a bond or a note or a horse or any other article of personal property. After your title is registered and a certificate put in the proper place in the record you are given a duplicate certificate and if there are any encumbrances they are noted on your certificate. If you want to transfer the property you can either execute an ordinary deed or enter on the back of your certificate an assignment, or if you want to borrow money on it you can transfer the certificate of title for that purpose. If you want to borrow money and give a formal mortgage, you can have the mortgage executed and all the party desiring to lend the money needs is to be shown your certificate. If the certificate is brought down to date, he has the whole thing before him. Your loan could be closed as quickly as if collateral were put up. A sale of a piece of land could be closed about as quickly as you could close up a sale of a horse or a block of stock. In other words the purpose of the whole system is first, to settle titles so that there will be no question as to the validity of a title, and second, to so facilitate the transfer of real estate that it can be made just as simple and just as effective, so far as passing the title is concerned, as the sale of personal property. In short, as Judge Peck suggests, it makes real estate a quick asset, absolutely so. New certificates are issued on each sale and transfer.

Now there is one other feature to which I want to call your attention and which has created a stumbling block against this system in Ohio. It is against our notions of

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justice that anybody should be cut out of his rights in property by mistake or otherwise without being made whole; so that wherever this system has been adopted, while it requires that the application shall be made to a court and the court shall examine the title and determine whether it is good, yet if it should turn out that the court had made a mistake in the adjudication and somebody would afterwards come up that had a valid and just claim, the sense of justice is so keen that there has always been a provision for a small fee of about one-tenth of one per cent upon the value of the property which shall go into a fund that is held to meet the cases where the parties have been deprived wrongfully of their property by the certifying of the title in some one else. There are a number of minor features, but those are the main ones. The system was first adopted fifty odd years ago in Australia in seven or eight provinces, and then in all the British provinces of the far East, including New Zealand and Tasmania, then in Scotland, Ireland and in England herself and in every one of the Canadian provinces, and it was in force in Prussia in a modified form for fifty years before it was adopted in Australia. Switzerland and many of the other European countries and six or seven states of this country, including Massachusetts, have adopted it. It was once adopted in Ohio and declared unconstitutional. It is in effective operation in Massachusetts and I have in my desk for inspection of any member who wants to see it, a letter from the secretary of state of Massachusetts in which he says that they cannot take care of the applications as rapidly as they come in for registration in their land courts.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Strike out of lines 5 and 6 the words "political subdivisions thereof" and insert in lieu thereof the word "counties".

Mr. KNIGHT: I think the counties should do that. I do not think that other political subdivisions should.

Mr. JONES: It should be left to the legislature as to what should be done.

Mr. KNIGHT: Would it not be needless to allow the smaller subdivisions to do it?

Mr. JONES: I wanted to make this matter purely a constitutional provision and let the legislature provide the details.

Mr. KNIGHT: I think we should not regard anything less than a county in this matter.

Mr. JONES: In 1893 the general assembly passed an act providing for the appointment of a commission of three by the governor to draft a bill for the purpose of making this system applicable in Ohio. That commission spent three years in the study of the question and an examination of the system as it prevailed in the various jurisdictions in Australia and elsewhere and finally reported to the legislature in 1896 a bill which it thought would overcome the constitutional objections which had been urged to the adoption of the system in Ohio. That bill was enacted into law by the legislature and went into effect. Its constitutionality was sought to be established by the auditor of state in a suit which he brought in the supreme court for that purpose, and the supreme court, under the view of the law it then entertained, was compelled to hold the act unconstitutional,

Mr. PECK: And that is why we are here now and that is particularly why we are here with this proposal.

Mr. JONES: One of the grounds upon which the supreme court held it to be unconstitutional was that it would violate the constitutional provision with reference to due process of law. That objection could be remedied without this proposed constitutional provision in the same way they have avoided it in Massachusetts and other places, but our supreme court said it was unconstitutional also in that it engaged the state in a private business, that it was not a function of government to do anything except to perform those acts which were for the general public good, and that insuring titles was essentially not different from the business of insuring property against loss by fire or insuring life.

Now the supreme court of Massachusetts and the supreme court of Illinois and the supreme courts of some of the other states differed from our supreme court on that proposition. Our supreme court argued that these provisions after all were merely for the benefit of persons who registered their titles under the system. The supreme court of the other states took the view that while there was a direct benefit to those who registered under the system, yet it was also a public benefit and that every body was indirectly interested in having real estate in such shape that the titles would be absolutely good and that it could be readily handled, and on that ground they differed from our supreme court. I provide here for meeting that objection of the supreme court upon the theory that it is not likely to reverse itself, although the supreme courts of other states have held differently.

Mr. CUNNINGHAM: What would be the probable expense to have titles registered under the system?

Mr. JONES: It was provided in the act of 1896 that there should be deposited twenty-five dollars upon filing the application, the excess to be returned.

Mr. CUNNINGHAM: Would that be the average expense?

Mr. JONES: It would depend on circumstances, the size of the property and the complexity of the title and all that. I think in a letter that I have from the secretary of state of Massachusetts they estimate that the average expense has been about twenty-five dollars.

Mr. CUNNINGHAM: What is the expense of a transfer?

Mr. JONES: All told I think on an average about two dollars. It is a very inexpensive operation.

Mr. KRAMER: I am not acquainted with that system. Do you have to have a complete abstract?

Mr. JONES: You go in with an application to register your title. The court of course requires you at the start to furnish the evidences of your title.

Mr. KRAMER: How do you do that?

Mr. JONES: You bring the original instruments, if you can get them, and they may ask you also to bring evidence in the form of an abstract showing that you are the owner of the property and giving an exact description of it. If your abstract shows there are any persons with adverse claims, those persons are made parties to the proceeding and they are notified and given an opportunity to be heard. The court determines, with all the parties before it just as in an ordinary action, whether your title is good.

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Mr. KRAMER: Then you proceed to advertise and it would be virtually bringing a suit.

Mr. JONES: It is.

Mr. KRAMER: What is the advantage of it?

Mr. JONES: After this is once done your title is registered and thereafter every time there is any transaction concerning it you don't have to go to a lawyer to get him to make an examination of the title.

Mr. BROWN, of Pike: Would not every owner of property have to employ a lawyer?

Mr. JONES: If he wanted to register his title it might in some cases be desirable, but where the system has been adopted it has never been made compulsory. Registering is entirely voluntary, but the advantages are so great, as the letter from Massachusetts indicates, that they come in fast.

Mr. BROWN, of Pike: Does not every owner have to employ a lawyer to trace his title when he wants to sell or borrow money?

Mr. JONES: Yes, generally.

Mr. BROWN, of Pike: Does he not have to employ a lawyer when he buys land?

Mr. JONES: Yes, generally he does.

Mr. BROWN, of Pike: Would he not have to do the same in this kind of a proceeding?

Mr. JONES: He could employ a lawyer if he wanted to.

Mr. BROWN, of Pike: Do you think the ordinary citizen is able to do it?

Mr. JONES: They do do it. There is a regular referee who takes charge of the matter and he examines your evidences of titles and reports to the court what defects if any he finds. Of course the services of an attorney would not be objectionable. The details in some cases would be complicated, but the experience in nineteen out of twenty real estate titles is that there is no serious question about the title.

Mr. BROWN, of Pike: Would not the court have to appoint that referee and the parties would have to pay him a fee?

Mr. JONES: He is a regular officer of the court.

Mr. BROWN, of Pike: Who pays that officer?

Mr. JONES: Provided for by law. In many places he is a salaried officer of the court. The fees charged go into a fund out of which that salary is paid, with other expenses.

Mr. DOTY: In those places where this system is optional, as against the old system, do you not find that this system is increasing in use?

Mr. JONES: Yes. It has increased and increased until it is overwhelming the courts administering it.

Mr. DOTY: You cannot create a cloud on the title except in the recorder's office?

Mr. JONES: No, sir.

Mr. DOTY: It must all be on one record?

Mr. JONES: That is one of the features. Everything that affects the title is right there on one page of a record in the recorder's office. Mortgages would be entered there, judgments, mechanics' liens, executions, suits, tax sales and everything that could be an encumbrance.

Mr. HARRIS, of Hamilton: Ninety-eight per cent of the titles are good merchantable titles and probably not to exceed two per cent are found to be so defective

as to be rejected. Under the Torrens system the farmer or owner of property in a city would bring the deed and all his evidences of ownership to the court. He would not have to employ any lawyer at all until the court's officer, this referee, came to him and said: "Mr. Farmer or Mr. Cityman, we find a defect in this title," and they would require that defect to be cleared up before the title was found good. And upon paying this one-tenth of one per cent, which on a hundred-acre farm would amount to about ten dollars, he would be given a certificate that the title was absolutely clear, and that farmer can then go to the bank and borrow money quickly and probably one per cent lower because the lender of the money knows the title is absolutely perfect and he does not have to depend on any lawyer. The farmer borrows the money and will be able to get his money so much cheaper. He would not have to be put to the expense of an examination, which must be paid by the borrower. Is not all that true?

Mr. JONES: Yes.

Mr. HARRIS, of Hamilton: And only when the title is found defective would he have to employ a lawyer for the purpose of making the title good, and then the further great advantage would be that these titles would pass and money could be borrowed quickly and immediately as on bonds or the very best security.

Mr. JONES: That is all true; and there is one other thing that I want to state. When a party once gets one of these certificates his title is good and he knows his title is good, but he does not always know his title is good when he gets an opinion from a lawyer. I have just within the past three weeks had a case determined by the supreme court of Ohio where a lawyer declared a title good in which the purchaser lost the land. I was defending for the man and he had to pay for the land over again more than the first cost and in addition will have to pay for nine years' use of the land.

Mr. HOSKINS: I wish you would explain. You may have done it, but I didn't get it. After the owner has perfected his title and receives a certificate how is that title transferred?

Mr. JONES: Just as if you had a time certificate in a bank. You sign your name on the back of it and you go to the bank and say give me a new certificate and you surrender the old one.

Mr. HOSKINS: The officer who transfers the title must examine each certificate and assignment and be responsible?

Mr. JONES: That is the reason for incorporating in this proposal the conferring of judicial powers on the recorder. There is to that extent an exercise of judicial power by the recorder.

Mr. BROWN, of Highland: Were there an appeal to a court would not that weaken it?

Mr. JONES: No, sir; that was one of the grounds upon which the supreme court held the act of 1896 unconstitutional, that it was conferring judicial power on the recorder and allowing an appeal, when under the constitution a recorder could not exercise judicial powers.

