

# SEVENTY-SIXTH DAY

## AFTERNOON SESSION.

MONDAY, May 27, 1912.

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

The journal of Friday was read and approved.

Mr. DOTY: I want to call your attention to an error in the printed journal that is correct in the journal itself. In Proposal No. 151 you will find the order of the vote given "Against License" first and "For License" below. That is just the other way and the journal itself is correct, but the printed journal is wrong.

Mr. Harbarger asked and obtained leave of absence for Mr. Knight.

Mr. DOTY: I now move that we proceed with third readings.

The PRESIDENT: If there is no objection the Convention will proceed to third readings.

### THIRD READING OF PROPOSALS.

Mr. TAGGART: Proposal No. 340 should be moved along by reference to the committee on Phraseology.

Mr. DOTY: Is not that the schedule that provides the time for the schedule to go into effect?

Mr. TAGGART: Yes.

Mr. DOTY: Do you not think it is better to wait and see all the proposals that are passed before we go into that?

Mr. TAGGART: The only purpose that I had in view was that it might go to the committee on Phraseology and come back and be ready for third reading and amendment.

The PRESIDENT: Proposal No. 62 is the next in order.

The proposal was read the third time.

Mr. CRITES: I offer an amendment.

The amendment was read as follows:

In line 10 after the word "life" add the following:

" , without pardon unless at some future time found to be innocent."

Mr. CRITES: The only objection that I have heard from my people on this proposal is that they say there would be too many pardons and I think this amendment will make it difficult and secure more votes for our work.

Mr. DOTY: This amendment says "found to be innocent." By whom found? Do you mean a trial? If you take the pardoning power away, there is little hope of their ever getting out.

Mr. ANDERSON: Why would not this cover it: Shall be imprisoned for life unless the innocence be made to appear beyond the existence of a reasonable doubt.

Mr. DOTY: To whom?

Mr. ANDERSON: To the pardoning board or to whatever board it may be.

Mr. DOTY: We haven't any board to pardon anybody.

Mr. ANDERSON: It may mean the pardoning board, subject, I suppose, to proper revision.

Mr. DOTY: I would not want to be guilty of living in a state that denied the pardoning power to its governor. That would be barbarous. My friend from Pickaway could not have thought that out. That is a perfectly barbarous proposition, and I move to lay the amendment on the table.

The motion was carried.

Mr. OKEY: I offer an amendment.

The amendment was read as follows:

In the sixth line after the word "of" strike out the word "homicide" and in lieu thereof insert the word "murder".

Mr. OKEY: My reason for offering this amendment is that the word "homicide" is an improper word from my standpoint to be used in this connection. The word "homicide" has a legal significance and it includes any kind of killing whether accidental or otherwise. I had a couple of judges call my attention to this: Under this proposal, as we have it, nobody could be admitted to bail, and the word "homicide", as I stated before includes all grades of killing. It is the killing of a human being, but it does not necessarily imply an unlawful killing. Homicide does not necessarily mean a crime. That has received judicial construction, the meaning of it is well defined and for that reason and that only, in order that the proposal may mean something, I offer this amendment.

Mr. PECK: "Homicide" is all right. It has always been there, and we don't know whether it is murder or something else until the man is tried.

Mr. HOSKINS: I believe that the amendment of the delegate from Noble [Mr. OKEY] should be adopted. It never struck me until just now, but if that proposal passes as here written there will be no such thing as bail in a case of homicide.

Mr. PECK: That is the way the constitution has been for years.

Mr. HOSKINS: No, sir. A "capital offense" it was, which means one where the death penalty is provided. We have abolished capital punishment now.

Mr. LAMPSON: Would not your amendment or the amendment of the gentleman from Noble prevent bailing of persons accused of murder in the second degree?

Mr. PECK: How are you going to determine whether it is murder, manslaughter or merely excusable homicide until the man is tried? The bail has to be given in advance. A homicide may be a murder and it may be something less. And there is where they say, when the proof is clear and the presumption great, bail may be denied. I do not see what other words you could use.

Mr. KING: I do not like the word "homicide", and "murder" would not be much better. The common law crime of murder is divided into two degrees and always

## Abolition of Capital Punishment.

was. "Manslaughter" is another offense. If the word "murder" were inserted, I do not see how bail could be granted in all cases where the charge is second degree. I understand these charges are usually first degree, but at the same time murder in the second degree has never been a capital offense and the phrase "capital offense" is used in our present constitution and the one preceding that. If you insert "murder", say "murder in the first degree", which has a common law definition.

Mr. WINN: Do you make any distinction between the word homicide and murder?

Mr. KING: Yes.

Mr. WINN: I notice Webster does not, and I wondered whether the lawyers differed from Webster.

Mr. KING: There is a well-defined difference.

Mr. JOHNSON, of Williams: I would like to make a few remarks defining my position on this question. It is the duty of the state to protect its citizens, and if the capital punishment or the fear of it would deter criminals from committing murder it should not be abolished. I do not like to hear the assertion that the state commits murder when it executes a criminal for the protection of society. It seems to me that such an assertion is unjust to the state and too sympathetic for the criminal. If society is better protected because of capital punishment it is the duty of the state to execute the criminal. In my opinion the recent execution of Richeson in Massachusetts was not only better for the criminal but better for the citizens of the state. It is said by many that they would rather be executed than imprisoned for life. If criminals as a rule were of that opinion I think that capital punishment might safely be abandoned, but the worst sort of criminals would rather have capital punishment abolished and take their chances of making an escape. Only yesterday I met a gentleman who said that he would have murdered his family at one time if it had not been for a fear of death. He told me that he knew plenty of criminals that were deterred from committing murder because of their fear of death. One man told the gentleman to whom I have just referred that he would have murdered his whole family if it were not for the fear of being executed.

Is there anybody in the United States who does not believe that we have better order and protection than in Italy?

Mr. DOTY: And more murders.

Mr. JOHNSON, of Williams: I dislike capital punishment as much as anybody here. I was foolish enough and silly enough until I was twenty-five or thirty years of age to say that if it were a question of my killing somebody or somebody killing me I would be willing to die. I have gotten over that. If a set of bandits rushed into this room and commenced trying to kill us I would be the first one to shoot them and I would not have any compunctions of conscience. I dislike the sentiment connected with this. Then there is one more objection. It has been admitted by everybody that this is statutory, that it could all be accomplished without a constitutional amendment. I might be in favor of submitting this question because I am not afraid to let the people rule, but if the legislature of the state has the same authority to do this that we have and there is no great demand for it, why should

we take it up? I dislike this proposal being mentioned along with other proposals to weaken the work that we have done here. I am not opposed to capital punishment. I repeat that I would be willing to let the people have an opportunity to vote for or against it if this thing were needed to correct the constitution, but it is not. All of you can see that there is something wrong with this provision, because here they are attempting to amend it right and left already. Now if we put anything in the constitution it will be beyond amendment. Why do a foolish thing when we can do the right thing at the proper time? I only rose to defend my position and not to take up time.

A reading of the amendment was called for and it was again read.

Mr. OKEY: That ought to have "murder in the first degree" inserted. I agreed to that when Judge King mentioned it.

The SECRETARY: It was not sent to the secretary's desk.

By unanimous consent the words "first degree" were added to the amendment, and the amendment was then read as follows:

Strike out the word "homicide" in line 6 and insert in lieu thereof "murder in the first degree".

The amendment was agreed to.

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

At the end of the proposal add: "Neither the governor nor the legislature shall have power to grant a pardon to any person convicted of murder, unless upon the written recommendation of the majority of the judges of the supreme court."

Mr. MILLER, of Crawford: I voted for this proposal believing that the state was not justified in taking human life, but we ought not to let our compunctions override the rightful protection of society. It seems to me that the pardoning power should not be used except under extenuating circumstances. This amendment of mine is copied from the constitution of California where a person is convicted the second time of a felony and I believe this amendment will strengthen this proposal before the people.

Mr. WINN: Does your amendment propose that the supreme court of the state of Ohio shall be a pardoning board?

Mr. MILLER, of Crawford: If they find a party was innocent they would be authorized to say so.

The amendment was disagreed to.

Mr. DUNN: I offer an amendment.

The amendment was read as follows:

In line 10 after the word "imprisonment" insert the words "at hard labor," and at end of line 10 change period to a comma and add the sentence, "and part or all of his net earnings may be paid to the dependents of his victim."

Mr. DUNN: I would like to see the proposal abolishing capital punishment adopted, but I believe there is a great deal of sentiment throughout the state against it. I believe it needs a little strengthening to

## Abolition of Capital Punishment.

make it popular with the people. I believe it would have been better if we would have permitted eleven out of twelve jurors to convict where a life will not any longer be at stake. This would prevent the bribery of one juror resulting in a mistrial and would bring about fewer mistrials, and by my amendment the people of the state will understand that those persons convicted for life are not going to be put into the idle house, but are going to work. If a person who meditates murder understands that he is almost sure of conviction and that he will be compelled to work for the dependents of his victim the rest of his life, he will be apt to hesitate, and it will be a blessing to the dependents of his victim if he be imprisoned for life instead of being executed and made to work for their support. I know some will laugh because you will say there will be no net earnings, but there ought to be. The state of Ohio ought to be able to make a man earn his own living and a little for the dependants of his victim. I am sure that this amendment will add popularity to this measure before the farmers.

Mr. DOTY: I am very grateful that the member has said what he has and it marks him as humane, but the only trouble is there is no definition of "net earnings." We talk about gross earnings and net earnings on things that we can figure. And even bookkeepers differ greatly on these. What is "net earnings" of a man? I do not believe that the member himself has worked out what that means. It does not mean anything.

Mr. WINN: Suppose that the proposal now pending before us, which does away with contract prison labor, is adopted and the prisoners are confined in a particular institution and are required to work only for the state, will there be any net earnings?

Mr. DOTY: That is a question of bookkeeping. The question of net earnings is a very hard one to get at, and if that proposal goes through it will be more indefinite than under the contract system. To put that word in, in my opinion, is worse than useless.

Mr. HARRIS, of Ashtabula: As I understand the amendment of the member from Clermont [Mr. DUNN] there are two questions involved. First, that the prisoner shall not be subject to pardon. Is that correct?

Mr. DOTY: No.

Mr. HARRIS, of Ashtabula: The governor cannot pardon him?

Mr. DOTY: That was another that has already been voted down.

Mr. HARRIS, of Ashtabula: Then with regard to the proposition of net earnings, I agree for once with the member from Cuyahoga [Mr. DOTY] and the gentleman from Defiance [Mr. WINN] that this is altogether too indeterminate to be a part of the constitution. What may be determined in the future about it we do not know, but we cannot make any provision about these net earnings under present conditions.

Mr. LEETE: I move to lay the amendment on the table.

The motion was carried and the amendment tabled.

Mr. ANDERSON: I offer an amendment.

The amendment was read as follows:

After the word "life" in line 10 insert: "and no such person shall ever be pardoned or released

unless his innocence shall be made to appear beyond a reasonable doubt."

Mr. ANDERSON: The presumption of innocence under the law surrounds everybody. In other words, no person can be convicted of a crime unless his guilt is made to appear beyond the existence of a reasonable doubt. Consequently what is meant by "beyond the existence of a reasonable doubt" is well understood in law and has many times been defined. So before you can find a person guilty who is accused of a capital offense you must establish his guilt beyond the existence of a reasonable doubt. After that guilt has been established and since we have taken away the right of the state to take his life, it seems to me that before he should be pardoned his innocence should be made to appear beyond the existence of a reasonable doubt. In other words, the state as such has to carry the burden of proving him guilty beyond the existence of a reasonable doubt, and next, if this amendment be adopted, it seems to me that the burden should shift and rest upon the shoulders of the prisoner, requiring him to prove his innocence beyond the existence of a reasonable doubt before he could be pardoned. I suggest this. I have not much feeling about it one way or the other, but it seems to me that if we take the protection away from the state, as we have done, we should give the state some protection in the matter and let it be reasonably certain that when a man is once found guilty of a capital offense his innocence must be made to appear beyond a reasonable doubt before he can get clear.

Mr. ELSON: If this amendment is adopted I fear that it will tend to popularize the proposal. I hope it will not be popularized because I hope it will be killed by the people.

Mr. ANDERSON: Then your position as to the amendment is that the amendment does improve the proposal?

Mr. ELSON: Yes. I have heard most serious objection to this proposal. Now, in spite of the fact that our friend from Cincinnati [Mr. BOWDLE] may ridicule me as he did the preachers because of their inhumanity, I want to express myself on this. I think this is nothing but maudlin, morbid sentimentalism.

Mr. DOTY: Did you vote for it?

Mr. ELSON: I do not remember, but if I did I have changed my mind. I believe that we should look to the welfare and protection of society rather than the murderer. The first law of nature is self-protection, and that applies to society as a whole just as much as to an individual. The state is merely society organized. The state can go into a man's home and can take him up from his fireside and put him in the forefront of battle with a musket in his hand there to lay down his life for the preservation of the state, and yet here we are trying to forbid the state from taking the life of a miserable scoundrel who violates the law of the state when he knows that the penalty is death. Take those auto-bandits of Paris a few weeks ago. They have killed a half hundred people and what does society owe them? Life? Certainly not. We are told that "if thy right arm offend thee cut it off and cast it from thee." Why should not these creatures be executed? Take the McNamara case in California. Would those

## Abolition of Capital Punishment.

men ever have confessed that crime if there had been no capital punishment? They would doubtless have gone to prison protesting innocence and thousands and thousands would have believed them innocent.

Take lonely farmers and outrages against them. We don't have many of them in this state, but in New York and New Jersey it is not an unusual thing for a criminal to come along and murder the inmates of a farm house. Do not the farmers want all the protection that they can get from organized society?

Mr. DWYER: I rise to a point of order. The gentleman is not talking to his amendment.

Mr. MARSHALL: I want to ask the gentleman a question.

The PRESIDENT: The gentleman's time is up.

Mr. HARRIS, of Hamilton: I trust that the Convention will adopt the amendment of the member from Mahoning, not because it is popular or unpopular, but because it is essentially just and wise. The conscience of the people of the state has been aroused since the Convention first adopted the proposal, and it has received more hearty commendation from the great majority of the people than any other proposal that we have adopted. We can judge from the editorials of the leading newspapers of the state. The public conscience is aroused; and the carnivora are running to cover; the people of the state will appreciate that this Convention is not blood-thirsty, no matter what else some of its detractors may say of it.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Strike out the last four words of the amendment.