Mr. BROWN, of Highland: Would not that appeal have to be made in every case?

Mr. JONES: No, sir; it would be like an appeal in any other case. The time for taking the appeal would

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be fixed. For instance, a mortgage is paid off and brought in to be released. The recorder must determine the validity of the release. This is in a sense a judicial act. If he makes an error the party prejudiced is given a right of appeal.

Mr. KRAMER: If these titles are so much better under these foreign systems than any other method, would not every piece of property in the state of Ohio be compelled to go into court and have its title put in the shape of a certificate because no purchaser would be satisfied with anything but the best?

Mr. JONES: He would not be compelled. It would be optional. But as a matter of fact a majority of men would prefer that kind of a title and it would be done.

Mr. KRAMER: Would not the purchaser compel him to do it?

Mr. JONES: It takes two to make a contract. He could not compel him if he didn't want to.

Mr. HOSKINS: You say that our supreme court prevented this being put into effect here. How was it put in effect in the other states?

Mr. JONES: They found a way in Illinois, Massachusetts, and in a number of other states by their supreme courts taking a different view of the similar constitutional provisions from those entertained by the supreme court of Ohio.

Mr. HOSKINS: Has the language used in this proposal been adopted in any other state?

Mr. JONES: No, sir.

Mr. HOSKINS: It is an entirely new proposition?

Mr. JONES: This proposal seeks to remove what was pointed out in *Guilbert vs. State*, 56 O. S. 626, as constitutional objections to the adoption of the Torrens system in Ohio.

Mr. TALLMAN: Suppose any large tract of land is partitioned and it is divided into a number of tracts among the supposed living heirs and one of those heirs that is supposed to be dead comes to life again, or there is a posthumous child not in existence at the time of the partition; how would that affect the registered title?

Mr. JONES: Whenever the title is registered it is good in the person in whose name it is registered. A fund is provided for just such a case as you mention, and the interest of that person would be made good out of the fund that is provided by the small guaranty fee. Experience has shown that not one-tenth part of the fund is used.

Mr. KNIGHT: It seems to me there is no occasion for departing from the historic practice in this state, so I have moved to amend the Proposal No. 334 as follows:

Strike out in lines 5 and 6 the words "political subdivisions thereof" and insert in lieu thereof the word "counties."

Mr. HARRIS, of Hamilton: I wish simply to say a few words on this subject. In my judgment it is one of the wisest and most beneficial proposals that has ever come before the Convention, and if adopted we cannot compute in money the benefit to the people of the state of Ohio if they wish to avail themselves of it. In the discussion that has occurred there is only one other point that I would like to make clear to you and that is this: If the court should err and declare a title good

that later investigation finds not to be good, the person in whom the title actually rests would suffer no injury. The court would allow that person the full value of his property at the time he proved his claim, and that would be taken out of the guaranty fund, so that it works absolute justice to all. Any of us who are at all conversant with economic laws knows that the easier you make your collateral the more readily you can obtain a loan and the lower rate you can get. It does not work an injustice to anybody. As the member from Fayette has shown you, it has been adopted by many of the civilized countries of the world and among these are half a dozen of the most progressive states in the Union.

Mr. HAHN: The great merit of the Torrens law is claimed to be that it makes the transfer of real estate as easy as the assignment of checks and notes is at present in the commercial intercourse of the world. I think the Torrens law makes the transfer of realty altogether too easy. The Torrens law is revolutionary in its character. It is unjust. As soon as the title is registered it is good against every unregistered claim against the property. From the time application is made to the county recorder to the moment that it is registered it leaves a wide scope for injustice and violence. I do not know under what circumstances it was introduced in Massachusetts or any of the other states. Why was this Torrens law proposal not introduced here earlier so that we could have had more time to give to its study?

Gentlemen of the Convention, the Torrens law is unconstitutional not merely under the federal constitution, not merely under our present constitution, but it will remain so also under the new constitution we are making, if adopted by the people. It is unconstitutional to take by force any private property and the new constitution will also demand that before a man can take private property even for public purposes the appraised value has to be first deposited in money.

The Torrens law demands no deposit of money, but merely refers the man who had to part with his interest to an uncertain insurance fund to be created by fees. You may pass the Torrens law, but any private corporation or individual that will ever bring it before the United States supreme court will surely succeed in having it declared invalid.

Mr. JONES: May I ask a question?

Mr. HAHN: When I am through I am willing to answer your question.

The federal constitution, article I, section 10, reads, "No state shall have the right to impair the obligation of a contract." Chief Justice Marshall in 1810 in the case of *Fletcher vs. Peck*, decided that the term "obligation of a contract" covers not merely contracts in general, but also conveyances of realty. The fourteenth amendment of the constitution of the United States says that no state shall have the right to deprive anybody of liberty, life or property without due process of law. What is the process of law in the Torrens law? None whatsoever! You have a claim against a piece of realty and you are not even notified about the suit against you; all that is necessary is to give a vague notice in a newspaper addressed to whomsoever it may concern, and then mention in it the name of the adjoining property owner and if the parties interested do not within a few

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weeks file their claim they are forever barred from doing so. Do you consider such a proceeding right in the state of Ohio? Is it just and fair that a man's interest in realty be taken away from him without any chance of defense? Such a law is nothing else but legalized robbery.

Mr. DOTY: I dislike very much to disagree with my colleague, and I also dislike to break up the extreme harmony that has been existing between the delegates from Cuyahoga, but I am compelled to do it. I desire to inform my colleague and the Convention that the supreme court of the United States has already passed favorably upon the Massachusetts Torrens system law, so that my colleague was mistaken in one part and being mistaken in one part it is barely possible that he was mistaken in some others.

Mr. HAHN: I am not mistaken in that. Even Mr. Jones says that on the fourteenth amendment of the constitution of the United States the supreme court did not come out directly in the syllabus. It is merely an opinion and we have no higher authority than Chief Justice Marshall, and in the work of Cooley on "Constitutional Limitations" you can find it.

Mr. DOTY: I want to say to the gentlemen that they don't get very far in their legal opinions before they are over my head, and I want to say that between the member from Cuyahoga, my colleague, and the gentleman from Fayette I would certainly decide with my colleague against the member from Fayette, but I am informed by the member from Fayette that such is the fact. Whether it is so or not I don't know. You remember my limited legal education, but in the past two or three years it has been my business to visit many places where the Torrens system has been in use on an optional basis—that is, they may or may not use it—and I have observed that anywhere I have found it the people, as they learn the usefulness of this new scientific way of doing the work, invariably use it in increasing numbers. In the city of Chicago they have the optional system. The system had small quarters in the recorder's office, but it has grown until now it is one of the largest departments. There are thousands of people in Chicago using the Torrens system. When I was in Minneapolis a few years ago I found this situation, that real estate agents who had property to sell published in their advertisements that one of the reasons it was a good piece of property was because it was a Torrens system piece of property. The people had learned the advantageous side of the Torrens system and therefore the people were advertising the fact that they used the Torrens system in connection with their land. If it were a detriment the real estate men would know of the fact and would keep the matter from being known. But that is not the tendency. The use of it in most places is optional, but the more the people use it the more they want it, and there is a continual growth in the number of people who desire to use the Torrens system. It is the scientific way of transferring property. If you buy a little piece of property in Cleveland worth only \$500 and go back to the time when Christopher Columbus discovered America and bring it on down to the present, with its five hundred grantors, it is perfectly absurd. It is antiquated. It is out of date. This is so much better that we should be able to use it if we want to.

Mr. STOKES: I move the previous question.

The motion was carried.

The PRESIDENT: The question is on the amendment offered by the delegate from Franklin [Mr. KNIGHT].

The amendment was agreed to.

The PRESIDENT: The question is, "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 84, nays 14, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Peck,
Antrim,	Harter, Huron,	Peters,
Baum,	Harter, Stark,	Pettit,
Beatty, Morrow,	Hoffman,	Pierce,
Beyer,	Holtz,	Price,
Bowdle,	Hoskins,	Read,
Brown, Highland,	Hursh,	Redington,
Campbell,	Johnson, Williams,	Riley,
Cassidy,	Jones,	Rockel,
Collett,	Kehoe,	Roehm,
Colton,	Kilpatrick,	Rorick,
Cordes,	King,	Shaffer,
Crites,	Knight,	Smith, Geauga,
Crosser,	Kramer,	Solther,
Cunningham,	Kunkel,	Stevens,
Davio,	Lampson,	Stewart,
Donahey,	Leete,	Stilwell,
Doty,	Leslie,	Stokes,
Dunlap,	Longstreth,	Taggart,
Dunn,	Marshall,	Tannehill,
Dwyer,	Matthews,	Tetlow,
Elson,	Mauck,	Thomas,
Farrell,	McClelland,	Ulmer,
Fess,	Miller, Crawford,	Wagner,
Fluke,	Miller, Fairfield,	Walker,
Fox,	Miller, Ottawa,	Watson,
Halenkamp,	Moore,	Wise,
Halfhill,	Partington,	Woods.

Those who voted in the negative are:

Brattain,	Harbarger,	Norris,
Brown, Pike,	Keller,	Nye,
Earnhart,	Ludey,	Okey,
Evans,	Malin,	Tallman.
Hahn,	Marriott,	

So the proposal passed as follows:

Proposal No. 334—Mr. Jones. To submit an amendment to article II, of the constitution. —Relative to the creation of a system for the **registration and guaranteeing of land titles and to simplify and facilitate the transfer of real estate.**—Legislative.

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 33. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or counties, and for the settling and determination of adverse or other claims and interests in and to the lands the titles to which are so registered, insured, or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and to effect and carry out said purposes, judicial powers, with right of appeal to the common pleas court, may by law be conferred upon county recorders

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or other officers in respect to matters arising under the operation of such system.

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

By unanimous consent Mr. Doty offered the following resolution:

Resolution No. 122:

Resolved, That the president is hereby authorized to appoint an additional member upon the standing committee on Submission and Address to the People.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. Lampson was appointed as the additional member of the committee on Submission and Address to the People.

By unanimous consent Mr. Donahey offered the following resolution:

Resolution No. 123:

Resolved, That the foregoing amendments to the constitution shall be submitted to the electors of the state at an election to be held on the _____ day of _____, one thousand nine hundred and twelve, in the several election districts of this state. The polls at said election shall be open at five thirty o'clock a. m. of said day, and remain open until five thirty o'clock p. m. of said day; the said election shall be conducted and the returns thereof made and certified to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and, if it shall appear that a majority of the votes cast on any of said amendments are in favor of such amendment or amendments, then the governor shall issue his proclamation, stating that fact, and said amendment or amendments shall become a part of the constitution of the state of Ohio, and not otherwise. That said amendments submitted shall be numbered in the order in which the proposals were adopted by the Convention on second reading, and each amendment shall be designated by such number and a title which shall suggest its subject matter. Said proposals with the number of the amendments corresponding thereto are as follows, to-wit: 54 (1); 118 (2); 100 (3); 2 (4); 184 (5); 236 (6); 93 (7); 212 (8); 163 (9); 5 (10); 249 (11); 62 (12); 64 (13); 242 (14); 122 (15); 209 (16); 24 (17); 7 (18); 261 (19); 309 (20); 169 (21); 72 (22); 304 (23); 241 (24); 166 (25); 322 (26); 252 (27); 272 (28). The ballots except as to proposals Nos. 151 and 91 at such election shall be printed in the following form, with each amendment designated by number and title thereon; those voters in favor of all said amendments may vote for all of said amendments by placing an X in the circle at the top of the column on said ballot, or by placing an X in the space before the word "For" in each and every title; those voters

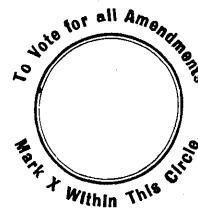
opposed to all of said amendments may vote against all said amendments by placing an X in the space before the word "Against" in each and every title; those voters who desire to vote for certain amendments only may place an X before the word "For" in the title of such amendment or amendments; those voters who desire to vote against certain amendments and not against other amendments may place an X in the space before the word "Against" in the title to such amendment or amendments. Ballots marked with an X within the circle at the top on said ballots shall be counted for all of said amendments, except such amendments as are erased or marked within the space before the word "Against". Ballots not marked shall not be counted for or against any amendment. Ballots so marked as to clearly indicate the intention of the voter shall be counted.

The following is the form of ballot with the designations and titles to amendments thereon:

PLAN OF BALLOT (Suggested).

Special Election Saturday, Sept. 14, 1912.

OHIO CONSTITUTIONAL AMENDMENTS.



	YES	Limiting Veto Power of Governor.
	NO	
	YES	Reform of Civil Jury System.
	NO	
	YES	State Bond Limit for Good Roads
	NO	
	YES	Abolition of Justice of the Peace in Certain Cities.
	NO	
	YES	Initiative and Referendum.
	NO	
	YES	Reform of Judicial System.
	NO	
	YES	Investigations by Each House of General Assembly.
	NO	

Form of Ballot for Submitting Amendments — Regulating Insurance.

	YES	Double Liability of Bank Stockholders and Inspection of Private Banks.
	NO	

Proposals number 151 and 91 shall each be submitted to the people for approval or rejection upon a separately printed ballot and separate ballot boxes provided for the reception of said ballots at all of the election booths in the state.

INTOXICATING LIQUORS.

	For License.
	Against License.

Proposal No. 91 shall be submitted in the following form:

ELECTIVE FRANCHISE.

	For Woman's Suffrage.
	Against Woman's Suffrage.

The resolution was laid over under the rule.

The PRESIDENT: The next business in order is Proposal No. 51. The committee on Corporations other than Municipal recommends passage as amended. The minority recommends passage of substitute. The question is on the substitution of the minority for the majority report.

The minority report was read as follows:

Strike out all after the title and insert in lieu thereof the following:

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:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of the state or doing any insurance business in this state for profit.

Provided, however, that the general assembly may establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident

or other insurance to the citizens of the state, and provided further, that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.

Mr. MILLER, of Crawford: I shall attempt to explain briefly what the difference is between the original proposal and the report of the majority and minority. The purpose of this proposal was to cure what seemed to our mutual people a discrimination against the mutual interests of the state through an opinion rendered by the attorney general, and the matter was taken up with the hope of remedying it. I will read just briefly from the second opinion of the attorney general:

I dislike very much to be constrained to hold against the practice of insurance companies doing an honorable business, as I am sure has been done by the federation of mutual insurance associations of Ohio, and I regret exceedingly to feel compelled to adhere to my former opinion.

In addition to that we have had the opinion of the lower court of Darke county which sustains the opinion of the attorney general, so that if we are to have any relief at all it will only come through this Convention. The amendment offered by Mr. Woods at the time the proposal was up before, and which is now a part of the majority report, permits the state to control the rates of insurance companies. The minority report contains that provision and also permits the state to go into the insurance business. So far as the mutual insurance interests are concerned, we are not fearful of either one, because the cost of mutual insurance in the state is lower than it could be even under the operation of the state. The last report shows that the average rate of mutual insurance companies in the state is only \$1.98 per \$1,000, while the rate for cash companies is \$3.33. We claim that mutual insurance does not only benefit its members, but every purchaser of insurance in the state of Ohio. Do you know that while the rates of insurance have gone up in practically every city in Ohio, they have not gone up in the country for twenty years? And why? Because the mutual insurance companies have been in operation there.

Now just for a moment I will do what I did not intend to do, refer to the work of some mutual insurance companies. Eleven years ago the home owners in three cities, Bucyrus, Galion and Crestline, concluded that they were paying too much insurance on residence property. We organized a mutual insurance company and we have been in operation eleven years. Our rate has been 5.3 cents on \$100.00. The general agents of cash companies came into our city about five years ago with the expectation of raising the rates of the cash companies on that kind of insurance. Our local agents said to them, "This business is all going to mutual insurance companies now and you will ruin our business if you do that." They prevented a raise and they are now issuing five-year policies at the same price they formerly charged for a three-year policy. They issue five-year policies to the home-owners of Bucyrus for the same price that you people in Columbus are paying for three-year policies. So here is an opportunity for the state to recognize the

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merit of mutual insurance and do the very thing that is sought to be done by this amendment.

Mr. KRAMER: Is the only thing you are asking for on behalf of the interests you represent that the mutual insurance companies may insure public property?

Mr. MILLER, of Crawford: That is all we want.

Mr. STEVENS: At the risk of repetition I want to say that the difference between the minority report and the majority report in this case is simply the amendment submitted by myself. The original proposal introduced by the member who has just spoken was amended by a provision which provided that the legislature of the state should have the power to regulate insurance rates. An additional amendment was offered by me providing that the state should have the right to establish a bureau of insurance for the purpose of furnishing fire, life and accident insurance for the citizens of the state. The question is squarely on that issue. As stated by the president, the question is Shall the minority report be substituted for the majority report? The majority report does not contain the bureau of insurance amendment. The minority report does contain that. So that those of you who are in favor of establishing a bureau of insurance should vote to substitute the minority report for the majority report. Now I think that matter is clear.

Mr. HALFHILL: May I ask you a question?

Mr. STEVENS: You have occupied hours of time where I have only occupied minutes and I now refuse to yield to you out of my meager time. Besides, I asked the privilege of putting a question to you the other day and you flatly turned me down. I know the member from Allen [Mr. HALFHILL] will vote fairly and squarely against me. He is absolutely beyond redemption. He sinned away his day of grace a thousand years ago and there is no use in trying to reform him.

For a few minutes I want your attention to some figures that are absolutely startling. Now the good roads proposal that we introduced several weeks ago contemplates the bonding of the state to the amount of \$50,000,000 in the next ten years. I am going to show you by the figures that the state of Ohio is throwing away every year in clear, clean profit more money than it will take to build the good roads at \$5,000,000 a year. It is costing us more than \$5,000,000 a year in profits that go out of the state and never return. On page 18 of the 1911 report of the commissioner of insurance of the state of Ohio I find these figures, and I would like your closest attention.

In 1901 the total amount of premiums received by the fire insurance companies in Ohio was substantially \$10,000,000. The amount of losses which the company paid that year were substantially \$5,000,000. The people in 1901 paid in for insurance \$10,000,000 and got back in the way of loss payments \$5,000,000. Pretty good, two to one.

Now come down to the year 1910. The people of Ohio in the year 1910 paid out for insurance \$15,000,000. They got back in losses \$5,000,000. The amount of premiums of all the people of Ohio has increased in ten years from \$10,000,000 to \$15,000,000, while the fire losses in Ohio have not increased at all. Is not that absolutely conclusive that that \$5,000,000 went out of the state of Ohio to New York insurance companies?

Very little of this insurance is carried by Ohio companies, and if the insurance companies can do business for ten years, starting out by keeping one dollar out of every two paid to them, and afterwards two dollars out of every three paid to them, certainly that is a mathematical demonstration that the extra profit would be saved to the state of Ohio and you would have no trouble about your \$5,000,000 per year on the good roads proposition. You are giving that away and there is no doubt about it. It is an absolute demonstration by figures.

That is only the matter of fire insurance. Look where it is going to. Suppose the same ratio continues. In ten more years we will be paying out \$25,000,000 a year and our losses will be \$5,000,000. They are not increasing. Now what are you people who do not think the state should undertake something in this line going to do? Are you going to continue to allow the millions to flow out of the state?

Now, as to the method: It has been suggested that the state should take control of the insurance rates and should say what the insurance companies of Ohio may charge. That in itself will doubtless do some good in the way of regulation, but I want to say to you it is not enough. Why, over in New York they had an insurance investigation a few years ago and the stench of it spread all over the United States. It was something terrible. The Armstrong bill was passed and that was the first real regulation of the insurance business in New York. Now there is no use to tell me it regulated it because I know better. The information that I have is in the possession of nearly every delegate in this Convention. Before that investigation I was carrying an insurance policy in the John Hancock, one of the old reliable companies, for \$5,000. I am carrying that policy yet. Notwithstanding before that investigation the whole business was reeking with corruption, and notwithstanding that since the Armstrong bill they claim to have thoroughly regulated the insurance business, I am paying the same premium on that old-line insurance now that I did previously. All there was in it was a nine days' wonder and all there ever will be in any attempt to regulate the insurance business by supervising its rates will result as did the Armstrong bill. It won't hurt the insurance companies a bit. It won't help the people a bit. The only way to do anything with them is to put competition up against them.

The first member who spoke has told you about the history of his town, showing where the mutual companies came into competition with the cash companies and down came the rates pell mell. That will be the story all over the state of Ohio just as soon as you put the state in competition with the insurance companies, and this will be another case of coming events casting their shadows before, because just as soon as the legislature is given the power to establish a bureau of insurance just that soon will the insurance companies doing business in Ohio proceed to get together and insurance will come down and down and we will save \$5,000,000.