Mr. PECK: I want to call the attention of the gentlemen who are offering these amendments to the fact that the clause that they are amending is only a temporary one and their amendments will pass away as soon as the legislature passes upon this. If they will read that clause to which Mr. Anderson's amendment applies they will find it reads that until otherwise provided by law persons convicted of crime heretofore punishable by death shall be imprisoned, etc. The expectation is that the general assembly will take up the matter and determine about these things and thus all of these amendments will be to something that does not longer apply.

Mr. LAMPSON: The Fackler amendment means nothing. Strike out and leave it that the innocence must appear! To whom and how proved? With what degree of proof would it be satisfied?

Mr. FACKLER: It would be the ordinary proof by a preponderance of the evidence.

Mr. ANDERSON: I want it stronger than that. When the accused is found guilty before a life sentence is imposed his guilt must appear beyond a reasonable doubt; not by a probability, but beyond a reasonable doubt. Consequently, after the state has overcome that great burden and handicap in convicting him, I say that the prisoner ought to have the same burden placed upon him before he can be pardoned. In other words, not by a mere probability to show his innocence, because that is just exactly the object of my amendment, to get away from any probability in letting a man out after he is once convicted. I want his innocence to appear beyond a rea-

sonable doubt, and I move to table the Fackler amendment.

The motion to table was carried.

Mr. DOTY: We have the authority of the member from Mahoning that the amendment of Mr. Fackler was meaningless and we voted that down. We now have the statement of the chairman of the committee that the amendment of the delegate from Mahoning is meaningless in that it amends the wrong part of the proposal, as I understand.

Mr. HARRIS, of Ashtabula: By whose authority did you say you had that.

Mr. DOTY: The member from Hamilton, the chairman of the committee.

Mr. HARRIS, of Ashtabula: Well, well.

Mr. DOTY: You may learn something from him if you try. I have. The member from Hamilton [Mr. PECK] says that the amendment of the member from Mahoning amounts only to a temporary thing.

Mr. ANDERSON: I didn't hear Judge Peck say that. Was not Judge Peck's statement that the legislature can do what I proposed? That is true. The legislature can do it.

Mr. DOTY: I didn't understand the judge to say that. Your amendment is tied on to the last sentence and that reads "until otherwise provided by law persons heretofore convicted of crime punishable by death shall be imprisoned in the penitentiary for life", etc. The chairman of the Judiciary committee and three other members have explained and spoken against this, and if the member from Mahoning consults the professors he will find out that he is wrong about it. I move that his amendment be laid on the table.

The motion to table was carried.

Mr. MOORE: I offer an amendment.

The amendment was read as follows:

Strike out all after the period in line 8.

Mr. MOORE: This proposal abolishes capital punishment in the state of Ohio, but the latter part is legislative. It does not belong in a constitutional provision and I think it should be dropped.

Mr. DOTY: Then what would you say would happen to a man who committed murder in the first degree the last day of August and is tried and convicted on the tenth of October if this amendment is adopted the third day of September and promulgated the first of October? What becomes of him? Would not you have to turn him loose? This takes care of it in the meantime.

Mr. FACKLER: I move that the amendment be tabled.

The motion to table was carried.

Mr. COLTON: I offer an amendment.

The amendment was read as follows:

In line 5 strike out "in cases" and in line 6 strike out the first word "of" and insert "those charged with".

Mr. COLTON: The intent of this amendment is to overcome the objection raised some time ago that we do not know at the start of what degree of murder the man is guilty. If this amendment is inserted it will read "all persons shall be bailable by sufficient surety except those charged with murder in the first degree".

Mr. HOSKINS: I call attention to the fact relative

Abolition of Capital Punishment.

to the amendment just offered that if you insert "those charged with" it simply refers to the charge and not to the remainder where it says "the proof is evident or the presumption great."

Mr. DOTY: Is not that the time when we ought to begin to define what should be bailable and what not?

Mr. HOSKINS: Those charged with, where the proof is evident or the presumption great. You charge him with it. I take it that the meaning is that whenever the charge of first degree murder is in the affidavit it shall not be bailable. I cannot see what else Mr. Colton means.

Mr. FACKLER: He must be charged with murder in the first degree and where the proof is evident or the presumption great.

Mr. PIERCE: I think the amendment of Mr. Colton should carry. I believe it is correct.

The amendment was agreed to.

Mr. WOODS: Gentlemen of the Convention: I only want a minute of your time. You know I am against this proposition. But there are a couple of points here that I do not think the Convention has fairly considered. There is not a man on this floor who, while in favor of abolishing capital punishment, does not admit that it is a statutory matter. It is not a matter that should be taken care of in the constitution. I say to you, in all fairness, you have tried in this proposal to take care of existing statutes if this becomes part of the constitution, but I do not think that you have done it. You cannot do it except by taking out of the statutes the first section and setting it right in the constitution. I believe that if you put this in the constitution and the people ratify it at the polls you will find that no man can be convicted of first degree murder who has been committed between the time this is adopted and the time the general assembly makes the statute. You say in this proposal that the first degree murder statute is in addition. You certainly do that, do you not?

Mr. DOTY: No.

Mr. WOODS: You do. You say "nor shall life be taken as a punishment for crime." How are you going to hold that first degree murder statute is constitutional in the face of this provision of the constitution? I say you cannot do it, and if you pass this proposal you cannot punish a man for first degree murder committed between the time this is adopted and the time the legislature passes the law.

There is another thing in this proposal to which I wish to call attention. The three lines "until otherwise provided by law, persons convicted of crimes heretofore punishable"—not now, but heretofore. When was that? Was it one hundred years ago when a man lost his life if he committed burglary? I want to say that you are interfering with a great deal here and you are going to leave the matter in such shape that no man can be convicted of first degree murder until after the general assembly has enacted a law. I don't think you ought to do this. You have the initiative and referendum and if the people of the state of Ohio want to abolish capital punishment and the general assembly will not do it, why do you not do it through the initiative and referendum? Let us not get in such shape that men cannot be punished for first degree murder. Why should this Constitutional Convention spend its time trying to lessen the

punishment for the most serious of all crimes? Nobody has been clamoring for it. I think you will lose ground if this thing is passed. Most all of you know it is very unpopular. The people of the state of Ohio are not anxious to have anything like this done. I am not afraid that it cannot be taken care of at the polls, but if we should happen to pass it the murder statute will be balled up and in about as bad shape as possible.

Mr. STEVENS: 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 65, nays 39, as follows:

Those who voted in the affirmative are:

Anderson,	Fox,	Miller, Crawford,
Antrim,	Hahn,	Miller, Ottawa,
Baum,	Halenkamp,	Moore,
Beatty, Morrow,	Halfhill,	Peck,
Beatty, Wood,	Harbarger,	Pierce,
Beyer,	Harris, Hamilton,	Price,
Bowdle,	Harter, Huron,	Read,
Cassidy,	Harter, Stark,	Redington,
Cody,	Hoffman,	Shaffer,
Crosser,	Hoskins,	Smith, Geauga,
Davio,	Hursh,	Solether,
Doty,	Keller,	Stamm,
Dunlap,	Kramer,	Stevens,
Dunn,	Kunkel,	Stilwell,
Dwyer,	Lambert,	Tannehill,
Earnhart,	Leete,	Tetlow,
Fackler,	Leslie,	Thomas,
Farnsworth,	Ludey,	Wagner,
Farrell,	Malin,	Winn,
Fess,	Marriott,	Wise,
FitzSimons,	Marshall,	Mr. President.
Fluke,	Matthews,	

Those who voted in the negative are:

Brattain,	Johnson, Williams,	Pettit,
Brown, Highland,	Jones,	Riley,
Collett,	Kehoe,	Rockel,
Colton,	Kerr,	Roehm,
Cordes,	King,	Rorick,
Crites,	Longstreth,	Shaw,
Cunningham,	Mauck,	Smith, Hamilton,
Donahey,	McClelland,	Stewart,
Elson,	Miller, Fairfield,	Stokes,
Evans,	Norris,	Taggart,
Harris, Ashtabula,	Okey,	Walker,
Henderson,	Partington,	Watson,
Johnson, Madison,	Peters,	Woods.

So the proposal passed as follows:

Proposal No. 62—Mr. Pierce. To submit an amendment to article I, section 9, of the constitution.—Abolition of capital punishment.

*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.

SEC. 9. All persons shall be bailable by sufficient sureties, except those charged with murder in the first degree, where proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishment inflicted; nor shall life be taken as a punishment for crime. Until otherwise provided by law, persons convicted of crimes

## Regulating Insurance.

heretofore punishable by death shall be punished by imprisonment in the penitentiary during life.

The proposal was referred to the committee on Arrangement and Phraseology.

The PRESIDENT: Proposal No. 51—Mr. Miller, of Crawford, is next.

The proposal was read the third time.

Mr. MILLER, of Crawford: I offer an amendment.

The amendment was read as follows:

Strike out the word "fire" in line 10.

Mr. MILLER, of Crawford: In the report from the committee this word "fire" was stricken out, but in re-submitting it and in the substitute offered the word "fire" was left in. We have three or four strong mutual companies in the state that insure against storms and I would like the word "fire" cut out.

The amendment was agreed to.

Mr. STEVENS: I offer an amendment.

The amendment was read as follows:

After the period at the end of line 13, add the following:

"Laws may be passed to establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident, and other insurance to the citizens of the state."

Mr. STEVENS: I do not desire to say anything further than to state this is what has been known on the floor of the Convention as the state insurance proposal. It gives the lawmaking authority in this state at any time it so desires the power to establish and maintain a bureau of insurance for the purpose of furnishing fire, life, accident and other insurance to the citizens of the state. I do not care to discuss it further than that. I think you understand it and I think the subject has been thoroughly discussed.

Mr. WINN: At the time this amendment was offered before I took occasion to call the attention of the Convention to the fact that while Ohio heretofore has been backward as far as the insurance business is concerned, different companies are now being organized in the state, and it will not be many years before Ohio will take front rank in the insurance business, both life and fire. I know of at least four splendid life insurance companies that have just entered upon what promises to be successful business.

Mr. STEVENS: Do you not suppose that those four insurance companies just being organized will do business in exactly the same way that all the rest of them have been doing for twenty-five years?

Mr. WINN: I undertake to say whenever it is known to the people of the state that the legislature of Ohio has authority to go into the insurance business, there is not the remotest possibility of the organization of either a life or a fire insurance company in Ohio until that possibility has been removed. I cannot think of anything that is more serious than this amendment. Therefore I move that it be laid on the table.

The yeas and nays were regularly demanded; taken, and resulted—yeas 61, nays 41, as follows:

Those who voted in the affirmative are:

Anderson,	Hahn,	Matthews,
Antrim,	Halfhill,	Mauck,
Baum,	Harris, Hamilton,	Miller, Crawford,
Beatty, Morrow,	Harter, Stark,	Miller, Fairfield,
Beyer,	Henderson,	Miller, Ottawa,
Brown, Highland,	Holtz,	Partington,
Campbell,	Hoskins,	Peck,
Cody,	Johnson, Madison,	Peters,
Collett,	Johnson, Williams,	Price,
Colton,	Jones,	Redington,
Cordes,	Kehoe,	Roehm,
Crites,	Keller,	Rorick,
Cunningham,	Kerr,	Shaw,
Dunlap,	King,	Smith, Hamilton,
Dwyer,	Kramer,	Solether,
Earnhart,	Longstreth,	Stewart,
Eison,	Ludey,	Stokes,
Farnsworth,	Malin,	Taggart,
Fess,	Marriott,	Winn,
Floke,	Marshall,	Wise.

Those who voted in the negative are:

Beatty, Wood,	Harter, Huron,	Rockel,
Cassidy,	Hoffman,	Shaffer,
Crosser,	Hursh,	Smith, Geauga,
Davio,	Kunkel,	Stamm,
Donahey,	Lambert,	Stevens,
Doty,	Leete,	Stilwell,
Dunn,	Leslie,	Tannehill,
Evans,	McClelland,	Tetlow,
Fackler,	Moore,	Thomas,
Farrell,	Okey,	Ulmer,
FitzSimons,	Pettit,	Walker,
Halenkamp,	Pierce,	Watson,
Harbarger,	Read,	Woods.
Harris, Ashtabula,	Riley,	

The roll call was verified.

So the amendment was tabled.

Mr. DUNN: I offer an amendment.

The amendment was read as follows:

Add after line 13 the following: "The state may insure citizens against sickness, invalidism and old age."

Mr. DUNN: Gentlemen: Just a moment. I suppose a great majority of the members of this Convention are fully aware that we are creatures of prejudice. Our surroundings in life affect our views of things. If you have noticed what I have been trying to do in the way of proposals during my service in this Convention you will conclude that it has all been in the direction of the betterment of the poorer class, or common people. If there is any class of persons in Ohio who look up, who are ambitious, and who are trying to climb over difficulties in life's pathway, if there is any man who deserves help, it is the man who loves his family and rushes into debt for the sake of having a home for his wife and children, and if there are any people in the state who deserve sympathy it is the father and mother who are anxious to be able to send their children to college. There are hundreds of such people in Ohio. If you will notice we have been talking of classifying property for taxation and one would think certainly now the poor man is going to have some chance to live, that he is going to have some hope in life's struggle. But it is in favor of the rich man to take the burden from the money of the rich and place the entire burden on the poor. It is not in favor of the poor man at all, and I

Regulating Insurance—Change in Judicial System.

want to say now that there are some people in Ohio that do not want anybody to pay their taxes. It is said on this floor or hinted that there is no man who would not be willing to escape his taxes if he could. I know there is one man who is going to pay his own taxes and pay far more than his own taxes. I have tried in some way or other in different ways to relieve the struggling farmer and home-owner who is in debt. I have tried in some way to relieve him of paying more than his own taxes, and yet I am laughed at and scorned because I say such a thing. Some of my best friends on the floor laugh at the idea of finding any way at all to relieve the man who is in debt of paying taxes on his debts as well as on what he owns. I have tried to get a proposal through for an old-age pension, because the poorer common people have been paying more taxes all along than they ought to and more than the very rich, the dishonest men who are hiding their property and are not paying taxes. The main work of this Convention has been toward the common people. In fact, a graduated income tax—

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

The PRESIDENT: State the point.

Mr. PETTIT: He is not talking to the amendment he offered at all. He is talking on taxation.

The PRESIDENT: Under the limitation of time under which each member speaks the chair does not feel that he should hold any member down too closely to the subject and the member will proceed.