You may say you don't want to put the state into the insurance business. Since when was it a crime for the state of Ohio to go into business? The last ten days have been spent solidly in putting the state of Ohio in one kind of business or another. First came home rule

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for cities. That gave the cities and villages of Ohio rights to go into all sorts of business. Then came the forestry proposal. It was passed, thereby giving the state the right to go into the forestry business, and only today you passed a proposal for a land-registration system to be established in the state of Ohio. What is that except the insurance of land titles? So you have been putting the state of Ohio into business almost every day since the Convention began. Why should we now shy, like a country horse, at a red automobile, at putting the state into business? And the further this progresses to a greater extent will you find the public in business of various kinds. Why, take the national government. We are in the postal savings business, the post office business, almost every sort of business. We are in the canal business, we are trying to get into the trolley business, the water works business and we know the insurance business as it is now carried on is doing far more harm and costing far more money than all of these other businesses. Now I want you to clearly understand, my friends, that it is not my purpose and it is not the intention of this proposition to start up here in the state house a great big insurance business in Columbus and not do anything else. I want simply to give the state the right to do anything it wants to do for the protection of its citizens, to furnish those citizens insurance in the various counties at reasonable rates.

The time of the delegate here expired and on motion was extended five minutes.

Mr. STEVENS: I feel grateful to the Convention and will not impose upon your good nature, but I simply want to add a few words as to how nicely this system I propose will fit in with the present order of things.

At present we have in Ohio an insurance department and at the head of that insurance department an officer who has so much time that he can attend to business on the outside. That department is so constituted that without an expenditure of more than \$5,000 the insurance business of the state could be started. In every auditor's office is the valuation of the property, and the foundation upon which the insurance is based must be values, and every spring an assessor goes around over the state examining the property; and we have the fire marshal's office and that fire marshal's office has really been doing a great work, but who is getting the benefit of it? Not the state of Ohio, because we are paying \$5,000,000 extra and that fire marshal's office is dividing and classifying and working for the benefit of the insurance companies and for no other purpose. I believe some system should be established by which the people of the state of Ohio should get some benefit and keep down the premiums at the same time, and you will never get that in any other way except by the state going in competition with the insurance companies.

The question of life insurance resolves itself to about the same thing. While we are paying out \$15,000,000 we are getting back about \$5,000,000 in fire insurance. We are paying out \$30,000,000 and getting back \$10,000,000 in life insurance. When you depart from the ordinary forms of insurance the figures become even more startling. Take the insurance commissioner's reports on the Fidelity and Casualty of New York, which is one of the great financial institutions. Out of \$1,800,-

000 received they pay out \$700,000 in accident insurance. Another company takes in \$1,100,000 and pays out \$500,000. So it is all the way down the list.

The PRESIDENT: The presiding officer wants to correct an error. We are acting on the minority report and the rule under which we are proceeding is five minutes, but since I made the mistake I should like to ask to extend to the chairman of the committee fifteen minutes.

Mr. HOSKINS: I am not an insurance expert and I do not care to take up much time in the discussion of this question, but I want to call attention to the fact that this is an important matter. I should like each member to give the minority and majority reports careful attention. The difference between the two reports is that the majority report is signed by ten and the minority report by seven members of the committee. The committee unanimously recommended Proposal No. 51 by Mr. Miller. Then when it came upon the floor there was a discussion of it and Mr. Woods offered an amendment and that was followed by an amendment by Mr. Stevens. After discussion it was referred back to the committee, and the committee, after having several hearings upon the matter, accepted in a great part the Woods amendment, and that is in the majority report and this is signed by ten members of the committee. Then the minority report embraced all that was in the amendment offered by Mr. Stevens. The ten members who signed the majority report are not in favor of putting the state into the insurance business. We believe by the incorporation of the Woods amendment we have provided as far as we possibly can go upon that proposition. It is conceded by everyone that the mutual insurance companies are not organized for the purpose of doing business at a profit and that they are attempting to give insurance to the public at cost, and there is no question that they are doing that. Of course, the law requires certain reserves to be carried in order to insure safety, and the larger the reserves carried the safer the company is and the more it is sought as a medium of insurance. The very idea of insurance is to make the company perfectly safe. Now, from all that I can gather—I do not understand some of the figures read by Mr. Miller, of Crawford, but in a general way it seems to be conceded that the mutual companies are able to do fire insurance business from twenty to thirty-three per cent lower than the old-line companies. I have had considerable experience and have made some observations. I am very largely insured in mutual companies and I know that the insurance runs twenty per cent less in the mutual than in the old-line companies. In other words, the mutual companies in which I carry insurance and of which I have some knowledge are doing an insurance business at twenty per cent less rates than the old-line companies. The average rate I think is about that, although some say it is thirty-three per cent.

It is impossible to fix an absolute rate for fire insurance. The great fires come, the conflagrations come, and companies must be strong enough to stand these extreme losses. We have many cases in which companies failed where extraordinary fires have taken place. Now if mutual companies are furnishing this fire insurance at from twenty to thirty per cent less than

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the old-line companies furnish it there is not a wide margin of difference left there. If the state of Ohio undertakes to control rates then I have no objection if that amendment of the committee carries.

Now the main point is not so much the premium charge as the expense of operation which the insurance department should have control of, and what is true of fire insurance is true also of life insurance. The abuses have grown up because of the expenses of operation, but the law is not undertaking to control these expenses of operation, and the Woods amendment to the original proposal would take care of that matter in both fire and life insurance.

In reference to life insurance—I think we all pay life insurance—we are all more or less acquainted with the rates and we are all in fraternal life insurance, and if the state went into the insurance business it would come into conflict with the fraternal orders of insurance and with the life insurance companies. You are acquainted with the rate you are compelled to pay in your fraternal insurance life companies. A large fraternal company in which I carried part of my insurance a few years ago was furnishing life insurance and it was being operated at cost. It was actually furnishing insurance to its members at cost, but it got into financial trouble and was compelled to advance its insurance rate until today I am paying practically what the old-line rates are. If the full monthly premiums were paid as they have been assessed it would be an old-line rate on \$3000 of insurance which I carry in that organization, but if the death rate is small enough and the premium receipts are sufficient there will be about two months a year that the premiums will be remitted. Do you mean that the state of Ohio would be put in competition with a fraternal organization that is carrying on business for the benefit of its membership at large? And what applies to this organization applies to every organization in the state of Ohio or doing business in the state of Ohio. Now when it comes to old-line life insurance rates I do not know how much those rates could be reduced. I am not an expert along those lines, but I do know about the fraternal organizations that have undertaken in the past years to furnish insurance at cost. When they established these extremely low rates which were attractive to many applicants and got them into membership as young men expecting it would be a provision for their old age and for accidents that might come to them, at a time when they could not get insurance in other companies, they found that those companies were failing them. Those companies have not been extravagantly managed for the reason that they were organized for the purpose of furnishing insurance at cost, and in the two fraternal organizations in which I carry insurance I know as clearly as I know anything that there has been no excessive cost of management, and yet both of these fraternal organizations have been compelled to raise their rates or quit.

Now with reference to the Armstrong investigation in New York, I don't know anything about it, but I want to call the attention of the members of the Convention to the fact that the great abuses in the management of the three large life insurance companies grew out of the deferred dividend policies which those companies instituted years and years ago. In other words,

the dividends were not to be paid until the maturity of the policy. A large part of the accumulations of those three large companies have grown out of the deferred dividend plan. One result of the Armstrong investigation was to do away with and prevent the company from writing this deferred dividend plan of insurance, and another result of the Armstrong investigation was to limit the volume of business that might be done by any company. But its particular application was to the three large companies in New York. A further result of that was to do away with certain forms of policies, one of which was the deferred dividend policy, and prevent the company from writing those policies hereafter.

Mr. STILWELL: What was the object of the Armstrong commission in limiting the amount of business that an insurance company could do?

Mr. HOSKINS: They were getting too big.

Mr. STILWELL: It was dangerous.

Mr. HOSKINS: Yes; I agree with you, but that is eliminated. So far as that is concerned the state of Ohio has no control over it.

You understand that every insurance company, every life insurance company, every fraternal company and every old-line company, must submit its rates to the insurance department of the state and the insurance department will not permit any company, under the present law, to write life insurance policies below certain rates and insists that the rate should be at a certain figure for the purpose of taking care of future losses of the company. If we give to the lawmaking power of the state a right—as I believe we ought to do—to regulate if there are abuses that creep into the insurance system—and I don't say there are any—to regulate the matter of rates and expenses, and, in other words, to give them full power over the situation in this state, we have gone as far as we ought to go.

While I am not familiar with it I think it will be conceded by those who are, that this proposition of putting the state into the insurance business is not a new one, but is an old one. It has been tried out time and again and has been found to be a failure in times past; so in the judgment of the committee we urge that the Convention reject the minority report and adopt the majority report with the provisions suggested.

Mr. STEVENS: You say that government insurance has been tried out and has failed. Where?

Mr. HOSKINS: In England.

Mr. STEVENS: Was not the state insurance proposition introduced in England by no less a person than William A. Gladstone, and is not that insurance in operation after fifty years?

Mr. HOSKINS: And it has proved to be an absolute failure and has gone down, down, down.

Mr. STEVENS: I understood you to say you thought that the insurance was being done at the lowest possible rate.

Mr. HOSKINS: Yes.

Mr. STEVENS: If you think so how do you account for the fact that in the ten year period the receipts were \$10,000,000 and the expenses were \$5,000,000, and another time the receipts were \$15,000,000 and the expenses \$5,000,000? Do you think the business is being done at a bare margin of profit? What becomes of that \$5,000,000?

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Mr. HOSKINS: You don't seem to remember that the companies are required to carry large reserves.

Mr. STEVENS: I am speaking of receipts and disbursements.