Mr. DUNN: I would rather have the proposal passed for an old-age pension, not as charity, but as giving to the common people something that has been taken from them, and if this Convention looks at this matter right and provides an old-age pension fund, as you have already passed a graded income tax, you would be returning in some degree the money taken from the common people by the very rich and passing it back to where it belongs.

Mr. DWYER: I move the previous question.

The main question was ordered.

The amendment of the delegate from Clermont was lost.

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

The yeas and nays were taken, and resulted—yeas 97, nays 4, as follows:

Those who voted in the affirmative are:

Anderson,	Earnhart,	Johnson, Williams,
Antrim,	Elson,	Kehoe,
Baum,	Fackler,	Keller,
Beatty, Morrow,	Farnsworth,	Kerr,
Beatty, Wood,	Farrell,	King,
Beyer,	Fess,	Kramer,
Bowdle,	FitzSimons,	Kunkel,
Brown, Highland,	Fluke,	Lambert,
Campbell,	Fox,	Lampson,
Cody,	Hahn,	Leete,
Collett,	Halenkamp,	Leslie,
Colton,	Halfhill,	Longstreth,
Cordes,	Harbarger,	Ludey,
Crites,	Harris, Ashtabula,	Marriott,
Crosser,	Harris, Hamilton,	Marshall,
Cunningham,	Harter, Huron,	Mathews,
Davio,	Harter, Stark,	Mauck,
Donahey,	Hoffman,	McClelland,
Dunlap,	Holtz,	Miller, Crawford,
Dunn,	Hursh,	Miller, Fairfield,
Dwyer,	Johnson, Madison,	Miller, Ottawa,

Okey,	Rorick,	Taggart,
Partington,	Shaffer,	Tannehill,
Peck,	Shaw,	Tetlow,
Peters,	Smith, Geauga,	Thomas,
Pettit,	Smith, Hamilton,	Ulmer,
Pierce,	Solether,	Wagner,
Price,	Stamm,	Walker,
Read,	Stevens,	Watson,
Redington,	Stewart,	Winn,
Riley,	Stilwell,	Wise,
Rockel,	Stokes,	Woods.
Roehm,		

Those who voted in the negative are: Messrs. Doty, Henderson, Hoskins, Moore.

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.—Regulating insurance.

*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.

SEC. 6. No laws shall be passed authorizing 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: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing 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.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. Ulmer arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Ulmer voted "aye."

Mr. HOSKINS: I rise to a point of order. As this roll was called I watched and saw that a large number of votes were cast from behind the railing. This has been done on a great many proposals and there is no assurance from the secretary's desk that the votes are votes of the members. I make the point that no member can vote unless he is in his seat or where the secretary and the Convention can see him.

The PRESIDENT: The point of order is well taken. A member must be in sight or his vote will not be received. The only way to vote is by being where the rest of us can see you. The next proposal is Proposal No. 184 and the question is, Shall the report of the committee be agreed to?

The report was agreed to.

The proposal was ordered to be engrossed and read the third time at once.

The PRESIDENT: If there is no objection the proposal will now be read for the third time. The chair hears none.

Proposal No. 184 was read the third time.

## Change in Judicial System.

Mr. PECK: It is necessary to amend this proposal somewhat and I offer an amendment.

The amendment was read as follows:

After the period in line 44 insert the following: "Until otherwise provided by law the term of office of such judges shall be six years."

Mr. PECK: That was made necessary by an omission in transcribing the proposal as originally introduced. The amendment was agreed to.

Mr. PECK: I offer another amendment. The amendment was read as follows:

At the end of section 2, line 34, add the following:

"All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law."

Mr. PECK: It was thought at the time this proposal was voted on before that this matter of pending cases might be provided for in the schedule, but upon consultation with some of the members of the Phraseology committee and some of the members of the Judiciary committee, it was thought best to put it in here to take care of pending cases in the supreme court, because if this amendment should be adopted and nothing is said about those cases it would deprive the court of jurisdiction and the court could do nothing but dismiss them and they ought to proceed to judgment.

The amendment was agreed to.

Mr. JONES: I offer an amendment.

The amendment was read as follows:

In line 55, after the word "appeals," insert: "and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be".

Mr. JONES: The purpose of this amendment is to take care of cases that may be pending in the circuit court at the time of the taking effect of this proposal. The language now is that the pending cases shall proceed to judgment and be determined by the respective courts of appeals subject to the provisions hereof. That would deprive of a trial a party who had a case pending in the circuit court which had been brought there on appeal. He may have tried the case in the common pleas court formally only. Now, when this provision goes into effect cases in the court of appeals can only be heard upon record. They cannot be heard as we have been hearing them. The object of this provision is simply to preserve the present procedure with reference to all cases that may be pending in the circuit court at the time this provision goes into effect, and that all cases coming into the court of appeals after this constitutional provision takes effect will be subject to the provisions of it. I might explain that this language with reference to the supreme court is inserted here so as to provide for a review by some other court of a case that is in the circuit court at the time of the taking effect of this constitutional provision. In a case that was pending to be tried in the circuit court on appeal, unless this provision is made that it might be reviewed in the

supreme court, the party would be deprived of his right of review.

Mr. KING: Is it your understanding that this amendment is to affect any case that will be pending in the court of common pleas at the time of the taking effect of this amendment?

Mr. JONES: No.

Mr. KING: Why should it not? Why should not the cases pending in the court of common pleas when this goes into effect be entitled to the same procedure and trial in the court of appeals that they are entitled to now and when they were commenced?

Mr. JONES: That matter was fully considered and this conclusion was reached in regard to it, that the cases pending in the circuit court at the time this constitutional provision takes effect would clearly be entitled to the same procedure we now have or else the parties would be cut out of their right of review in many cases, but cases in the common pleas court could be tried with reference to this constitutional provision. Parties in trying a case, if it were an appeal case, could try it in the common pleas court in anticipation of the adoption of this judiciary proposal.

The PRESIDENT: The member's time is up.

Mr. MAUCK: I would like to ask the gentleman a question.

The PRESIDENT: The gentleman's time is up.

Mr. MAUCK: Then if I cannot ask a question I will make a statement. It seems to me that parties ought to be protected in cases where they are now entitled to a trial. Suppose they try their case in the court of common pleas, what becomes of it then? The court has rendered its decision, but the time within which they may appeal or have a bill of exceptions signed or file a petition in error has not expired. They can do either or both under the present law, and if this amendment goes into effect where does it leave such cases? Why should they not have the right they now have to retry in the appellate court?

Mr. JONES: Those cases that were tried in the common pleas court that would be error cases in the reviewing court could be prosecuted to the court of appeals just as effectively in the way of securing their rights as they could to the circuit court. They could not be prejudiced. Only equity cases could be tried in the common pleas court, and it was thought that parties with the knowledge that this proposal might be adopted could, without much inconvenience, try those cases so that if it were adopted they could go to the appellate court with a full record and have a review just as they would with cases after that time.

Mr. KING: I think we can take care of that better in Proposal No. 340, for we have made that absolutely general, covering every case in every court.

Mr. JONES: It does not cover these cases.

Mr. KING: "All cases pending in the courts at the time this amendment takes effect shall be heard and tried in the same manner and with the same procedure as now exists by law."

Mr. PECK: If that fixes it, why worry about it here?

Mr. KING: You are taking it away line by line. I do not think it would affect this if this is not adopted.

Mr. ANDERSON: The Convention needs no better evidence of the confusion that would exist provided this



## Change in Judicial System.

amendment prevails than the confusion among the gentlemen here discussing it. It will only confuse and not clarify. If anything this Convention has done has received more praise than everything else it has been Proposal No. 184. And it has received more critical examination than any other proposal. There are very few attorneys who have not received copies. I move that the amendment offered by Mr. Jones be tabled.

Mr. JONES: Will you allow me to ask a question? It is suggested that it is taken care of in Proposal No. 340. That is a separate proposal. Suppose Proposal No. 340 does not carry and this does; where will you be? It is absolutely necessary to have this provision adopted as part of the Peck proposal or you leave in very bad condition every case pending in the court of appeals at the time of the adoption.

Mr. ANDERSON: And if you do pass it every pending case, provided it goes to the supreme court and then back again, years from now, will have a different rule of procedure provided the Jones amendment carries than the other cases, provided the Peck proposal carries, which will mean endless confusion. I maintain every case that has been tried in the common pleas court and determined and then goes to the circuit court has gone exactly the same way as if the Peck proposal was a law when tried in the common pleas court and no hardship is entailed at all. All we have in the Peck proposal is one trial and one review and all litigants will get that. I move to table the amendment of Mr. Jones.

The motion to table was lost.

The PRESIDENT: The question is, Shall the amendment of the gentleman from Fayette prevail?

Mr. KRAMER: I want to ask the member from Mahoning a question.

The PRESIDENT: The member from Mahoning has not the floor and his time has expired.

Mr. KRAMER: Take these two circuit courts where they have not been requiring a record be taken. That is the way in our county and circuit. Suppose there is a murder case that has been tried and it has gone to the circuit court on appeal. The people have absolutely no chance at all to have that case even reviewed, because our circuit court has always been allowing us to try the second time or de novo.

The PRESIDENT PRO TEM [Mr. DOTY]: That is out of order. The delegate from Highland [Mr. BROWN] is not here.

Mr. KRAMER: Under this we would be shut out, because the attorneys have made no effort to prepare the record below for the purpose of having the case reviewed in the circuit court.

The amendment was agreed to.

Mr. HALFHILL: I offer an amendment.

The amendment was read as follows:

After the word "jurisdiction" in line 59 insert: "in the trial of chancery cases, and,".

Mr. HALFHILL: Mr. President and Gentlemen of the Convention: The amendment I offered is for the purpose of giving to the circuit court the right to retry chancery cases that have been heard and determined in the court of common pleas. There was some attempt to present an amendment of that kind at the time this proposal was at the stage of second reading, and at that time it was discussed here or suggested here that in the

larger counties of Cuyahoga and Hamilton the circuit court had for some years past adopted a plan of having these cases which under the law are retriable by introducing the witnesses, heard by these courts by review upon the printed record. This in no way interferes with that arrangement in those counties because they are doing that under a rule of court and are actually usurping the law in that respect, but so far as the client and parties are bound by acquiescing therein, it answers the same purpose. We do the same frequently in other circuits, but that is by agreement of parties, usually made by their counsel.

Now many a time where I have had a client who was financially able to have the testimony printed out as it was heard in the court of common pleas, I have by agreement with the party on the other side, had that testimony extended and presented to the circuit court as a basis for the trial there, but we always had a right to supplement it with oral testimony. We have been used to this right of appeal in chancery cases for a great many years in Ohio. By inserting the amendment I in no way whatever conflict with the principal workings of this proposal as framed, because what I propose by this amendment, is simply a method of review. You are not giving an additional trial. You are giving only the two trials, a review by way of a trial instead of a review by way of printed record, and there is no chance to take that case any further unless it is within the exceptions named in the proposal or unless it is a felony or a case involving a constitutional question, and of course a felony case is not a chancery case. A constitutional question is only occasionally raised in a chancery case, so this does not at all interfere with the proposal as framed. There is no reason why it should be objected to. It was argued by the chairman of the Judiciary committee on second reading that nobody wanted this right of appeal but the lawyers, and "when did the the lawyers ever do anything for the purpose of reforming judicial procedure?" That is a loose and reckless and slanderous statement, doing a great wrong to our profession, because the lawyers have at all times been to the very forefront in the changing and reforming of judicial procedure. Why, David Dudley Field, of New York, framed the code of civil procedure, joined the common law actions and equity procedure into a civil action commenced by filing a "petition", and we followed that plan in 1851 in this state and that is our court procedure in Ohio today, and every bar association, not only of our own state, but of every state in the Union as well as the American Bar Association, as is known to everyone of any observation, has its committees constantly looking after judicial procedure and reforming it.

The amendment was agreed to.

Mr. PECK: I wanted a word before that was put. This is an important matter and I move to reconsider the vote by which that motion was carried.

Mr. WINN: I make the point of order that the member who makes the motion did not vote in favor of the amendment.

The PRESIDENT PRO TEM: The point is not well taken. There was no record vote. No man knows how the Judge voted and nobody has a right to ask him. The question is on reconsidering the vote by which the amendment of the gentleman from Allen was adopted.

## Change in Judicial System.

Mr. PECK: I want to be heard and I want to answer the objections of Mr. Halfhill. There has been so much discussion of so many things that probably a good many of the members have forgotten that this matter was all fought out on the second reading of the proposal and fought out at considerable length. The amendment that Mr. Halfhill puts forward was considered and voted down.

This simply gives two trials to one class of cases, and a large class of cases, and it violates the fundamental principle of this proposal, that a man shall have one trial and one review. It puts in a large class of exceptions to that principle. If this amendment prevails those cases will have two trials, one in the common pleas court and one in the court of appeals, and will have no review.

Mr. HALFHILL: Does it not go simply to the method of review? We review it by a trial.

Mr. PECK: It goes to the method and you ought to leave it alone. My method is as good as yours. The review now would be just the same sort of review that every man who has any sort of a case at law has, and there is no earthly reason why that review is not as good as any other. It is now resorted to in nearly all sorts of cases. They nearly all review on the record taken by the shorthand writer. It has become a very rare thing that the circuit court hears any oral testimony in many of the circuits of the state; so the amendment ought not to prevail. It merely weakens the proposition and is a step backwards. It introduces two trials and no review instead of one trial and a review in a large class of cases.

Mr. BROWN, of Highland: On the contrary, I think this amendment ought to pass.

Mr. PECK: Well, what do you know about it?

Mr. BROWN, of Highland: A good deal; and that is the trouble with the lawyers, that they think laymen do not know anything about anything connected with the law and that the lawyer knows everything. The fact is what the lawyer knows is partisan knowledge. The fact that I have been dubbed "a de novo" brings to my mind that in the second reading I tried to get this thing in by advocating an amendment giving a right to trial de novo on the ground that a party might not have secured a proper trial in the court below or that the court below was probably unjust by reason of certain influences, and further, on the ground that witnesses may have testified that were credible and witnesses may have testified that were not credible, and that fact could not be known except by actual contact and analysis of the individuals who testified; that the upper court, if the case were submitted on the record, would be utterly unable to give proper consideration to it; that it would probably give to discredited witnesses as much credit as accredited witnesses and that would result in injustice.