Mr. HARTER, of Stark: I do not believe that most of the members of this Convention have original minds. I know I have not. I reason by comparison. I had a little object lesson this morning and I learned something about insurance rates. I took out a policy today in one of the London companies. I don't know what company it was, but the insurance agent handed me my policy and the rate was six-tenths of one per cent for three years. That would be about \$5 a year, and if we could save thirty-three per cent on that it would be about \$1.60 or the premium would be \$3.40. So \$5 paid the insurance agent and the premium for one year and \$15 paid for three years. Now I doubt whether the state of Ohio could furnish insurance much cheaper than that. The best rates in this state are secured by the farmers. They have a good many mutual insurance companies among themselves, but they have the best line of risks. I do not believe that insurance could be done at much less rates than that for which I insured this property. I do not like to see the state go into all kinds of business. We have gone into the printing business and it was said that that measure was strictly legislative. I don't see why this matter of fire and life insurance should not be left to the legislature. Let us try the printing business out before we go into the insurance business. I think it is a dangerous experiment. I do not understand life insurance or fire insurance and I am not a stockholder in any of those companies. Yes, I believe I do own \$100 of life insurance stock in the state of Ohio. It is an Ohio corporation, but I don't make any fortune out of it.

Mr. STEVENS: Will you answer a question?

Mr. HARTER, of Stark: I don't know that I can answer it.

Mr. STEVENS: Do you know the fact that the fire losses of your Atlas Company were \$800,000 and that the single item of commissions to agents was \$360,000?

Mr. HARTER, of Stark: How many American millions did that insure?

Mr. STEVENS: I could not say.

Mr. HARTER, of Stark: They are represented by a great many agents and have to pay taxes, etc.

Mr. STEVENS: Then is your argument against this based on the fact that this company should be an eleemosynary institution?

Mr. HOSKINS: Do you conceive that mutual companies are being operated at cost?

Mr. STEVENS: No, sir.

Mr. HOSKINS: You think rates can be reduced?

Mr. STEVENS: Yes; I do.

Mr. HOSKINS: Then I have no further argument.

Mr. KRAMER: Just a word about the minority report. I would like to call the attention of the members to the fact that no man ever takes out insurance, especially life insurance, unless he is hounded to death. I believe in life insurance as much as I believe in anything. I carry a little life insurance and I should carry more, but I will never take out a dollar's worth more until I cannot refrain. I thought when I came down here I would escape the life insurance agent, and,

lo and behold, when I came into the Constitutional Convention I found I was still hounded by life insurance agents.

I tell you the state of Ohio will never make a success of this without having a horde of agents. That is what I want to call your attention to.

The member from Tuscarawas [Mr. STEVENS] is not fair. He knows that it costs an immense amount of money to get these life insurance agents and that in the expenditure of this vast sum of money he mentions, a great deal of it was given to the agents.

Mr. STEVENS: Can I ask a question?

Mr. KRAMER: No, sir. Not right now. You didn't show much courtesy to my friend back there [Mr. HALFHILL]. I say that the state cannot engage in the life insurance business without maintaining a vast horde of agents. Wouldn't it be a grand scheme for the state of Ohio to have eighty-eight agents in every county soliciting business?

Mr. ULMER: May I ask a question?

Mr. KRAMER: Yes; I yield to you.

Mr. ULMER: Does the minority report compel the state to go into the insurance business? It doesn't compel it. It is in the constitution, so that if there is reason for it to go into the business it can go in.

Mr. KRAMER: I am one of those persons who are not in favor of saddling responsibility upon somebody or something else. If I don't believe in a thing I am not willing to saddle the responsibility of engaging in it upon the legislature and whenever the time comes when the legislature or the state of Ohio should engage in the insurance business we will find ways and means to enable them to do so, but I am not willing to have the state of Ohio go into the insurance business when I know it cannot succeed to any extent without a horde of agents running over the state of Ohio and who possibly would not be interested, but might be used for something else. Just think how hard they would work! Why, they would become grayheaded in a year on account of the energy they would put into the business. I don't want any eighty or eight-eight thousand men running over the state spending their time electioneering. Then another thing, suppose we have a Titanic disaster or a Chicago fire or a San Francisco earthquake and have no reserve fund. Bless you, gentlemen, let us not adopt the minority report without mighty careful consideration.

Mr. DOTY: Suppose we did have some such disaster as you have referred to. Do you know of any combination of insurance companies that are financially able to stand as great a drain on their resources as the state of Ohio?

Mr. HARRIS, of Hamilton: How would the losses be paid, by taxes?

Mr. CAMPBELL: And under the one per cent limit, too?

Mr. KRAMER: I have said all I want to say on this matter. I think I can conscientiously vote for the majority report. This is not so dangerous, but let us keep away from this minority report.

Mr. STILWELL: Mr. President and Gentlemen of the Convention: Just a word relative to the members of the committee respectively that signed the majority report and the minority report. Two of the gentlemen

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who signed the majority report voted with the minority in committee and signed the majority report under a misapprehension of what it was, so that as a matter of fact the report that is in here as the majority report is really the minority report.

Mr. HOSKINS: I wish you would enlighten us on that subject. Mr. Eby signed both by mistake.

Mr. STILWELL: Mr. Eby voted with the minority in committee and because the majority report happened to be presented to him he signed the report thinking it was the minority. The same thing is true of Mr. Smith, of Geauga.

Mr. HOSKINS: We took a tally on it in the committee.

Mr. STILWELL: Just a little further reference to these reports. The Convention had no more than taken up the discussion of this question before they were urged to delay a hearing upon it in order that somebody might come from somewhere in order to represent the great insurance companies of America. There was a meeting held in this hall and somebody came from the East. I can't recall his name, but mark you this fact about his appearance here: He was not representing any particular insurance company, but he was representing a combination of insurance companies through their president because the Armstrong commission had limited the business of those great insurance companies as to the amount they could do, and, being limited, they have combined, and now they have their president and their accounting and their different departments of business united through a centralized office. As a matter of fact, they are doing all the business that they can do, and when the limit placed upon the insurance company is reached they will simply reach out and get one more company that is not doing any business and put it in the combination and they will be able to sell about \$3,000,000 more of their business, just a little personal business. I carry some insurance in two of those companies and I have carried it for some length of time. In one mutual company I am paying fifty cents and in one of the old-line companies I am paying three dollars.

Mr. MAUCK: Are you complaining about the rate in the mutual?

Mr. STILWELL: No.

Mr. MAUCK: Then we have adequate provision to fight the old-line companies under the law.

Mr. STILWELL: No, sir; it is not sufficient. The fact of the matter is that the regulation might have some effect upon the reduction of the insurance rate, but it has not been sufficient to put the proper leverage on the old-line companies to beat down the exorbitant charges that they are making at the present time. Why is it that out of the rates heretofore charged they have been able to build those skyscrapers in the East and pay their presidents enormous salaries and agents enormous commissions for writing policies. As the question of the gentleman from Lucas well indicated, this doesn't put the state in the insurance business. If the general assembly sometime in the future thinks the insurance companies could be better controlled by putting the state in the insurance business it might be done.

Mr. HOSKINS: A question of privilege. I want to know something about that correction of the number that signed in the committee.

Mr. STILWELL: I have given that.

Mr. HOSKINS: Didn't ten on the call of the roll answer for the majority report and seven for the minority report?

Mr. STILWELL: You must be mistaken. There were not seventeen present.

Mr. REDINGTON: There were just fifteen. There were eight for the majority and seven for the other side. The two who signed by mistake were Mr. Eby and Mr. Smith, of Geauga.

Mr. CROSSER: I have frequently noticed in what little experience I have had that when for any reason there is a reference to some special committee or back to a committee of a matter which has come up for discussion before the legislative body itself, there really is a great deal more trouble in passing it when it comes back. That has been my experience. When it goes to committees of which I have been a member, there are experts who come in and explain it all to us, how it happened and what should and should not pass. I am not enthused about the government operation of this thing, but I am in favor of the minority report for this reason: There are no better means of coercion than the power of the state to go into the business itself if it sees fit to. If this proposition proposed that the state should go into the business of insurance I would hesitate a great deal before I would give my vote for it, but when it says that the state may go into the business if in the wisdom of the legislature it should do so, that is another thing. I think the state should have the power to do so, because there will be no better plan or means of bringing down rates of the regular companies than this method. You can regulate all you please. You can have your commission regulate prices, just as your railway commissions and your public service commissions, but it won't amount to a hill of beans unless you have some means of combating with them.

They say we must have eighty thousand insurance agents to get the business. Is that reasonable? If there is any truth about what my brother from Tuscarawas says about rates they charge, if the state can split that rate do you think it is reasonable that you would pay five or six agents a half bigger price to come to you? No, the people would find where the cheap insurance is and when the cheapest insurance is with the state they will come to the state. Don't let us assume to ourselves that infinite wisdom that the majority report contemplates. Every time you put any addition in the constitution that says shall or shall not you impute infinite wisdom to us more than to the people that are to come after us.

Mr. ELSON: You would not contemplate the state sending out agents to write insurance?

Mr. CROSSER: I want the state to be empowered to write insurance and properly advertise the matter, but not solicit. I have confidence in the proposition and I have confidence that when men know that they can get it cheaper and better one place than another they will go there. Now I move the previous question.

The main question was ordered.

The PRESIDENT: The question is on substituting the minority report for the majority report.

The yeas and nays were regularly demanded; taken and resulted—yeas 50, nays 47, as follows:

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Those who voted in the affirmative are:

Beatty, Morrow,	Harter, Huron,	Pierce,
Brown, Pike,	Hoffman,	Read,
Colton,	Hursh,	Riley,
Crosser,	Kerr,	Rockel,
Davio,	Kilpatrick,	Shaffer,
Donahey,	Kunkel,	Smith, Geauga,
Doty,	Lambert,	Stevens,
Dunn,	Leslie,	Stilwell,
Dwyer,	Malin,	Tannehill,
Earnhart,	Marriott,	Tetlow,
Elson,	Marshall,	Thomas,
Fackler,	McClelland,	Ulmer,
Farrell,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Hahn,	Miller, Ottawa,	Watson,
Halenkamp,	Moore,	Woods.
Harbarger,	Pettit,	

Those who voted in the negative are:

Anderson,	Hoskins,	Partington,
Antrim,	Johnson, Williams,	Peck,
Beatty, Wood,	Jones,	Peters,
Brown, Highland,	Kehoe,	Price,
Campbell,	Keller,	Redington,
Collett,	King,	Roehm,
Crites,	Knight,	Rorick,
Cunningham,	Kramer,	Solether,
Dunlap,	Lampson,	Stalter,
Evans,	Leete,	Stewart,
Fluke,	Longstreth,	Stokes,
Fox,	Ludey,	Taggart,
Halfhill,	Matthews,	Tallman,
Harris, Ashtabula,	Mauck,	Weybrecht,
Harris, Hamilton,	Nye,	Winn.
Holtz,	Okey,	

So the minority report was substituted for the majority report.

The PRESIDENT: The question is now on adopting the report of the committee as amended. This is a final vote.

DELEGATES: The report has not been agreed to yet.

The PRESIDENT: It is altogether as to how you regard that second vote when you voted to substitute. The chair will rule that the substitute being adopted it does not do away with the vote on the committee's report as amended, so we will put the question to a vote.

The committee's report was agreed to.

The PRESIDENT: Now the question will go upon the adoption of the proposal and the secretary will call the roll.

The question being "Shall the proposal pass?"

The yeas and nays were taken and resulted—yeas 54, nays 44, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Halenkamp,	Miller, Fairfield,
Beatty, Wood,	Harbarger,	Miller, Ottawa,
Brown, Pike,	Harter, Huron,	Moore,
Colton,	Hoffman,	Pettit,
Crosser,	Hursh,	Pierce,
Davio,	Kerr,	Read,
Donahey,	Kilpatrick,	Riley,
Doty,	Kunkel,	Rockel,
Dunn,	Lambert,	Shaffer,
Dwyer,	Leslie,	Smith, Geauga,
Earnhart,	Longstreth,	Solether,
Elson,	Ludey,	Stevens,
Fackler,	Malin,	Stilwell,
Farrell,	Marriott,	Stokes,
Fess,	Marshall,	Tallman,
Hahn,	Miller, Crawford,	Tannehill,

Tetlow,	Ulmer,	Walker,
Thomas,	Wagner,	Watson.

Those who voted in the negative are:

Antrim,	Holtz,	Okey,
Brown, Highland,	Hoskins,	Partington,
Campbell,	Johnson, Williams,	Peck,
Collett,	Jones,	Peters,
Cordes,	Kehoe,	Price,
Crites,	Keller,	Redington,
Cunningham,	King,	Roehm,
Dunlap,	Knight,	Rorick,
Evans,	Kramer,	Stalter,
Fluke,	Lampson,	Stewart,
Fox,	Leete,	Taggart,
Halfhill,	Matthews,	Weybrecht,
Harris, Ashtabula,	Mauck,	Winn,
Harris, Hamilton,	McClelland,	Woods.
Harter, Stark,	Nye,	

So the proposal, not having received the requisite number, failed to pass.

Mr. WOODS: I move that the vote whereby Proposal No. 51 was lost be now reconsidered.

The motion was seconded.

The PRESIDENT: The chair would inquire how the gentleman voted?

Mr. WOODS: I voted the right way to make the motion.

Mr. PECK: I move to lay that motion on the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 36, nays 64, as follows:

Those who voted in the affirmative are:

Antrim,	Hoskins,	Okey,
Brown, Highland,	Jones,	Peck,
Campbell,	Kehoe,	Price,
Collett,	Keller,	Redington,
Crites,	King,	Roehm,
Cunningham,	Knight,	Rorick,
Dunlap,	Kramer,	Solether,
Evans,	Lampson,	Stewart,
Halfhill,	Matthews,	Taggart,
Harris, Ashtabula,	Mauck,	Tallman,
Harris, Hamilton,	McClelland,	Weybrecht,
Harter, Stark,	Nye,	Winn.

Those who voted in the negative are:

Anderson,	Harbarger,	Peters,
Baum,	Harter, Huron,	Pettit,
Beatty, Morrow,	Hoffman,	Pierce,
Beatty, Wood,	Holtz,	Read,
Brown, Pike,	Hursh,	Riley,
Colton,	Johnson, Williams,	Rockel,
Cordes,	Kerr,	Shaffer,
Crosser,	Kilpatrick,	Smith, Geauga,
Davio,	Kunkel,	Stalter,
Donahey,	Lambert,	Stevens,
Doty,	Leslie,	Stilwell,
Dunn,	Longstreth,	Stokes,
Dwyer,	Ludey,	Tannehill,
Earnhart,	Malin,	Tetlow,
Elson,	Marriott,	Thomas,
Fackler,	Marshall,	Ulmer,
Farrell,	Miller, Crawford,	Wagner,
Fess,	Miller, Fairfield,	Walker,
Fluke,	Miller, Ottawa,	Watson,
Fox,	Moore,	Wise,
Hahn,	Partington,	Woods.
Halenkamp,		

So the motion to table was lost.

The motion to reconsider was carried.

Mr. WOODS: I now offer an amendment.

The amendment was read as follows:

Regulating Insurance.

Strike out lines 14, 15, 16, and 17 and 18 and in line 13 after "state" insert "for profit".

Mr. WOODS: Gentlemen of the Convention: I am not here this morning because I like to be. I was for the Stevens amendment. I would like to have seen that proposition go into the constitution, not because I am a believer in the state going into the insurance business, but because I wanted the state to have that club over the insurance companies. However, we were only able to muster forty-six votes for the Stevens amendment.

Mr. STEVENS: Fifty-four.

Mr. WOODS: My idea is when we cannot get a whole loaf we had better get a half. I don't like to see this proposal killed. I don't want to see the amendment I offer to it killed. There is not a man in Ohio who owns property who does not carry insurance, and I think it is ridiculous that whenever a man who has any property insured before he can get it insured in an old-line company the board at Columbus fixes the rate he will have to pay. I do not care what the business is, when it comes to a point that you cannot get the necessities of life—and insurance is a necessity of life—without the companies binding you and making you pay their price because there is no competition in that business, it is time for the state to step in and say something about that price. I say to you, gentlemen, that the fire insurance companies of this state have gone into an agreement and they have a board here in Columbus and that board fixes the price that we all have to pay. I think the companies have a right to make profits, but not to make the profits that they are making now.

Mr. HOSKINS: Do you mean to strike out the last two lines or the last three words of lines 16, 17 and 18? That would destroy the original amendment in the minority report. I don't believe you mean that.

Mr. WOODS: The minority report, lines 14, 15, 16, 17 and 18.

Mr. HOSKINS: But you have added the Miller amendment at the end of the minority report, so that it is in lines 17 and 18, and it would strike out what Mr. Miller was after.

Mr. WOODS: What I was trying to do was to strike out the Stevens amendment.

Mr. HARTER, of Huron: How can the state compel insurance companies to accept the rates the state may make?

Mr. WOODS: They cannot do it. But if we put this amendment in the constitution and then the general assembly passes a law under it, the insurance companies will be regulated just the same as any other corporation.

Mr. MARRIOTT: They accept it or go out of the business.

Mr. DOTY: I move to lay the amendment of the delegate from Medina on the table and I call for a division on that.

The motion was carried.

Mr. MILLER, of Crawford: I offer an amendment. The amendment was read as follows:

Strike out all after the resolving clause and insert the following:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association, whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association,

Providing however; that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of the state or doing any insurance business in this state for profit.

Mr. DOTY: A point of order. The Convention has once within half an hour voted this very amendment down by a yea and nay vote and the only way to get at that is to reconsider it.

Mr. HOSKINS: When was that done?

Mr. DOTY: The minority report was substituted for the majority.

Mr. LAMPSON: It is true that that amendment was included in the majority report, but the question that was put was on substitution of the one report for the other and not upon the adoption of an amendment.

The VICE PRESIDENT: The chair will rule that the amendment being in the report the vote was not specifically on it, but the report simply included the amendment. This is in order.

Mr. DOTY: I move that we lay this on the table.

The VICE PRESIDENT: The chair cannot recognize the gentleman to make the motion. The chair was trying to recognize the delegate from Delaware.

Mr. MARRIOTT: I move to amend at the end of line 13 by adding the words "for profit".

Mr. MILLER, of Crawford: I want that included in my amendment; I accept that.

Mr. FACKLER: I do not believe any man or set of men is wise enough or good enough to be master of other men. I realize in the piling up of the tremendous fund that is now accumulating in the city of New York from the great insurance companies there is a real menace to the liberties of the people. The enormous amount of \$1,500,000,000 is represented by three of those companies and they are in a position to bring about any disaster to prosperity or any depression to business that they desire. That is not a healthy power. How can you remedy it? The state itself will be forced to take some action.

Mr. DOTY: Do you not know that the state of Ohio regulates the rates charged for life insurance?

Mr. FACKLER: They have not exercised any authority at all.

Mr. DOTY: Do you not know that a life insurance company cannot do any business unless they abide by the rates provided by the state of Ohio?

Mr. FACKLER: No, sir; I don't know that. I say the policy holders should be protected. I say that the

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control of that vast amount of money I have mentioned is a menace to the whole nation and in the near future we shall know of it.

Mr. WOODS: Is it not a fact before a life insurance company can do business in this state they have to get a certificate showing it is a good company and it has never anything to do with the rate?

Mr. FACKLER: That is my idea. My colleague [Mr. DOTY] was taking the part of an Ohio corporation. I don't understand that the state of Ohio has any control whatsoever over the rates charged by foreign insurance companies. Now I would not place the right of the state to engage in this business upon any desire for a regulation of the rates particularly. It is a broader right than that. Many insurance companies are furnishing insurance at the lowest rate they can furnish insurance, but this piling up of great amounts of money is a menace to the liberty of the country.

Mr. HALFHILL: Are you aware of the fact that there are common law insurance contracts, and are they not all absolutely in the control of the state?

Mr. FACKLER: No; there are no common law insurance contracts that I know of any place.

Mr. HALFHILL: I mean by that as distinguished from an ordinary contract?

Mr. FACKLER: I am not familiar with the insurance laws. Do you know that there is such a law?

Mr. HALFHILL: Yes; I do as a lawyer, and I also know something about life insurance and establishing rates and controlling rates. You could not do business unless you submitted to the rates.

Mr. FACKLER: Has the state control of the rates?

Mr. HALFHILL: Absolute control. Even the form of the contract.

Mr. FACKLER: That was copied after the Armstrong law.

Mr. HALFHILL: No, sir; it was not copied after that.

Mr. HARRIS, of Hamilton: Are you aware that one savings bank in the city of New York has something like \$200,000,000 in bank?

Mr. FACKLER: No, sir; what bank is it?

Mr. HARRIS, of Hamilton: The Bowery Savings Bank. Do you consider that a menace to the people of the state of Ohio?

Mr. FACKLER: No, sir. But whenever any three large institutions, with their various national banks and their various trust companies with which they are affiliated, are in a position to do as those three insurance companies are doing, we know that they can make everybody else tremble. You know that as a banker and as a broker.