Mr. CROSSER: There are several reasons why I would like to see the amendment adopted. This is not proposing any more trials than the present proposition because it simply provides a different means of having the second trial. If the proposal is adopted as it stands at the present time there are innumerable persons who will never be able to go to the court of appeals simply because they are not able to buy the record. A record

costs anywhere from thirty or forty to several hundred dollars, according to the length of time the case takes to be tried. That is one reason why the amendment should be adopted. It will help the poor man and it will let him have a chance to have a retrial as well as the man who can pay for the record.

Another reason is that the upper court has an opportunity to see the witnesses, watch their behavior and determine how much credence should be placed in the statements of any particular witness in the case on trial, an opportunity it cannot have by the plain old printed record. I think for these two reasons the proposition should be passed.

Mr. KING: I do not think the question of whether we shall allow appeals of trials in the appellate court of cases that have been once tried in the common pleas court is of such great importance that those who believe in that method of procedure should undertake to force it into this proposal so as to destroy the whole proposal. I believe it will have that effect. At least it will contribute largely to it. Personally, having had experience at both ends of the game, both in trying cases and hearing them tried, I have no prejudice one way or the other, but my contention has always been that one trial was enough. I know that the legal profession of Ohio generally, outside perhaps of the larger cities, are wedded to the theory of a trial on appeal, and the only objection that has been urged to me to this proposal has been the objection of the lawyers because the right to try their cases upon an appeal has been taken away. But do not let anybody make the mistake that the lawyers of Ohio, if they make up their minds on this question, have no influence. They will call in their clients and explain the proposition and get them to vote against it. I think there are more important things in the proposal than the question of whether you try a case on appeal, and therefore I am in favor of leaving the appeals where they stand right now. Let the court of appeals enforce them and let the trial be by new witnesses where the court wants them. Therefore I hope that the vote by which this amendment was carried will not be reconsidered.

Mr. JONES: Since we are by this proposed amendment establishing the court of appeals as the court of last resort in practically all of the cases, would it not be an anomaly to have a court of last resort a trial court? Did you ever hear anywhere in any jurisdiction in this country of a court of last resort being a trial court in any sort of a case except one of original jurisdiction?

Mr. KING: It is not usual, but we are doing some things differently here from what they are doing them in other states. This whole proposal is based upon a different proposition than you will find in force in most of the states of the Union, but I am for the main feature of it and I believe it should be adopted. It will benefit the legal procedure in this state, and I would not hazard the success of that by taking out of it the right to appeal which the people enjoyed. That is too small a thing to be talked about a moment.

Mr. PETTIT: I am heartily in favor of the amendment offered by Mr. Halfhill for reasons I have given heretofore, but which I will repeat briefly. It does not take any longer time under this amendment to try a case on appeal than it will on error. I do not want the laymen of the Convention to forget that proposition. It

## Change in Judicial System.

has been discussed by the gentleman from Hamilton that it will consume more time and will cost more. I do not assent to that. I say it will cost less. What is the transcript worth telling what a man testified to? One man's testimony on paper looks as well as another's, although it may be all perjured, and when the judges come to charge the jury with reference to the testimony they hear they say, "Look at the witnesses, scrutinize their conduct and behavior and see whether they know what they are testifying about." I say that is all in the interest of the people. There was a howl before that only the lawyers were in favor of this. That is a base slander.

Mr. BOWDLE: I am opposed to the amendment and I am in favor of the proposal as it stands. It is a mistake to suppose that it is of very great value in the administration of justice for courts to look into the faces of witnesses. In the first place about half of the witnesses who get on the stand are accomplished liars, and the more accomplished liars they are the more impressive is their testimony. It would be a fine thing in all trials if all testimony were taken down in advance and carefully reduced to typewriting and presented to the judges. I am opposed to seeing the witnesses generally, and one thing that is particularly offensive to me is for courts to have the ability to easily see whether the lawyer before them is a democrat or a republican.

In the administration of justice in Athens in the court of the Areopagus, the Athenians held court in outer darkness so that the judges could not see the witnesses or the lawyers, and when people went to hold court they carried a lantern and their night clothes. I believe one trial is quite sufficient and I believe it would be a mistake to have two trials.

Mr. OKEY: I am in favor of the Peck proposal and also in favor of the amendment offered by the gentleman from Allen county [Mr. HALFHILL]. When this proposition was before us a few weeks ago I discovered that a great many men voted under a misapprehension of what this proposal means. The amendment that was offered by the gentleman from Allen does not injure in the least degree the Peck proposal, but it only strengthens it. I realize that a man frequently views legal procedure from the custom that prevails in his time, but I tell you when you are taking away from the rights of the people of this country the right to appeal you are doing something that we ought not to do. Sometimes we want a retrial and we have a right to bring the witnesses before the appellate court. It sometimes happens that a man is not able to procure the record to go up, and if he is compelled to have the record and is not permitted to use witnesses he cannot go up. Therefore I hope that the members of this Convention will see the object that we have in view and the sole object of giving the right to the people to appeal. I would like to appeal a case when I want to, and it will not only be less costly, but it will give the right we want the people to enjoy and will not impair the proposition in the least.

Mr. HOSKINS: Just a word on this subject. It has not been made evident here and for the benefit of those who do not practice law I hope you will understand what is meant by a chancery case. We will have, if this amendment prevails, the right to appeal a chancery case to the appellate court where there has been no trial by

jury and where you have no right of trial by jury. In hundreds of cases we are compelled to try the cases before the common pleas judges, who are the sole judges of facts. All judges are not perfect. Justice can be arrived at only approximately at the best, and we are compelled to try cases in a local community where there may be political or personal prejudice. That does not cut much figure where you submit to twelve men, but in a chancery case you submit to only one man. Now, under the proposal as it stands, you must pay the expenses of the record to take that up in printed or typewritten form to the appellate court. I will state for the benefit of the laymen that that is more expensive than the right to take your witnesses before the court of appeals and have your witnesses heard originally, a right we have enjoyed for sixty years. You are not increasing the number of hearings or the cost. You are decreasing the cost, making litigation more simple and arriving nearer at justice, because you can hear your case before these three men and they are not subject to the prejudice which the single man may be subject to who hears the case in the court below. Now we have had that right for sixty years. There has not been any complaint about that right. It is the dragging of the cases along that makes the complaint, but when you realize you have not increased the cost, but have preserved to the litigant a right he has enjoyed for sixty years, the right of having an appeal to the upper court, where he must submit his controversy in the common pleas court to a single man—the judge—we ask you, gentlemen, to give us this right of appeal and nothing short of this will meet the demands of the people.

Mr. HURSH: You remember that Mr. Halfhill in the original argument said that it was charged that lawyers did not—

Mr. HOSKINS: I cannot have you taking up my time.

Mr. HURSH:—generally properly prepare the case on the first trial?

Mr. HOSKINS: I don't think that happens. You could not provide against that anyhow. That has nothing to do with the case.

Mr. NYE: Mr. President and Gentlemen of the Convention: It seems to me that the nearer you can get the courts to the people the more satisfactory your courts are to the people. I am therefore in favor of the amendment proposed by the gentleman from Allen, because if the litigants and their witnesses can go before the circuit court and can be heard by the circuit court they get nearer to the court and the court is nearer to the people than it would be if they tried the cases in any other way. I do not believe that you can do anything for this proposal that would make it more popular with the people and get more votes for it than to adopt this amendment proposed by the gentleman from Allen. I have just come from the people and I have talked with the people and with the attorneys about this amendment and about this very proposal. They are in favor of having this appeal where you can try the case originally and have the court hear the witnesses testify. The gentleman from Hamilton [Mr. BOWDLE] said that he believes that witnesses generally are liars. From my experience on the bench for ten years I do not concur in that opinion. I believe generally that witnesses are honest and as a

## Change in Judicial System.

general thing are seeking to get at the truth, and I know of no better way in which they can get at the truth than to hear the witnesses and see them face to face. I am therefore in favor of the amendment.

Mr. JONES: Gentlemen of the Convention: It seems strange that in so short a time since the second reading of this proposal and its passage there could be such an apparent change of sentiment. The main purpose and object of this judiciary proposal is to facilitate the administration of justice and make it possible to cheapen it. Therefore the slogan has been adopted, one trial and one review. No lawyer, I think, if he would consider for a moment, would say that any case should be finally tried without an opportunity for a review. That is a thing we have had in English jurisprudence for hundreds and hundreds of years, and there has been no jurisdiction that has adopted the plan of finally disposing of cases without an opportunity for review. There is good reason for that, because in reviewing cases, with the whole record before the court, the court can sift out and determine the questions of law involved and arrive at a correct solution of the facts better than in the hurry of a trial with witnesses before it. Here is a trial in the common pleas court of two or three weeks, and for the purpose of facilitating these cases through the courts you say that you are going to have a repetition of that three weeks' trial in the court of appeals and call all the witnesses back again and have them say the same things over again which they have once said and which in ninety-nine cases out of a hundred has been reduced to typewriting. We do not any longer try cases without having them reported. All the evidence is taken, and for the purposes of the second trial, as we now have it, the second trial is merely a review of the case on the evidence taken in the court below. Now, if we do not want to thwart the purpose of this proposal—and I at first had some prejudice against it, but upon further reflection have taken a different view—if we want to accomplish the main purpose of this proposal, we should facilitate the prompt disposition of the case, so that if a litigant has a controversy with his neighbor he can have the one good trial and the one good review and get through with the matter in a year.

Mr. WINN: Gentlemen: I quite agree with the member from Fayette that where one good trial has been obtained litigants and counsel should be satisfied, but my objection to this proposal and my reasons for favoring the proposed amendment are that sometimes, yes, many times, litigants are deprived of one good trial. I have in mind a judge who declined to vacate the bench when affidavits of prejudice were filed against him under the provisions of the statute. He persisted in sitting on the bench and deciding the cases when the parties objected to him because of his alleged prejudice.

Mr. PECK: Under this proposal you could go into the supreme court and get a writ of prohibition against him.

Mr. WINN: And yet there was no method by which that judge could be removed. Now suppose a litigant has a case of that sort and brings it before a judge where he knows the judge is biased or prejudiced. What is he to do? Must he submit his case whether or no? Some one says that is all we have in a jury case, but that is not so. In a jury case we examine every juror

and want to know in advance whether or not he has prejudged the case, whether he has any opinion upon it and whether he has any bias or prejudice, but we never examine the judges, who are just common men, who sit here and hear testimony as jurors do, and who are influenced by the same considerations that influence jurors. Judges are men after all, and so it is that in many cases a good trial is not obtained. Now it will not hurry litigation to an end to provide for this trial and review as is this proposal. The member from Erie [Mr. KING] said when the subject was under debate that after a long term of experience on the bench he found to meet the witnesses face to face hurried the business rather than retarded it. Lately I had a trial in Northwestern Ohio and there were just thirty-one hundred pages of typewritten record. It cost a little more than \$600 to obtain a transcript of the record for the purpose of review in the circuit court. The one who was defeated below and who finally succeeded upon review of the case was totally unable to pay any part of that. That is not an unusual occurrence. In that instance one whose rights should have prevailed and that did finally prevail, because others came to her assistance, was then unable to pay the cost of the transcript. Now that happens many times. I have known a good many cases in which litigants were unable to pay the expenses of the transcript, and so the business may be hurried along if the appeal and retrial are allowed, and besides all that it does give litigants at least one good trial.

Now I am not surprised that there are a good many that have changed their opinions, because the member from Fayette told me just before he told you that when this debate opened he was of the same opinion that I am, but he changed his mind upon the subject, and it is not surprising, therefore, that others changed their minds.

It has been urged that this in no wise injures this proposition. I said when this final vote was taken that thus far there was but one proposition to which I could not give my hearty support and that was this one. It was because I believed that the litigants of this state had been deprived of their most valuable right, the right of one fair and impartial trial. That appeal will not be asked in many cases. It is only when counsel for parties believe that the client has not been given one fair trial that he will ask by appeal a retrial upon the evidence. Otherwise he will be satisfied with the ordinary review that prevails.

Mr. FACKLER: I notice that all the speeches that have been made upon this amendment have been made by those who previously were of the same opinion which they expressed here, and I noticed from page 4 of the journal of April 10 that the men who were opposed to this proposition at that time have spoken in opposition to it today and those who at that time spoke in favor of it are still in favor of it. I do not believe that the Convention can gain anything by a further rehash, and I move the previous question on the motion to reconsider and on the amendment. I demand the yeas and nays on that question.

The PRESIDENT: The question is, Shall the vote be reconsidered by which the amendment was carried? The yeas and nays are demanded.

Mr. HOSKINS: May I make a statement? We

Change in Judicial System.

have the matter mixed around here and we would like to have the chair straighten it out.

The PRESIDENT: An amendment offered by the gentleman from Allen was carried. The member from Hamilton moved to reconsider that action. That is the question now before the Convention. The yeas and nays have been demanded and the secretary will call the roll.

The yeas and nays were taken, and resulted—yeas 38, nays 59, as follows:

Those who voted in the affirmative are:

Baum,	Harter, Huron,	Roehm,
Bowdle,	Hoffman,	Shaffer,
Colton,	Hursh,	Smith, Geauga,
Davio,	Johnson, Williams,	Smith, Hamilton,
Doty,	Jones,	Stevens,
Dwyer,	Kunkel,	Stewart,
Fackler,	Lambert,	Stilwell,
Farnsworth,	Leete,	Taggart,
Farrell,	Leslie,	Tetlow,
Fess,	McClelland,	Thomas,
Hahn,	Miller, Fairfield,	Woods,
Halenkamp,	Peck,	Mr. President.
Harbarger,	Riley,	

Those who voted in the negative are:

Antrim,	Harris, Hamilton,	Nye,
Beatty, Morrow,	Harter, Stark,	Okey,
Beatty, Wood,	Holtz,	Partington,
Beyer,	Hoskins,	Peters,
Brattain,	Johnson, Madison,	Pettit,
Brown, Highland,	Kehoe,	Pierce,
Campbell,	Kerr,	Price,
Collett,	King,	Read,
Crites,	Kramer,	Redington,
Crosser,	Lampson,	Rockel,
Cunningham,	Longstreth,	Shaw,
Donahey,	Ludey,	Stamm,
Dunlap,	Malin,	Stokes,
Earnhart,	Marriott,	Tannehill,
Elson,	Marshall,	Ulmer,
Evans,	Matthews,	Walker,
Fluke,	Mauck,	Watson,
Fox,	Miller, Crawford,	Winn,
Halfhill,	Moore,	Wise.
Harris, Ashtabula,	Norris,	

So the motion to reconsider was lost.