Mr. HARRIS, of Hamilton: Your statement is not correct. I am not a banker nor a broker. I never have been and I never expect to be.

Mr. FACKLER: I am misinformed as to your business.

Mr. HARRIS, of Hamilton: As a matter of information, do you know that every investment of those three great life insurance companies is regulated by law?

Mr. FACKLER: That is what they say and still lend out large sums of money on call loans upon collateral, and the law does not prevent them from calling those

loans whenever they want to. It is the power to call loans that is the power to bring about panics.

Mr. WINN: There is another side of this question that we have not touched upon.

The delegate from Defiance here yielded to a motion to recess.

On motion of Mr. Doty the Convention recessed until 7:30 o'clock p. m.

EVENING SESSION.

The Convention met pursuant to recess.

Mr. WINN: I was about to say at the time we recessed for supper that there are some features of the question that have not been discussed, and I was about to call attention to the fact that until recently there were very few life insurance companies in this state. The Union Central Life Insurance Company, an Ohio corporation, has been in existence a good while. It is a splendid company, with a good many policy holders in the state; but within very recent years, in fact, within the last two years, two large insurance companies have been organized in Toledo and one or two in Columbus, and since the commencement of this year the Gem City Life Insurance Company of Dayton was authorized to do business; in fact, it has been authorized to do business within the last four or five weeks. I speak of that company because it so happens that those who have to do with the organization of it are acquaintances and friends of mine. Not long since I was shown a list of the stockholders and I find on that list quite a large number of very respectable citizens of Defiance, a large number in Van Wert, a very great number in Columbus and page after page of stockholders who live in Cincinnati and Montgomery and all over the state. There were, I was told by the president, fifty-four agents out selling stock in different parts of the state. The Gem City Life Insurance Company with \$100,000 capital and \$110,000 surplus is one of the most promising companies ever organized to open business in this or any other state.

What does this mean? If we are to say that Ohio is going into the insurance business in competition with Dayton and these two new companies in Toledo and two or three companies in other parts of the state, it is practically ruination to them. They cannot do business. These stockholders, running up to many thousands, will have to pay their money for their stock and get nothing because whenever it is known that the great commonwealth of Ohio is going to set up business in competition with its citizens it means ruination to the business of the citizens. That is not all. Even though the state shall never engage in business it will write that into the constitution, and if we write into the constitution a provision that the legislature may whenever it sees fit go into the insurance business in competition with existing companies, no company in Ohio will ever be organized as long as that constitutional provision exists. I venture the assertion that if that provision is written into the constitution there never will be attempted the organization of another life or fire insurance company in this state.

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Mr. LAMPSON: Do you think the Ohio Farmer's Fire Insurance Company could compete with the great state of Ohio in the insurance business?

Mr. WINN: I do not. In every locality there is a little insurance company. Over in my county there is a farmers' mutual. It has a right to do business in Defiance and part of Williams and part of Paulding. It is writing insurance in all that part of the country. What is the result? Immediately the state of Ohio goes into the insurance business and we put the state in competition with the farmers' mutual, or with any of these other mutuals with which my friends are connected, we array against all of the work we have been doing here not only thousands of policy holders of the Union Central Life Insurance Company all over the state of Ohio, but all of the policyholders of all other Ohio institutions.

Mr. WATSON: Will you yield for a question?

Mr. WINN: No; I will not.

The PRESIDENT: The time of the gentleman is up. The delegate from Mercer is recognized.

Mr. FOX: I notice that the delegates from the cities and everywhere are all interested in their homes. A number of delegates say, "This does not interfere with you, but it a great help to us," and they have asked me to assist them. Here is a proposition that comes from the rural districts. Mercer county is a county of farmers and we have in our county one township that has a large association, a farmers' mutual, mentioned by Mr. Winn. They have done business in the fire insurance line for over thirty years. They have protected the farmers' interests at less than one-half of the money that they would have had to pay to the old-line insurance companies. Then we have right close to us a settlement of people called the Dunkards and they also write a part of the country. They are located in Miami county. That company does a great deal of business in Mercer, Preble and Montgomery counties. I think it does some in Shelby also. These people have insured farmers and they also insure houses in villages, and I know their rates average from twenty-two to forty-eight cents per hundred less than those of the old-line companies and you know what a saving that is. We also have another company, the Minster Mutual. The company covers a good deal of territory. It extends to a number of counties, and I know about one-half of the people in our town are insured in this company. I have been insured with them for twenty-four years and as a mutual company it is the cheapest I have known. It is the cheapest insurance I have ever been in. They have done business for more than twenty years and since the decision of the attorney general that it would be illegal to insure school houses and other public buildings in a mutual company, outside companies have come in and are trying to do business on the strength of the attorney general's decision.

Mr. WINN: You understand that if the amendment offered by Mr. Miller is adopted it merely cuts out the state insurance proposition and leaves all the rest intact?

Mr. FOX: Yes; I was opposed to that. I was looking at the interest of our people. If that is inserted I am in favor of it.

Mr. WINN: We are in favor of that, but the Miller amendment is a substitute for the minority report.

Mr. KNIGHT: No; the majority report for the minority report.

Mr. WINN: All right.

Mr. FOX: I also object to the state going into business. It is not best. I would not favor the state launching into that, but otherwise I would like to see the proposal pass.

Mr. STEVENS: I want to make two motions—that is, that further consideration of the pending matter be deferred and that it be placed at the head of the calendar for tomorrow. Then I want to follow that with a motion to adjourn to Chillicothe. I now offer the first motion.

Mr. WINN: I move that that motion be laid on the table, and on that I call the yeas and nays.

The yeas and nays were regularly demanded; taken, and resulted—yeas 41, nays 39, as follows:

Those who voted in the affirmative are:

Beyer,	Hoskins,	Peters,
Collett,	Johnson; Williams,	Pettit,
Colton,	Jones,	Pierce,
Cordes,	King,	Riley,
Crites,	Kramer,	Rockel,
Cunningham,	Lambert,	Roehm,
Davio,	Lampson,	Rorick,
Donahay,	Leete,	Shaffer,
Halenkamp,	Leslie,	Smith, Geauga,
Halfhill,	Longstreth,	Stokes,
Harbarger,	Ludey,	Thomas,
Harris, Hamilton,	Okey,	Winn,
Harter, Huron,	Partington,	Woods.
Harter, Stark,	Peck,	

Those who voted in the negative are:

Baum,	Fox,	Price,
Beatty, Morrow,	Harris, Ashtabula,	Solether,
Beatty, Wood,	Hoffman,	Stalter,
Eowdle,	Hursh,	Stevens,
Cassidy,	Kilpatrick,	Stewart,
Cody,	Knight,	Stilwell,
Crosser,	Kunkel,	Taggart,
Dunlap,	Malin,	Tannehill,
Dunn,	Marriott,	Tetlow,
Dwyer,	Marshall,	Ulmer,
Earnhart,	McClelland,	Walker,
Fackler,	Miller, Crawford,	Watson,
Fluke	Moore,	Wise.

So the motion was tabled.

Mr. STEVENS: I move that we adjourn to meet tomorrow at Chillicothe.

The PRESIDENT: The motion is out of order.

Mr. CORDES: I move the previous question on the Miller proposal.

The PRESIDENT: The chair wants to state for the benefit of the gentleman making the motion that there was a motion before the house.

Mr. STEVENS: I withdraw the motion to recess.

The main question was ordered.

Mr. STILWELL: I move to adjourn.

Mr. WINN: I demand the yeas and nays on that.

Mr. STILWELL: I second the demand.

The yeas and nays were taken, and resulted—yeas 38, nays 54, as follows:

Those who voted in the affirmative are:

Beatty, Morrow,	Dunn,	Hahn,
Beatty, Wood,	Dwyer,	Halenkamp,
Cassidy,	Earnhart,	Harbarger,
Crosser,	Fackler,	Harris, Ashtabula,
Donahay,	Farrell,	Hoffman,

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Hursh,	Moore,	Tannehill,
Kilpatrick,	Price,	Tetlow,
Knight,	Solether,	Thomas,
Kunkel,	Stalter,	Ulmer,
Leslie,	Stevens,	Walker,
Malin,	Stewart,	Watson,
Marshall,	Stilwell,	Wise.
McClelland,	Taggart,	

Those who voted in the negative are:

Anderson,	Harter, Stark,	Miller, Fairfield,
Baum,	Henderson,	Okey,
Beyer,	Holtz,	Partington,
Bowdle,	Hoskins,	Peck,
Cody,	Johnson, Williams,	Peters,
Collett,	Jones,	Pettit,
Colton,	Kehoe,	Pierce,
Cordes,	Keller,	Read,
Crites,	King,	Riley,
Cunningham,	Kramer,	Rockel,
Davio,	Lambert,	Roehm,
Dunlap,	Lampson,	Rorick,
Fess,	Leete,	Shaffer,
Fluke,	Longstreth,	Smith, Geauga,
Fox,	Ludey,	Stokes,
Halfhill,	Matthews,	Tallman,
Harris, Hamilton,	Mauck,	Winn,
Harter, Huron,	Miller, Crawford,	Woods.

So the motion to adjourn was lost.

The amendment was agreed to.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 87, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Stark,	Peck,
Baum,	Hoffman,	Peters,
Beatty, Morrow,	Holtz,	Pettit,
Beatty, Wood,	Hoskins,	Pierce,
Beyer,	Hursh,	Read,
Bowdle,	Johnson, Williams,	Riley,
Cassidy,	Jones,	Rockel,
Cody,	Kehoe,	Roehm,
Collett,	Keller,	Rorick,
Colton,	Kilpatrick,	Shaffer,
Cordes,	King,	Smith, Geauga,
Crites,	Knight,	Solether,
Crosser,	Kramer,	Stalter,
Davio,	Kunkel,	Stevens,
Donahey,	Lambert,	Stewart,
Dunlap,	Lampson,	Stilwell,
Dunn,	Leete,	Stokes,
Dwyer,	Leslie,	Taggart,
Earnhart,	Longstreth,	Tallman,
Fackler,	Ludey,	Tannehill,
Farrell,	Marriott,	Tetlow,
Fess,	Marshall,	Thomas,
Fluke,	Mauck,	Ulmer,
Fox,	McClelland,	Wagner,
Hahn,	Miller, Crawford,	Walker,
Halenkamp,	Miller, Fairfield,	Watson,
Harbarger,	Moore,	Winn,
Harris, Hamilton,	Okey,	Wise,
Harter, Huron,	Partington,	Woods.