Mr. MAUCK: I offer an amendment.

The amendment was read as follows:

In line 74 strike out the words "and courts of appeals".

Mr. MAUCK: The purpose of this is to prevent the requiring of the courts of appeals to report all of their cases. Something like eighteen hundred to two thousand cases are disposed of by the circuit courts of Ohio each year. A publication of all those opinions would result in a needless multiplication of useless books. There are no reporters for those courts. There is no way provided by law for their publication and the publication depends solely upon private enterprise. I doubt whether anyone engaged in the book publishing business cares to get out all of these opinions, and therefore I suggest that that be stricken out. I entertain grave doubt whether the Constitutional Convention ought to require the supreme court to publish all of its opinions, but any one familiar with the circuit court practice knows that a large part of the business in the circuit courts goes to review and with it the testimony of the lower court. It would be absolutely nonsensical to require that the judgment of all the circuit courts be published.

The amendment was agreed to.

Mr. MAUCK: I offer another amendment.

The amendment was read as follows:

At the end of section 2 add:

"No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court."

Mr. MAUCK: The supreme court has very little original jurisdiction. It is fair to assume that the purpose in giving the supreme court this original jurisdiction was for the benefit of the litigant and not for the benefit of the court. The supreme court has been laboring with congested dockets and for a number of years has required anyone seeking to invade the jurisdiction to first get the consent of the court to file his appeal. The result has been in quo warranto and mandamus and other cases in which original jurisdiction has been invoked, the court has required suitors to go to the circuit court. One result has been that in many cases brought by the attorney general he has been required to go to the circuit court of Franklin county. This has, therefore, added largely to the work of this circuit, and after all it has not put on the supreme court any considerable amount of work because cases of that kind generally wind up in the court of final resort. We have taken from the supreme court one-half or more of all its jurisdiction when we have secured a ratification of the Peck proposal, and that being so there is no longer any reason why the supreme court cannot exercise the jurisdiction conferred upon it by this amendment to the constitution.

The amendment was agreed to.

Mr. STEVENS: I offer an amendment.

The amendment was read as follows:

Strike out all after the period in line 73 and all of line 74 and insert:

"All decisions of the supreme court and courts of appeals, declarative of principles not previously adjudicated by the supreme court, shall be fully reported."

Mr. STEVENS: If you will notice after the period in line 73 is the matter concerning the reported cases, and the language in the proposal is that the decisions in all cases in the supreme court and courts of appeals shall be reported. It will be easily seen that the multiplication of reports is going to reach tremendous figures. There will be no end to it. All that is necessary is to have the decision in the cases announcing new principles of law properly adjudicated and reported and that is what this amendment seeks to do. Whenever the court of appeals announces a principle that has not been previously adjudicated by the higher court it will be the duty of the court to have that case reported. I think the amendment explains itself.

Mr. PECK: Are you not aware that an amendment striking out the courts of appeals has been adopted so that we now do not have to deal with that?

Mr. STEVENS: Yes.

Mr. PECK: Now who is going to determine about this?

Mr. STEVENS: The judges themselves.

Mr. PECK: How many cases are there in which there

## Change in Judicial System.

are a great many questions in which some principles, some principles new, some partially new and some old, are mixed up?

Mr. STEVENS: I would rather miss an occasional new principle than to have my office filled with books that contained nothing but chaff. This refers only to new principles.

Mr. LAMPSON: Would it not be simply the application in a somewhat different way of an old principle?

Mr. STEVENS: Substantially that. This has constitutional sanction and it has been the practice in the supreme court of avoiding repetition of principles adopted from time to time.

Mr. PECK: That is what the supreme courts say they have been doing.

The amendment was lost.

On motion the Convention here recessed until seven o'clock this evening.

## EVENING SESSION.

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

The PRESIDENT: The question is on the adoption of Proposal No. 184.

Mr. TAGGART: I offer an amendment.

The amendment was read as follows:

In line 9 after the word "of" insert "a chief justice and".

At the end of the proposal add the following:

"The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court."

Mr. TAGGART: Mr. President and Gentlemen of the Convention: At the time of the second reading of this proposal I voted against the proposal, but I am satisfied that this proposal in some form will carry at the approaching election. It is my desire that it be as efficient as it is possible to make it, and therefore I have presented the amendments just read from the desk. I presented them to the chairman of the Judiciary committee and I beg leave now to state my reasons for these amendments. The proposal as passed and as it will be adopted by the people creates at least eight courts of last resort. There is no union between those eight courts. Each court is independent and separate from every other court. There is no means of communication between the two. Under the present system of the circuit courts of the state the circuit courts meet in the fall of the year and elect a chief justice. He has supervisory power over the judges of the courts of the circuit, but he has no power to enforce any of his orders. He may assign a judge from Cleveland to Hamilton county, but if that judge does not see fit to go the chief justice has no power to make him go.

Now the amendment I suggest at the end of this is making the supervisory powers over the courts of appeals vest in the chief justice of the state. He then can supervise and direct the judges of the various courts to

hold courts in any county of the state, and this will be effective and will add efficiency to the court. I know from experience that there are certain judges of circuit courts that have refused and declined to leave their own circuits even with the admonition and direction of the chief justice of the court. It is not desirable that the chief justice be elected from the courts of appeals. He should be a chief justice outside of the courts of appeals, so that a power that could be enforced would be vested in some other person. That being true, the efficiency of your court will be increased. Therefore you must have a chief justice. The chief justice now is simply a legislative office. It ought to be a constitutional office so as to conform to the provisions of this proposal. In addition to that the proposal introduced by the gentleman from Allen county provided that the chief justice of the supreme court shall supervise the judges of the courts of common pleas. Therefore it is only reasonable and rational that he would supervise the judges of the courts of appeals as well, and having this all under control he can bring these courts in direct connection with and bring them close to the people and have them under his control. In order that this chief justice should have this control he should be a constitutional officer and he should be a member of the supreme court, supervising the business of the court and of the courts of appeals and of the common pleas courts, and therefore the other amendment that I suggest is that there should be a chief justice and six judges which will constitute the supreme court. I know that this will add efficiency to this proposal. I know it will be to the great advantage of jurisprudence in this state. I am sure the tendency would be, instead of having eight courts in a state, one court deciding a matter one way and another court deciding it another way, that the chief justice by circulating these judges would bring about uniformity in jurisprudence, which is a great and desirable result to be accomplished.

Mr. PECK: I agree to this motion to amend. I have no objection to it. This matter of a chief justice has been under consideration for a long time and has been adopted and rejected by the committee two or three times. There is a great difference of opinion about it, but finally, due to the conservative feeling perhaps, it would be better to leave the court just as it is. But I have always felt that a chief justice is very desirable and I concur in the motion.

The amendment was agreed to.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

Change the period in line 74 to a comma and add: "and laws may be passed providing for the reporting of cases in the courts of appeals."

Mr. KNIGHT: This afternoon the Convention adopted an amendment offered by the delegate from Gallia [Mr. MAUCK] striking out the words "and courts of appeals" in line 74 where it was made mandatory that all cases in the courts of appeals should be reported. However, with the adoption of that amendment, it leaves the constitution this way, that no laws, no matter how many may be adopted by the lawmaking power of the state, can force the courts of appeals to report any case because the courts have uniformly held that the

## Change in Judicial System.

question of the matter of reporting cases was entirely within the control of the judiciary department. This amendment now offered simply makes it clear that, on such terms and conditions as may seem wise to the lawmaking power, laws may be enacted for the reporting of cases, which is different from making it mandatory that all cases shall be reported. It seems to me unwise to leave it to the courts of appeals to decide whether they will report any case, and it seems to me that the lawmaking body should have the right to make provisions.

Mr. DOTY: I demand the previous question on the whole proposal.

The main question was ordered.

The amendment of the delegate from Franklin [Mr. KNIGHT] was agreed to.

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

The yeas and nays were taken, and resulted—yeas 97, nays 5, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Okey,
Antrim,	Harris, Ashtabula,	Peck,
Baum,	Harris, Hamilton,	Peters,
Beatty, Morrow,	Harter, Huron,	Pettit,
Beatty, Wood,	Henderson,	Pierce,
Beyer,	Hoffman,	Price,
Bowdle,	Holtz,	Read,
Brown, Highland,	Hoskins,	Riley,
Campbell,	Hursh,	Rockel,
Cassidy,	Johnson, Madison,	Roehm,
Cody,	Jones,	Rorick,
Collett,	Kehoe,	Shaffer,
Colton,	Keller,	Shaw,
Cordes,	Kerr,	Smith, Geauga,
Crites,	King,	Smith, Hamilton,
Crosser,	Knight,	Solether,
Cunningham,	Kramer,	Stamm,
Davio,	Kunkel,	Stewart,
Donahey,	Lambert,	Stilwell,
Doty,	Lampson,	Stokes,
Dunlap,	Leete,	Taggart,
Dunn,	Longstreth,	Tannehill,
Dwyer,	Ludey,	Tetlow,
Elson,	Malin,	Thomas,
Farnsworth,	Marshall,	Ulmer,
Farrell,	Matthews,	Wagner,
Fess,	Mauck,	Walker,
FitzSimons,	McClelland,	Watson,
Fluke,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Hahn,	Miller, Ottawa,	Woods,
Halenkamp,	Moore,	Mr. President.
Halfhill,		

Those who voted in the negative are: Evans, Johnson, of Williams, Nye, Partington, Stevens.

So the proposal passed as follows:

Proposal No. 184—Mr. Peck, to submit an amendment to article IV, sections 1, 2 and 6, of the constitution.—Change in judicial system.

*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 IV.

SEC. 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and

such other courts inferior to the courts of appeals as may from time to time be established by law.

SEC. 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in case of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmation of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

SEC. 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties

## Change in Judicial System—Regulating Expert Testimony in Criminal Trials.

thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the provisions hereof, and the circuit courts shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify, or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualifi-

cation of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court.

The proposal was referred to the committee on Arrangement and Phraseology.

Mr. Knight arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Knight voted "aye."

Mr. Nye arose to a question of privilege, and asked that his name be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Nye voted "aye."

Mr. COLTON: Since Proposal No. 184 was considerably changed by amendment, I move that the usual number be printed.

The motion was carried.

The PRESIDENT: The next business is Proposal No. 322 — Mr. Bowdle, which the secretary will read.

The proposal was read the third time.

Mr. BOWDLE: This matter was thoroughly discussed the other day. There was a good deal of debate and I am not inclined to add anything to what has been said. I was apprised, however, that the gentleman from Auglaize [Mr. HOSKINS] had asked questions in my absence as to what reason there was for this proposal. The answer is this, that the supreme court of Michigan has passed upon an effort of the legislature of Michigan to control medical expert testimony. The legislature of the state of Michigan attempted to do just what we are now empowering the legislature to do, and the supreme court of Michigan said it was unconstitutional under a constitution precisely like ours in Ohio. The difficulty seemed to be, at least as detected by the supreme court of Michigan, that any effort of the legislature of the state to do the thing that we are now seeking to empower the legislature to do, amounted to the creation of a new order of witnesses. To make that clear to those who have not studied law and whose minds have not, therefore, become narrowed as the gentleman from Highland implies our minds have become, let me say just a word. In a trial, especially a criminal trial, the state offers its witnesses and in offering its witnesses it vouches for those witnesses, that they are worthy of belief, that they are credible men. When the accused comes on with his testimony he vouches for his witnesses, that they are worthy of belief by the jury. Now, a law of the legislature of Michigan sought to create a board of experts, allowing the court to appoint experts to testify in such cases, and the supreme court held that such a law as that brings into being a special order of witnesses that is not vouched for by the state, because the state does not offer the testimony, nor by the accused, because the accused does not offer the testimony, but it brings into being a class of witnesses vouched for by the court or the judge, and the supreme court of Michigan said that is absolutely contrary to the common law, the Declaration of Independence, the constitution of the United States, Washington's Farewell Address to the Army, Plymouth Rock, Liberty Bell and all the other things that we are bound by. It is, therefore, necessary for us, if we are going to stop the scandal of high priced expert witnesses paid for by the state in given cases, to free the hands of the legislature and allow the legislature to pass just such an excellent act as the legislature at-



## Regulating Expert Testimony in Criminal Trials.

tempted to pass in the state of Michigan. Of course, even in the state of Michigan there was no effort on the part of the legislature to prevent the accused from bringing on such expert testimony as he cared to bring on, but the act accomplished this good at least, that it allowed the twelve jurors the satisfaction of hearing men who had been appointed by the court and who were unbiased, men who had no interest in the money of either side, and allowed the satisfaction to the jury of hearing men who have no interest in the case other than to tell the truth.

Mr. ANDERSON: Would it not clarify this case to say where the accused had a number of experts and the state had a number and the jury could not decide, that the court might appoint a certain number to clarify the situation?

Mr. BOWDLE: Very well stated, and that is the reason for this proposal. Without further discussion I am willing to leave to the Convention this proposal. It is an effort to get ahead in the administration of the criminal law.

Mr. BROWN, of Highland: I move to amend Proposal No. 322 as follows:

In line 6 strike out the word "criminal" and insert the word "all."

Mr. BROWN, of Highland: No one realizes the necessity of the control of expert witnesses more than I do. I have had considerable experience with experts in criminal cases and I wish to confess that in criminal cases or any other cases the expert witness is hired to pettifog the case just like a lawyer, and if we allow them to testify freely in criminal cases and allow both sides to have the unrestrained use of experts where there is both a civil and a criminal case growing out of the same matter we would have a different kind of testimony in each of the two cases. I think if we allow them in one case we ought to allow them in all.

Mr. ANDERSON: The lawyers that Dr. Brown mentioned must have been the kind of lawyers he read law with. But let me direct your attention to this amendment to the amendment. Let us see the situation. Say there is a question of who signed a note or check for a good many thousand dollars. If Mr. Bowdle will permit me I will try to give an example. Say Mr. Bowdle is notified by the bank that a certain note is due for several thousand dollars. Mr. Bowdle claims he didn't sign the note. What is the question to be decided? Whether or not that is his signature. Now the court under Dr. Brown's amendment could appoint two experts on handwriting, the testimony of those experts would be conclusive and those two experts would end the case one way or the other. I am only using this as an illustration of what could be done in civil cases, and many cases where experts are used in civil cases will come to your mind. We threshed this amendment out and it was overwhelmingly defeated. It seems to me extremely dangerous to have this rule prevail in civil cases, and therefore I move that the Brown amendment be tabled.

The motion to table was carried.

Mr. HOSKINS: Just a word on this proposition and to follow up the argument of the gentleman from Mahoning on the amendment to eliminate this from

civil cases on which you just voted and for which I voted. I wanted to vote to eliminate the entire matter from the constitution. I do not think it is a constitutional matter. Suppose Mr. Bowdle is charged with forgery. Are you going to allow the court to appoint two experts to say whether or not that is his signature on the note? The main argument of the gentleman from Mahoning would apply in a criminal case as in a civil case. I raised this question the other day in the absence of the proponent of this proposal for the reason I did not see any necessity for the adoption of a matter of this kind. It doesn't do anything except to authorize the legislature to pass legislation of a certain character which I am thoroughly convinced there is nothing in the constitution now to prevent them from doing, and it seems to me that it is a proposition that is not necessary to be brought up to the people.

Mr. DWYER: I believe as the gentleman from Auglaize [Mr. HOSKINS] suggests, that the law is ample to authorize the court to appoint experts in all matters, whether civil or criminal. I know during my term on the bench I had experts in many cases, especially on one where a man was accused of poisoning his wife. He was tried for murder in the first degree and the embalming fluid in which she was embalmed contained some of the same poison he was accused of having administered to her. I had some of the very best experts in Ohio in that case. I remember I had Dr. Reed, of Cincinnati, one of the most prominent men in the whole state. These witnesses were called. We recognized our power to call them as experts to testify in the case and they did testify, and no one said that we didn't have the power. I think the court has the power and can exercise it whenever it desires.

Mr. BOWDLE: It cannot be that Judge Dwyer wants the Convention to understand that a court today in Ohio in a criminal case where the defense is insanity can call experts and foist those experts with their testimony upon the accused and upon the jury. There is no such power. Gentlemen, the great defect in our administration of justice in the matter of crime is that the court seems to have lost control of the cases. The great thing in English jurisprudence, especially as relating to the criminal side of it, is that the courts have control of the cases. You never hear of any scandals surrounding the introduction of expert testimony in a criminal case in England, and the reason is that the courts have just the control over experts that we seek to give the courts here through the process that I have suggested.

Mr. DWYER: Do you claim the courts have not the power under the present law to call experts in all cases that they desire to?

Mr. BOWDLE: I never heard of such a thing in the state of Ohio or any other American commonwealth. The only effort made to do that was in Michigan and Oklahoma and the courts declared it unconstitutional. Neither party, plaintiff nor defendant, in Ohio or elsewhere, has power to exclude such witnesses as a party thinks beneficial, and a party cannot have foisted on him a class of witnesses that he does not vouch for. I am absolutely certain under our present constitution that cannot be done.

Mr. DWYER: I have done it and I have seen it done in other courts.

## Regulating Expert Testimony in Criminal Trials.

Mr. BOWDLE: But were not those witnesses called by the prosecuting attorney?

Mr. DWYER: Certainly.

Mr. BOWDLE: Exactly so, and that is the distinction. I desire the Convention to bear in mind that I would call them for the defense, just as well for the defense as for the prosecution, and as far as insanity is concerned, anybody is an expert in insanity. I can now call here anybody as an expert on insanity.

Mr. HARTER, of Huron: Does this preclude the plaintiff from calling expert testimony?

Mr. BOWDLE: No, sir; it does not preclude anything of that sort. It does not commit the legislature to any scheme of things. This is just the permission to the legislature to take up this matter and investigate it and pass some sort of reasonable provision.

Mr. HALFHILL: Was it your idea that a law might be passed whereby a corps of expert witnesses might be brought into being and they could arrange as to these matters?

Mr. BOWDLE: That is somewhat my idea, but that is not wrapped up in the words used. This power we give the legislature does not commit us or them to any kind of process. They may adopt the Michigan scheme, and the Michigan scheme did not preclude the parties from introducing such expert testimony as they might desire.

Mr. LAMPSON: Would this proposal of yours lead to putting it into the hands of the court to determine who these expert witnesses for the defendant should be?

Mr. BOWDLE: It might lead to that. It would lead to the court appointing some expert, but that would not be to the exclusion of those that the defendant wished. In case he was not satisfied with such experts he might call those that he deemed proper. And I might say that this proposition is framed because of the original demand in the medical literature of the country and the demand from medical societies of all sorts for just such a provision.

Mr. PECK: Is that an unusual practice?

Mr. BOWDLE: Yes.

Mr. WINN: Before we recessed for dinner, in the discussion of some case you said that half or more of the witnesses who appeared in the trials are liars. Are you of the opinion that that term will apply to experts, especially medical experts?

Mr. BOWDLE: I say the ordinary medical expert purchased by a fat pocketbook is not worthy of belief, and I want to cross-examine him with great care before I accept him as a witness at all. He is a special pleader seated in the witness box.

Mr. HALFHILL: I believe that this proposal before us is absolutely unnecessary under the present constitution. I have not heard any argument advanced here at all that could not be met by a law which would be perfectly competent to be passed under the existing constitution; that is to say, the legislature prescribes all rules of evidence so far as competency of evidence is concerned. The legislature now says on this great question of reputation and on the question of whom shall testify in a suit against the administrator and the situation is such that the legislature can define rules as they apply to expert witnesses or expert testimony in criminal trials

or anywhere else. I maintain if it is the intention, as I heard it by the proponent to a question put to him, to create a board which will pass upon the questions of fact, that that would plainly be contravention of many other provisions of the constitution, because the jury passes upon the questions of fact, and if you are going to create a board which is suggested here you usurp the province of the jury. Now it is true that expert witnesses testify to certain conclusions and to a certain extent each expert tells what his opinion is, and the reasons for his opinion. I submit that all of the argument that has been advanced here for the necessity of this thing falls under existing power.

Mr. ANDERSON: Is not this the fact, that as the constitution now stands in any criminal case the accused can call any witness he pleases and the prosecuting attorney may do the same? Do you mean to say that under our constitution the court or any one else can say to this, that or the other person, "You can be a witness in this case?"

Mr. HALFHILL: I do not understand that is the duty of the court.

Mr. ANDERSON: The prosecuting attorney calls any witness he pleases and the state pays?

Mr. HALFHILL: Yes.

Mr. ANDERSON: The accused can call anyone as an expert that he chooses?

Mr. HALFHILL: Yes.

Mr. ANDERSON: Under the present constitution the court as such can not appoint any person to testify?

Mr. HALFHILL: And the court ought not to have authority to appoint a board, and I understand that the proponent says certain eminent medical gentlemen have suggested that. I know that is true. It has been suggested by the American Medical Association that there ought to be a board appointed for the purpose of shutting off the employment of expert witnesses, and when you create that board for the purpose of shutting off the employment of expert witnesses then you have created something extra constitutional, over and above and beyond the jury, and you are piling on the jury, which is bound to decide upon the evidence, evidence of a creative board, and that is in direct conflict with other provisions of the constitution.

Mr. PECK: You don't find anything of that kind here.

Mr. HALFHILL: I find that in the argument for the defense.

Mr. PECK: I am speaking of the language of the proposal.

Mr. HALFHILL: Now another question, and I want to preface it by a statement. As I understand it the practice in England is very reasonable. If a party wants an expert witness in either a civil or a criminal case he applies to the court. He says, "I would like to have two or three doctors"—or experts on penmanship, or this, that or the other thing—"and I would like to have the court designate the persons who will testify on the matter." The court makes the order designating an expert or experts, and they are called on by the party. Is not that good practice? It furnishes experts who are not under suspicion all of the time of being tampered with by the party calling them. Would you contend for a mo-

Regulating Expert Testimony in Criminal Cases—Conservation of Natural Resources.

ment that that power does not exist and that the legislature could not provide for it now?

Mr. PECK: I rather think they could.

Mr. HALFHILL: Do you not admit that they could do it?

Mr. PECK: We passed a proposal the other day which provides that laws may be passed prescribing the rules and regulations for the conduct of business, and I think under that the legislature might act.

Mr. HALFHILL: I think we have ample power to do this under the existing constitution. That is why I object to this.

Mr. STAMM: In the Richeson case did the governor or the court appoint experts?

Mr. HALFHILL: I am unable to answer that question because, notwithstanding the declaration that I am a criminal lawyer, I do not know much about it in this state or in any other state.

Mr. STAMM: Under the present constitution can an expert be examined in insanity cases that is appointed by the court?

Mr. HALFHILL: My contention is that the legislature under existing circumstances has a perfect right to prescribe such a rule and if such a rule is not in existence the power is here to create it.

Mr. STAMM: Is it done in Ohio?

Mr. HALFHILL: It has been by some courts.

Mr. STAMM: Has there not been a demand for years by the medical profession to have it done, and isn't it a fact that the legislature hasn't done it?

Mr. HALFHILL: I do not know whether the legislature has done it or not.

Mr. STAMM: For fifteen years the medical profession has fought for this and no attention has been paid to them.

Mr. HALFHILL: Certainly there is not any rule laid down in the proposal to meet the suggestion you make.

Mr. STAMM: Could it not be put in the constitution so that every one will know it can and ought to be done?

Mr. NORRIS: What has the medical profession to do with it?

Mr. HALFHILL: Of course, the medical profession has nothing to do with the trial of a criminal case, any more than they would be called as expert witnesses, and while they may have their own ideas how they would like to be called or upon whose part, I do not know that it would assist the medical profession. I understand that they recently tried to get a national board of health, very much to the disgust of the Christian Science people.

Mr. CASSIDY: I demand the previous question.

The main question was ordered.

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

The yeas and nays were taken, and resulted—yeas 74, nays 32, as follows:

Those who voted in the affirmative are:

Anderson,	Bowdle,	Cordes,
Antrim,	Brown, Highland,	Crosser,
Baum,	Cassidy,	Davio,
Beatty, Wood,	Cody,	Donahey,
Beyer,	Colton,	Doty,

Dunlap,	Jones,	Riley,
Dunn,	Kehoe,	Roehm,
Dwyer,	King,	Rorick,
Elson,	Kunkel,	Shaffer,
Farnsworth,	Lambert,	Shaw,
Farrell,	Leete,	Smith, Geauga,
Fess,	Leslie,	Smith, Hamilton,
FitzSimons,	Ludey,	Solether,
Fox,	Marshall,	Stamm,
Hahn,	Mauck,	Stilwell,
Halenkamp,	McClelland,	Stokes,
Harbarger,	Miller, Crawford,	Tannehill,
Harris, Ashtabula,	Miller, Fairfield,	Tetlow,
Harris, Hamilton,	Miller, Ottawa,	Thomas,
Harter, Huron,	Moore,	Ulmer,
Harter, Stark,	Peck,	Watson,
Henderson,	Peters,	Winn,
Hoffman,	Pettit,	Woods,
Hursh,	Read,	Mr. President.
Johnson, Williams,	Redington,	

Those who voted in the negative are:

Beatty, Morrow,	Johnson, Madison,	Partington,
Brattain,	Kerr,	Pierce,
Campbell,	Knight,	Price,
Collett,	Kramer,	Rockel,
Crites,	Lampson,	Stevens,
Cunningham,	Malin,	Stewart,
Evans,	Marriott,	Taggart,
Fluke,	Matthews,	Wagner,
Halfhill,	Norris,	Walker,
Holtz,	Nye,	Wise.
Hoskins,	Okey,	

So the proposal passed as follows:

Proposal No. 322—Mr. Bowdle. To submit an amendment by adding section 39 to article II, of the constitution.—Regulating expert testimony in criminal trials.

*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 II.

SEC. 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

The PRESIDENT: Proposal No. 64, Mr. Miller, of Fairfield, is next.

The proposal was read the third time.

Mr. MILLER, of Fairfield: I do not think it is necessary for me to go into any extended argument for the passage of this proposal. I believe that with this body of men in this day, when conservation congresses are being held at the call of the president and with the assistance of the governors, and when it is considered that this proposal reaches to all corners of the state of Ohio and appeals to every man who builds a home and to every man who burns electric lights or who has to supply food in the future, no argument is needed to convince them of the necessity of adopting this proposal. We have no right to waste our natural resources and thereby deprive the people of the future of that which belongs to them. I have an amendment to offer and I understand that there will be one or two others. I leave this with you and hope you will see the necessity for its passage.

Mr. LEETE: I offer an amendment.

The amendment was read as follows:

## Conservation of Natural Resources.

In line 10 after the word "including" insert: "streams, lakes, submerged and swamp lands and".

And in line 11, after the second "of", insert: "drainage and".

And in line 13, strike out the words "all minerals" and insert in lieu thereof the words "coal, oil, gas and all other minerals."

Mr. LEETE: Mr. President and Members of the Convention: I think these amendments are necessary. These are the same words that were stricken from the original proposal as it was originally written. After consulting with a number of the best attorneys here I find it is their unanimous opinion that the words "streams, lakes, submerged and swamp lands" should be inserted after the word "inclusive". Further, in line 11, after the second "of," insert "drainage and". In line 13 strike out the words "all minerals" and insert in lieu thereof the words "coal, oil, gas and other minerals."

In the proposal, as we have it here, it reads "Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempt in whole or in part from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including the development and regulation of water power and the formation of conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing all minerals." This amendment in line ten would change the reading as follows: "Also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands, and the development and regulation of water power and the formation of drainage and conservation districts." That will, beyond question, give the power to the state to control the drainage problems of the state, especially swamp districts where several counties are involved. There the state can control and govern the drainage system. Furthermore, the last amendment is made necessary by the passing of the Worthington amendment, Proposal No. 170. I believe in section 9 authority is conferred for the enactment of laws providing for excise and franchise taxes and for the imposition of taxes on the production of coal, oil, gas and other minerals. So it is necessary for this proposal to have the same language. I hope this amendment will pass and I think it strengthens the proposal very much.

The amendment was agreed to.

Mr. BEYER: I offer an amendment.

The amendment was read as follows:

In line 9 after the word "purpose" insert "by the state or counties".

Mr. BEYER: When we had this proposal before us on second reading we were trying to go too fast. We were in too much of a hurry. We granted the right to the state to have the poor worn-out land planted into forest reserves as state reservations, but we did not

give the counties the right to do so. Now I read from the official report of the department of agriculture about some of our counties. Adams county, for instance, has 6,110 acres of worn-out land and 20,000 acres of waste land. Gallia has 10,000 acres of worn-out land and 20,000 acres of waste land. Hocking has 14,000 acres of worn-out land and 20,000 acres of waste land.