Those who voted in the negative are: Cunningham, Halfhill, Harris, of Ashtabula, and Price.

So the proposal passed as follows:

Proposal No. 51 — Mr. Miller of Crawford. To submit an amendment to article VIII, section 6, of the constitution.—Relative to permitting public property being insured in mutual associations and companies.

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:

ARTICLE VIII.

SECTION 6. The general assembly shall never authorize any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of any such company, corporation, or association;

Providing however; that nothing in this section shall prevent public buildings or property being insured in mutual fire insurance associations or companies.

The general assembly may provide by law for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.

Mr. Lampson moved that the vote whereby Proposal No. 51 was passed be reconsidered.

Mr. Lampson moved that the motion to reconsider be laid on the table.

The motion to lay on the table was carried.

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

Mr. Stilwell arose to a question of privilege, and asked that his vote be recorded on the motion to lay Proposal No. 16, by Mr. Elson, on the table. His name being called, Mr. Stilwell voted "no."

Mr. Winn arose to a question of privilege, and asked that his vote be recorded on the motion to lay Proposal No. 16, by Mr. Elson, on the table. His name being called, Mr. Winn voted "aye."

Mr. Hoskins arose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Hoskins voted "no."

Mr. Halfhill arose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Halfhill voted "no."

Mr. Marshall arose to a question of privilege, and asked that his vote be recorded on Proposal No. 331, by Mr. Walker. His name being called, Mr. Marshall voted "aye."

The PRESIDENT: The president desires to call attention to the fact that he is not going to permit this any more. If the delegates are not here they will not be permitted to vote.

Mr. ANDERSON: The regular order.

The PRESIDENT: The next is Proposal No. 330.

The proposal was read the second time.

Mr. DWYER: I want to offer an amendment.

The amendment was read as follows:

In line 6 strike out the word "fifth" and in lieu thereof insert the word "fourth".

In line 8 strike out the word "fifth" and in lieu thereof insert the word "fourth".

Strike out lines 11, 12 and 13 and in lieu thereof insert the following:

Appellate Court Districts — Creating Office of Superintendent of Public Instruction.

"The counties of Delaware, Morrow, Richland, Ashland, Wayne, Stark, Tuscarawas, Holmes, Knox, Coshocton, Muskingum, Morgan and Perry shall constitute the fifth appellate court judicial district."

In line 17 strike out the comma and in lieu thereof insert the word "and" and strike out the words "and Washington".

In line 19 between the words "of" and "Franklin" insert "Licking, Fairfield."

Mr. DWYER: I will explain very briefly what the object of the proposal is so that you can understand it. Twenty-five years ago the state was divided into eight circuits. At that time we had about three million people in Ohio. Now we have nearly five millions, and we have the same eight circuits still. At the present time some of those circuits have too much work and the judges cannot do justice to the work they have to do. This circuit has eleven counties—Franklin, with a large city, Montgomery, with a large city, and Clark county with a large city. In addition to that the attorney general has a right to bring suits in this county from any part of the state, so that the circuit court of this county has more work than it can attend to and this circuit is overloaded. The lawyers in our county are complaining that the judges cannot give the time to the work that they should. They cannot give the cases the consideration that they should. Now, especially if we are going to make an appellate court a court of final jurisdiction, it will need more time. We want carefully prepared decisions by the appellate court hereafter if it is to be a court of final jurisdiction in most cases. It was to relieve that situation that I offered this proposal. This only affects the second circuit. For example, the proposition is to put seven counties into one circuit and call it the second circuit, and then the other four counties with two counties from the fifth circuit will make the tenth circuit. Judge Taggart says that this circuit has eighteen counties, that they have fifteen hundred cases on the docket and that the judges cannot get through with their work. The proposition is to take the two counties from that circuit and let them be thrown in with Franklin county and take Fairfield and Licking and put them in with these counties, which will make six counties in this circuit, and that will put seven in the Montgomery circuit. That is all the disturbance we make in this part of the state. Mr. Anderson has said that work in his part of the state is growing very rapidly and those counties up there have iron works and all that and are growing so rapidly that he says they cannot do the work in his district. He wants to divide that district. That is the whole proposition.

Mr. RILEY: This proposal was recommended by the Judiciary committee?

Mr. DWYER: Yes.

Mr. RILEY: Everybody is ready to vote on it I think.

Mr. PETTIT: I want to say a word. This is the first time that I have heard of judges being much overworked. Down in our district they are playing most of the time. In Adams county they didn't have a case last term. In Brown county they had one. At Portsmouth they have a little and at Ironton they have a little, and outside of that there is very little to do. I am opposed to making any more circuits.

Mr. PRICE: I move that the proposal and the amendment be laid on the table.

The motion was carried.

The PRESIDENT: The next is Proposal No. 96, which the secretary will read.

The proposal was read the second time.

Mr. FESS: I want the Convention to bear with me not over ten minutes.

Mr. PECK: That is a good while tonight.

Mr. FESS: I am running a great risk because eighteen men can defeat this proposal. I would very much rather not have it considered now, but I see the situation we are in and we must bring it to the test. I have been anxious that we should make the educational department of the state the most important thing next to the governor, as it really ought to be. I think there are no interests that are dearer to the state than the educational interests, and what I would like to make possible is to create a state department of education that would be ranked as it ought to be ranked. As it now stands everybody knows that the educational department of Ohio has no constitutional rating. It is not even mentioned in the constitution. It has no recognition so far as power is required. It is remarkable what the department has been able to do, but that is because of the devotion of the men who have been at the head of it. If the present commissioner had the power commensurate with the importance of educational work he could do so much more than is possible under the situation now existing. This is what I want to do, to make the head of the department of education an appointive officer, so that we can secure efficiency in the department. Give the power to the governor to appoint the head so that the educators of the state and other people can unite upon some leader and say to the governor that they would like to have this man. If the governor believes that the man is the person the teachers of the state can be heard in the matter. Then if the governor appoints him for four years, and he proves a good official, the governor can reappoint him. At present he is in politics, nominated at the tail end of the convention, when it is tired. The selection is often the result of geography. We want to take it out if possible. So I ask you men if you can see your way clear to do it to take this department out of politics so far as possible and put it within our power to secure a man like Superintendent Dwyer of Cincinnati or others who could not be induced to go into a political struggle. But if he could be appointed he could easily be secured. We cannot reach the rank in the educational work of Ohio we should have unless we can make some change. I am going to risk this. I am going to ask you to vote your confidence in a department of education so that we will be in the same position that Pennsylvania is. Twenty years ago a democratic governor appointed a democratic head of the educational department, and when that democrat was superseded by a republican the teachers united upon Dr. Shaffer, the incumbent, and he was reappointed. A second republican governor reappointed him, and a third, and a fourth, and a fifth. All of these reappointments came because he is a great educator. He never could have been continued in that position if the position had been elective. Make it possible for us to get a man like that and put him in office, not for the

Creating Office of Superintendent of Public Instruction.

sake of the politicians but for the sake of the schools of Ohio.

Mr. PETTIT: Does this do away with the state school commissioner?

Mr. FESS: The name is changed, but the same officer is provided with additional powers.

Mr. PIERCE: I was going to make the same inquiry. I want to know if it makes an additional officer?

Mr. FESS: No, sir.

Mr. FACKLER: I am for the proposal if it does not.

Mr. KING: Section 3 authorizes a school commissioner.

Mr. HARRIS, of Ashtabula: I was going to call attention to that.

Mr. FESS: There is only the one officer.

Mr. THOMAS: I offer an amendment.

The amendment was read as follows:

Strike out the word "four" in the seventh line and insert the word "two."

The amendment was agreed to.

Mr. HOSKINS: I don't think changes should be made so fast unless they can show some reason for them. I don't much like this appointing power.

Mr. PRICE: It seems to me on this proposition there is room for radical difference of opinion. I don't see that we are going to keep it away from politics. I believe time will demonstrate if this man is appointed the head of the system that the office will drift into politics and we will have politics in the public schools.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 66, nays 22, as follows:

Those who voted in the affirmative are:

Anderson,	Fackler,	Holtz,
Baum,	Farrell,	Jones,
Beatty, Morrow,	Fess,	Kehoe,
Beyer,	Fluke,	Kilpatrick,
Bowdle,	Fox,	King,
Cassidy,	Hahn,	Knight,
Colton,	Halenkamp,	Kramer,
Crites,	Harbarger,	Lambert,
Crosser,	Harris, Ashtabula,	Lampson,
Cunningham,	Harris, Hamilton,	Leete,
Davio,	Harter, Huron,	Ludey,
Dunn,	Harter, Stark,	Marriott,
Dwyer,	Hoffman,	Mauck,

McClelland,	Riley,	Tallman,
Miller, Crawford,	Roehm,	Tannehill,
Moore,	Rorick,	Tetlow,
Peck,	Shaffer,	Thomas,
Peters,	Smith, Geauga,	Ulmer,
Pettit,	Stewart,	Wagner,
Pierce,	Stilwell,	Walker,
Read,	Stokes,	Winn,
Rockel,	Taggart,	Woods.

Those who voted in the negative are:

Beatty, Wood,	Hoskins,	Malin,
Brown, Pike,	Hursh,	Marshall,
Cody,	Johnson, Williams,	Miller, Fairfield,
Collett,	Keller,	Okey,
Donahey,	Kunkel,	Price,
Dunlap,	Leslie,	Stevens,
Earnhart,	Longstreth,	Watson.
Halfhill,		

So the proposal passed as follows:

Proposal No. 96—Mr. Fess. To submit an amendment by adding section 4 to article VI, of the constitution.—Relative to the office of superintendent of public instruction.

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 :

ARTICLE VI.

SEC. 4. A superintendent of public instruction shall be included as one of the officers of the executive department to be appointed by the governor, for the term of two years, with such powers as may be prescribed by law.

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

Mr. Harter, of Huron, arose to a question of privilege and asked that his vote be recorded on Proposal No. 272, by Mr. FitzSimons. His name being called Mr. Harter, of Huron, voted "aye."

Mr. Marriott arose to a question of privilege and asked that his vote be recorded on Proposal No. 15, by Mr. Riley. His name being called, Mr. Marriott voted "aye."

Leave of absence for Thursday was granted to Mr. Stilwell, Mr. Walker and Mr. Tetlow.

On motion of Mr. Lampson the Convention adjourned.