Mr. HARRIS, of Ashtabula: What are you reading from?

Mr. BEYER: From a report of the department of agriculture of the state of Ohio.

Mr. LAMPSON: Do you not think this would result in a conflict as to forestry between the states and the counties, giving to both the state and the counties power to do the same thing?

Mr. BEYER: I understand the state has the paramount authority, but if the state does not do it then the counties can.

Mr. LAMPSON: You propose to amend it so as to give both the state and the counties a right which will necessarily result in a conflict of authority.

Mr. BEYER: No, sir; but if the state does not take hold of this matter and any county does want to take hold of it, it seems to me that the county should have the right. Indeed, I think the county should have the first right.

Mr. LAMPSON: But suppose the state wants to control the whole system. We are providing a system of conservation to be under the control of the state, and under your amendment you would make it possible for a system of conservation under the control of each county.

Mr. BEYER: I understand that it can be done, but the county should have the right. If the state will replant the land and maintain it forty years, the state will get the timber, sell it and distribute the money for the benefit of the whole state, and the rich counties would have the benefit and the poor counties would have to pay taxes all through the forty years and get nothing from their lands. This is done in other states. The state of New York has a provision in this direction and the state of Pennsylvania has such a law. I have the figures and reports here from Harrisburg and they show that they have fine young forests planted by counties.

Mr. LAMPSON: Are the counties allowed to do that over there?

Mr. BEYER: Yes.

Mr. LAMPSON: Independent of the state?

Mr. BEYER: The county has the first right over there and then the state.

Mr. ANDERSON: Your idea is wherever a county wants to go into the timber-raising business, it as a unit could do so?

Mr. BEYER: Yes.

Mr. ANDERSON: Entirely independent of the state or any other counties?

Mr. BEYER: Yes.

Mr. ANDERSON: Is it not true that the best lands for this purpose are the poorest lands and the counties would have to tax themselves to go into the business?

Mr. BEYER: Yes.

Mr. LAMPSON: The poorest county would be the least able to tax itself?

Mr. BEYER: Yes.

Conservation of Natural Resources—Contempt Proceedings and Injunctions.

Mr. LAMPSON: Wouldn't that put the burden on them?

Mr. BEYER: Yes; but there would be an income from it finally.

Mr. LAMPSON: Yes, in the third generation.

Mr. BEYER: It could not do any harm that I see.

Mr. LAMPSON: Would it not cause an extra burden to be upon the poorest counties of the state and the counties least able to expend a large amount of money?

Mr. BEYER: They are not forced to do it. They only have the right. If they don't want to do it the state can do it, but we should not take the right from the counties. We should not make them give their land to the state and get nothing themselves. I hope the majority will consider this question and pass it.

Mr. HARBARGER: I move that this amendment be laid upon the table.

The motion was carried.

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

The yeas and nays were taken, and resulted—yeas 109, nays 1, as follows:

Those who voted in the affirmative are:

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

Mr. Woods voted in the negative.

So the proposal passed as follows:

Proposal No. 64—Mr. Miller, of Fairfield. To submit an amendment by adding section 36 to article II, of the constitution.—Conservation of natural resources.

*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 II.

SEC. 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals.

The proposal was referred to the committee on Arrangement and Phraseology.

Proposal No. 134—Mr. Halenkamp, was read the third time.

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted—yeas 94, nays 9, as follows:

Those who voted in the affirmative are:

Anderson,	Harter, Huron,	Peck,
Beatty, Morrow,	Harter, Stark,	Peters,
Beatty, Wood,	Henderson,	Pettit,
Beyer,	Hoffman,	Pierce,
Bowdle,	Hoskins,	Price,
Brown, Higland,	Hursh,	Read,
Cassidy,	Johnson, Madison,	Redington,
Cody,	Johnson, Williams,	Riley,
Colton,	Jones,	Rockel,
Cordes,	Kehoe,	Roehm,
Crosser,	Keller,	Rorick,
Davio,	Kerr,	Shaffer,
Donahey,	King,	Shaw,
Doty,	Knight,	Smith, Geauga,
Dunlap,	Kunkel,	Smith, Hamilton,
Dunn,	Lambert,	Solether,
Dwyer,	Lampson,	Stevens,
Earnhart,	Leete,	Stewart,
Elson,	Leslie,	Stilwell,
Evans,	Longstreth,	Stokes,
Fackler,	Ludey,	Tannehill,
Farnsworth,	Malin,	Tetlow,
Farrell,	Marshall,	Thomas,
Fess,	Matthews,	Ulmer,
FitzSimons,	Mauck,	Wagner,
Fluke,	Miller, Crawford,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Winn,
Halenkamp,	Moore,	Wise,
Halfhill,	Okey,	Woods,
Harbarger,	Partington,	Mr. President.
Harris, Hamilton,		

Those who voted in the negative are:

Brattain,	Cunningham,	McClelland,
Brown, Pike,	Kramer,	Norris,
Collett,	Marriott,	Nye.

So the proposal passed as follows:

Proposal No. 134—Mr. Halenkamp. To submit an amendment by adding section 21 to article IV, of the constitution.—Contempt proceedings and injunctions.

*Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the*

## Contempt Proceedings and Injunctions—Abolishing Prison Contract Labor.

constitution shall be submitted to the electors to read as follows:

## ARTICLE IV.

SEC. 21. Laws may be passed, prescribing rules and regulations for the conduct of cases and business in the courts of the state, regulating proceedings in contempt, and limiting the power to punish for contempt. No order of injunction shall issue in any controversy involving the employment of labor, except to preserve physical property from injury or destruction; and all persons charged in contempt proceedings with the violation of an injunction issued in such controversies shall, upon demand, be granted a trial by jury as in criminal cases.

The PRESIDENT: The next is Proposal No. 34, by Mr. Thomas.

The proposal was read the third time.

Mr. STILWELL: I offer an amendment.

The amendment was read as follows:

In line 17 change the period to a semi-colon and add the words: "and the products of such labor disposed of to the state or any political subdivision thereof owned or managed and controlled by the state or any political subdivision thereof shall not be marked 'prison made.'"

Mr. STILWELL: Just a word of explanation. It was not the intention of the framers of this proposal that in the interchange of the products of prison labor between the several state institutions the products should be marked "prison made," and this simply eliminates that objectionable feature.

Mr. ELSON: I am not quite sure that I understand you. Do you mean it would eliminate these from the products of the reformatory?

Mr. STILWELL: It eliminates the marking of the goods "prison-made" when there is an interchange between the institutions of the state.

Mr. ELSON: You mean where goods are made in one public institution and are sent to another institution for use?

Mr. STILWELL: Yes.

Mr. KNIGHT: I do not like the wording "to the state or any political subdivision thereof". Would it not be better to have it any public institution, or is it broad enough to cover a specific case like that which confronted the institution with which I happened to be connected two years ago? The printing of all the bulletins and catalogues for the State University was the matter involved. I think two years ago that was intended to be done at the Mansfield Reformatory, and of course there was a contract between the trustees of one institution, namely, the State University, and the trustees and board of managers of the other state institution, the Mansfield Reformatory, by which they printed these bulletins and furnished all the material and did all the work on state account, but the State University and its board of trustees paid for the matter. Now, the practical question is this: Is this proposal, even with this amendment, such that it is certain that if the lawmaking power of this state should reenact such a law in the future it is

clear that the catalogues and bulletins, amounting into thousands of dollars each year, that are sent to the young men and women seeking admission to the university or inquiring about it—and the same would be true with reference to the institution with which the gentleman from Athens is connected—is it clear that this proposal with this amendment would not require all of those catalogues sent out to those people wanting to enter college to be marked "prison made" on the cover? If there is any doubt about that I do not think any proposal should be adopted that will make it mandatory to put such words as that on literature sent out from the colleges. Here this proposal says "no institution owned or controlled by the state or any political subdivision thereof"—I would prefer to have inserted after the word "thereof" "or to any public institution owned, managed or controlled by the state or any political subdivision thereof."

Mr. STILWELL: That is perfectly agreeable.

Mr. KNIGHT: It was an oversight on my part that I did not call attention to that before.

The PRESIDENT: Is this an amendment or a substitute.

Mr. STILWELL: A substitute, but I accept it.

The amendment of Mr. Stilwell with this amendment was then read as follows:

In line 17 change the period to a semi-colon and add the words: "and the products of such labor disposed of to the state or any political subdivision thereof or to any public institution owned or managed and controlled by the state or any political subdivision thereof shall not be marked 'prison made.'"

The amendment was agreed to.

Mr. McCLELLAND: I offer an amendment.

The amendment was read as follows:

In line 10 strike out the word "sold" and the comma following it.

Mr. McCLELLAND: I want to call attention to the title of this proposal, "Abolishing prison contract labor." It not only does that, however, but a good deal more. That will prohibit the state selling any prison-made goods in the state outside of selling them to other state institutions or the different subdivisions thereof. The state cannot sell it in the open market no matter what surplus may be made or what the laws may be otherwise. You will notice if this were a law and had such a title and such contents, every court in the state would pronounce it unconstitutional and this Convention cannot afford to go before the voters of the state with a title which is so utterly misleading in regard to this proposal. The title specifies that it is to abolish contract prison labor. We are all in favor of that—every one of us. No one will object to abolishing contract prison labor, but if the state in the manufacture of certain goods should overstock, this absolutely prohibits that overstock of goods being sold in the open market under any consideration whatever.

Then the next sentence is "contracted". So that it simply on the face of it seems to be out of harmony with that just given "and goods made by persons under sen-

## Abolishing Prison Contract Labor.

tence to any penal institution or reformatory either within or without the state of Ohio shall not be sold within this state unless the same is conspicuously marked "prison made." That is placed there, no doubt, to avoid having this declared unconstitutional under the interstate commerce provision of the United States constitution, but if this word "sold" were stricken out very little advantage would result in the manufacture in our penal institutions and it would avoid that seeming conflict as well as avoid the difficulty which results in the penal institutions from occasional overstocking of goods. It would avoid the construction which would be necessarily placed on that succeeding sentence which any court or lawyer would say is an attempt to dodge the interstate commerce provisions of the United States constitution. Therefore, it seems to me desirous, in the interest of the proposal and in the interest of our people and of the structure of the proposal, that that word "sold" after the comma should be stricken out.

Mr. THOMAS: The whole object of the proposal would be destroyed if this amendment were agreed to. The object of this proposal is to abolish contract prison labor and protect the citizens and workers of the state against the competition of prison labor in the open market. The amount sold in the state is not one-tenth—probably far less than that—of one per cent of the goods that are manufactured in the state, but the fact is where contract prison labor is used it is used in one or two lines of business and drives from those lines of business everybody else in the state. New York has had this in its constitution since 1894 and has worked it out to the entire satisfaction of that state. The prisoners are worked for state use, supplying other state institutions, and the thing has worked out admirably and to the satisfaction of everybody and we want the same thing to be put in vogue here. I move that the amendment be laid upon the table.

The motion was carried.

Mr. FESS: I was absent when this was discussed on second reading and I would like to have an interpretation of one line. It seems to me that it is in contravention of the constitution of the United States. Suppose goods were made in Elmira, New York, in the reformatory there. Do we say that they cannot be sold in this state? I do not think we have any authority to do that.

Mr. THOMAS: Under the present status of United States law we would not have the right here to say that, but a bill has passed the national house of representatives prescribing that any convict-made goods that are being sent from one state to another shall be subject to the laws of that state. I have a letter from the chairman of the National Consumers League which states that he expects the bill to pass in the near future, and if that bill passes this provision in our constitution will become applicable.

Mr. KNIGHT: Then the constitutionality of this clause depends upon whether there is an act of congress?

Mr. THOMAS: Yes.

Mr. KNIGHT: Unless congress enacts that law this is not constitutional, and if congress afterwards repeals that law our provision will become unconstitutional?

Mr. THOMAS: It hardly goes that far.

Mr. KNIGHT: One other question: It was stated a moment ago by the gentleman from Cuyahoga [Mr.

THOMAS] that this was substantially the provision of the New York constitution. Is there anything in the New York constitution touching the subject of labeling goods "prison made"?

Mr. THOMAS: No, but there is in the New York law.

Mr. KNIGHT: Then that is not derived from the New York constitution?

Mr. THOMAS: No.

Mr. COLTON: There is no class of proposals against which I dislike to cast my vote more than the proposals introduced by the labor delegates. I concede to them earnestness of purpose in doing that which they think is best for the working men. With that I am in hearty sympathy, but I was compelled to vote against this proposal on its other reading and I shall vote against it again. It appears to accomplish two things:

1. It forbids the use of contract prison labor.

2. It avoids the competition of convict labor by providing that the goods must be branded "prison made."

I agree with the gentleman from Athens that the value resulting from all this is too small to be made the subject of constitutional enactment. There are twelve hundred thousand voters and in the penal institutions there are two thousand, so that there is about one man in six hundred working in the penal institutions of the state. I submit that the product of one in six hundred is too small a matter to be taken care of by a constitutional amendment.

Mr. THOMAS: Suppose these six hundred were engaged in one industry?

Mr. COLTON: While the supposition is not true I still say the same thing. There is no use of having a big stick to kill a flea.

Mr. THOMAS: Well, suppose you had been trying for twenty years to kill the flea?

Mr. COLTON: We have a law prohibiting convict labor. A constitutional provision is no more forcible than that?

Mr. KRAMER: I would like to vote for this, but I am afraid of the first part of the proposal as against the latter part. The first part absolutely forbids the sale and then the second part comes along and says that nothing herein shall be construed to prevent the passage of laws providing for the sale of goods to the state or any political subdivision thereof. I can readily see if this constitutional provision is adopted that the inmates of the penal institutions will be absolutely forbidden from engaging in any industry. That is what is bothering me. It says "unless laws are passed."

Mr. THOMAS: The laws are on the books now.

Mr. KRAMER: There is another thing that bothers me. In Richland county we have the finest shale in the state of Ohio and we have eight or nine hundred men that ought to be engaged in making brick for the purpose of making good roads. I cannot see how that can be done. They cannot be sold. If they cannot be farmed out and if they cannot be contracted how can the reformatory at Mansfield make bricks and give them to any contractor or sell them to any contractor or contract with any contractor for the use of those bricks? If I could see any way under this provision for the good roads system to go forward I would support it. Does

Abolishing Prison Contract Labor—Double Liability of Bank Stockholders and Inspection of Private Banks.

the state of New York make good roads with their prisoners?

Mr. THOMAS: They use them in manufacturing school desks.

Mr. KRAMER: Can they make good roads?

Mr. THOMAS: Yes.

Mr. KRAMER: Do they?

Mr. THOMAS: They do to a certain extent.

Mr. KRAMER: Well, here is a gentleman who says he knows they do not.

Mr. THOMAS: This provision is word for word as in the constitution of New York with the exception of the marking, "prison made".

Mr. KRAMER: Well, what I can't understand is that they have a provision absolutely forbidding the sale or the giving away in the first part and then in the latter part it says it shall not be construed to prevent the passage of laws allowing that.

Mr. KING: Did you read that exactly right?

Mr. KRAMER: It says in the tenth line "or the product or profit of his work, shall be sold, farmed out," etc.

Mr. KING: The prohibition is on the working, not on the goods.

Mr. KRAMER: If a man cannot work at making bricks, that is what I object to. It says positively here it shall not be sold.

Mr. KING: You cannot find that in the provision.

Mr. KRAMER: Let us read it:

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".

Mr. LEETE: I move the previous question.

The main question was ordered.

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

The yeas and nays were taken, and resulted—yeas, 71, nays 33, as follows:

Those who voted in the affirmative are:

- |                  |                   |                   |
|------------------|-------------------|-------------------|
| Anderson,        | FitzSimons,       | Leete,            |
| Beatty, Wood,    | Hahn,             | Leslie,           |
| Beyer,           | Halenkamp,        | Longstreth,       |
| Bowdle,          | Halfhill,         | Malin,            |
| Brown, Highland, | Harbarger,        | Marshall,         |
| Cody,            | Harris, Hamilton, | Matthews,         |
| Cordes,          | Harter, Huron,    | Miller, Crawford, |
| Crosser,         | Harter, Stark,    | Moore,            |
| Davio,           | Henderson,        | Okey,             |
| Donahey,         | Hoffman,          | Peck,             |
| Doty,            | Hursh,            | Pierce,           |
| Dunlap,          | Johnson, Madison, | Price,            |
| Dunn,            | Jones,            | Read,             |
| Dwyer,           | Keller,           | Redington,        |
| Earnhart,        | Kerr,             | Riley,            |
| Fackler,         | King,             | Rockel,           |
| Farnsworth,      | Kunkel,           | Roehm,            |
| Farrell,         | Lambert,          | Shaffer,          |
| Fess,            | Lampson,          | Smith, Hamilton,  |

- Stamm,
- Stevens,
- Stewart,
- Stilwell,
- Stokes,

- Tannehill,
- Tetlow,
- Thomas,
- Ulmer,
- Watson,

- Winn,
- Wise,
- Woods,
- Mr. President.

Those who voted in the negative are:

- Antrim,
- Beatty, Morrow,
- Brattain,
- Brown, Pike,
- Campbell,
- Collett,
- Colton,
- Crites,
- Cunningham,
- Elson,
- Fluke,

- Fox,
- Harris, Ashtabula,
- Holtz,
- Johnson, Williams,
- Kehoe,
- Knight,
- Kramer,
- Ludey,
- Marriott,
- Mauck,
- Miller, Ottawa,

- Norris,
- Nye,
- Partington,
- Peters,
- Pettit,
- Shaw,
- Smith, Geauga,
- Solether,
- Taggart,
- Wagner,
- Walker,

So the proposal passed as follows:

Proposal No. 34.—Mr. Thomas. To submit an amendment by adding section 41 to article II, of the constitution.—Abolishing prison contract labor.

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 II.

SEC. 41. 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 while under sentence thereto to work 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 providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political subdivision thereof; and the products of such labor disposed of to the state or any political subdivision thereof, or to any public institution owned or managed and controlled by the state or any political subdivision thereof shall not be marked "prison made".

The proposal was referred to the committee on Arrangement and Phraseology.

Proposal No. 93—Mr. Earnhart, was read the third time.

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

Strike out all of the proposal after the word "first" where the same occurs in line 16 and insert in lieu thereof the following:



## Double Liability of Bank Stockholders and Inspection of Private Banks.

"and thereafter in each year at the times provided by law for reports from state banks, submit to the superintendent of banks and banking a sworn statement in detail showing that they have a paid in and unimpaired capital of at least \$10,000.00, and that they are worth in the aggregate, above all liabilities, not less than \$50,000.00, in addition to the \$10,000.00 paid in capital. And the superintendent of banks and banking is authorized to make the necessary examinations for the purpose of verifying the correctness of such statements, and if found incorrect he may cause the business of the parties so offending to be discontinued."

Mr. MILLER, of Crawford: I think this is a very proper amendment. Many of the strong, safe private banks in the state are doing just exactly what this amendment provides for. These banks have adopted certain rules and maintain certain policies and this would not inconvenience any private banks at all, but only afford means whereby the state will prevent irresponsible persons from going into the banking business. Now with this proposal and the other provisions of the law by which we provide for supervision by the state banking department, it seems to me that we have not only protected the depositors, but the good banks of the state as well, and my interest is entirely in the state banks. I do not want to impose impossibilities on the state banks and I hope this amendment will prevail.

Mr. LAMPSON: I am unable to understand by what authority the state can proceed to inspect private business. The United States never makes rules for an inspection of private banks. It would be an infringement upon their constitutional right. I think that we have as much right to say that a dry-goods merchant should not use the term "dry-goods store" and place it over his place of business unless he at first submitted to certain inspection as to say that a man engaged in the private banking business must submit to an inspection before he uses the word "bank" or "banking institution." I think we are undertaking to do something that we have no authority to do if we attempt to pass this amendment. If we keep on, after a while the individual will have no rights at all. I offer an amendment.

The amendment was read as follows:

In line 12 after the word "shares" strike out the remainder of line 12 and all of lines 13 to 17 inclusive."

Mr. LAMPSON: That strikes out all after the period in line 12.

Mr. ELSON: I fully agree with Mr. Miller that there is no disposition on the part of the Convention to annoy the private banks. It is true that many private bankers are perfectly honorable and responsible men and there is no intention to annoy them, but the idea is to get at the business of the private banks. In answer to Mr. Lampson I would say that there is a great deal of difference between a private bank and a dry-goods merchant. The private banker calls upon the people for deposits of their money. Why should such a thing be permitted unless there is some sort of notice taken of it by the state? We do not permit the medi-

cine vender under the pure-food act to sell what he pleases and make whatever claims he chooses as to the effect of taking his medicine. I believe the individual ought to be protected by this examination. Under our present laws no examination whatever can be had of the private banks and if the people are foolish enough to put their money in them they run the risk of losing. I believe they should be protected and that every institution of that sort ought to be under state supervision. I am perfectly willing for my part to accept the amendment of the gentleman from Crawford, but as to the amendment of Mr. Lampson I hope it will be voted down and the other amendment adopted.

Mr. LAMPSON: Do you not know that under the amendment offered by the delegate from Crawford [Mr. MILLER] a private banker would have to have a larger capital than is now required by a national bank? There would necessarily have to be \$60,000, whereas any five men can organize a national bank with \$25,000 capital.

Mr. WOODS: I offer an amendment.

The amendment was read as follows:

At the end of the amendment add: "provided, however, laws may be passed to further regulate private banks or the use of the words "bank", "banker", or "banking".

Mr. WOODS: Gentlemen of the Convention: I only want to say a few words. I have talked about this since it first came up. I have no interest in this except what I think is best for the people.

We have three kinds of banks:

National banks, organized under the laws of the United States.

State banks, organized under the laws of the state. Those banks are subject to inspection and regulation of national and state officers.

Private banks.

Now, I do not believe that I need to argue to these one hundred and nineteen men that we should regulate and protect the public as against persons that hold themselves out and ask the public to leave their money with them. I do not care who goes into that sort of business, in my judgment they should be subject to the laws of the state regulating that business. We protect the public in so doing. I do not believe that half the people of the state of Ohio ever stopped to think or know that there is a difference in banking between state banks and private banks. For instance, I think it is perfectly ridiculous that the state of Ohio in the year 1912 should allow me when I may not be worth two cents to have an office on a main street and a sign up "Farmer's Bank" or "Woods' Bank" or any other person's name similarly fixed, and thus try to get the people to come in and leave their money. I think that is all wrong. All I want is to have these banks subject to state regulation, and I think this Convention ought to do it. I know the private bankers don't want it, but nobody wants his own business regulated. It is like paying taxes—let the other fellow do it. I believe we should do something here. I believe we ought to say in this constitution that the general assembly shall have the right to regulate this matter. Now, if the bank is right, it is not afraid of regulation. I do not want to hurt

## Double Liability of Bank Stockholders and Inspection of Private Banks.

any private banker, but if somebody is doing a private banking business and is not good, I do want to hurt him. We all want to hurt that sort of a fellow and under the laws now it is a great question. We tried to do it in the general assembly when we passed a state bank inspection bill. We tried to figure out some way that we could regulate private banks. We came to the conclusion that we did not have a right to do it without authority in the constitution. Now when I put this amendment in this proposal the other time the amendment didn't go far. It does not put out of business any private banker, but simply says if he wants to use the word "bank" or "banker" he must submit to an inspection and regulation. If they don't want to submit to an inspection and regulation they can keep on doing the banking business, but they can not use those words. That amendment didn't go as far as it ought to go to protect the people. I have been up against this proposition in a legislative body before. I was here once before when we tried to take care of those private bankers in a small way, and we could not touch that proposition without stirring up a hornets' nest, and when this went in we did stir up a hornets' nest and the private bankers are asking that it be taken out. I do not like the amendment of the gentleman from Crawford because there are things in it that ought not to be in the constitution. If you are going to adopt Mr. Miller's amendment you ought to adopt the amendment I sent up to the desk, which simply provides that the general assembly may further regulate bankers or anybody else using the word "bank" or "bankers." That cannot hurt anything. Do you think that the general assembly of the state of Ohio is going to put private banks out of business? The state banks simply stood up and hallooed when we passed the Thomas bank inspection bill. You would have thought we were going to put out of business all of the state banks. Yet it was a good thing for them as well as for the people of the state, and the private bankers, after they got to working under the regulation, found out it was a good thing for them. I would not for a minute stand on this floor and ask you to put the private banks out of business, because I know there are as many private bankers as there are state and national bankers, and I say anybody who is advertising himself to the world as a banker ought to submit himself to regulation and examination, and I insist that the general assembly should have the right to pass laws for inspection and regulation.

Mr. KING: I want to ask Mr. Woods if the last two lines of the proposal as reported back are not substantially what he has in his amendment?

Mr. WOODS: Yes.

Mr. KING: Then in the interest of phraseology, if the Miller amendment is voted down, it would be in better shape, would it not?

Mr. LAMPSON: Does the gentleman not know that in a great many country places, back ten miles or more from the cities, there are merchants who do a little banking business for the accommodation of the community and who would be put out of business by this?

Mr. WOODS: They would not be put out under this amendment.

Mr. KNIGHT: I would like to speak for a moment

to the amendment of the gentleman from Crawford [Mr. MILLER].

In the first place, it makes a constitutional officer of the superintendent of banking. He is now purely a legislative officer, absolutely unknown to the constitution, and yet it proposes to insert him in the constitution, and, therefore, the legislature could not abolish the office of the superintendent of banks. Then it puts private concerns out of the right to use the word "banker" and also from the right to do business. All the original proposal undertook to do was to forbid the use of the word "bank" or "banker," and this amendment forbids the carrying on of any business like a banking business. Not only forbids the use of the name, but stops the business. This is pure legislation.

Mr. HARTER, of Stark: Would that not apply to Mr. Wood's amendment as well?

Mr. KNIGHT: I think that the purpose of both the proposal and amendment can be accomplished by striking out one word from the present proposal instead of adding anything, and that would be to strike out the word "first" in line 16. Doing that accomplishes in principle everything which is undertaken by both the amendments of the gentleman from Crawford and the gentleman from Medina, because it provides then that they cannot use the term "bank" or "banker" unless they shall submit to an inspection and examination and regulation as is now or may be hereafter provided by law. The only thing it does not do is to provide the minimum capital stock or the minimum of reserve, and it seems to me it accomplishes all that is undertaken by this much larger number of words and that it is preferable. If it is in order I move that both the pending amendments be tabled.

Mr. LAMPSON: I desire a yea and nay vote on my amendment.

Mr. KNIGHT: I move that the amendment of the gentleman from Medina and that of the gentleman from Crawford be laid upon the table.

Mr. MILLER, of Crawford: Before that motion is made may I make a statement?

The PRESIDENT: It is not in order except by unanimous consent.

By unanimous consent the gentleman was allowed to make a statement.

Mr. MILLER, of Crawford: This amendment is what the private banks of Ohio have asked.

Mr. WINN: Where do you get that information?

Mr. MILLER, of Crawford: From their organization.

Mr. WINN: Where do you get your information?

Mr. MILLER, of Crawford: From the private bankers in the Convention and they have handed this amendment to me.

Mr. WINN: Who handed you the amendment? Was it Mr. Jones, a member of the Convention?

Mr. MILLER, of Crawford: Mr. Harter was one. Under the proposal in the book the small banks cannot make the loans that they are required to make and they have asked for this amendment to be substituted for the one in the book.

The motion to table the amendments offered by the delegate from Medina and the delegate from Crawford was carried.

## Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. LAMPSON: Now I demand the yeas and nays upon my amendment.

Mr. ANDERSON: Before that I want to ask Mr. Lampson a question. If your amendment carries will it permit any private banks using the word "bank" to go without inspection?

Mr. LAMPSON: Yes. It leaves the proposal as originally reported by the committee, simply making a double liability against the bank.

Mr. ANDERSON: I want to give an example to the Convention of what happened in Youngstown since this Convention has been in session. The highest-priced property in Youngstown is along Federal street, where the property is worth \$5,000 to \$6,000 a foot. The Commercial National Bank, which did business in a building for years and years, moved out to other quarters. A firm or a few men came in there and put up the word "bank." Hundreds and hundreds of our citizens deposited their money in that place because it was centrally located and a big building and well advertised and because it had the word "bank." What was the result? They lost every penny. These people would not have put their money in there but for the word "bank." Now we passed the blue-sky proposal and why? To protect the citizens of Ohio against buying stocks that were worthless, and yet now, apparently, you refuse to protect the people against depositing their money in a bank that is worthless—the same kind of advertisement, the same thing on the window, and people hunting a bank to put their money in where it will be kept safely. It is a poor man who deposits his money. The rich man invests his money and he knows where to put it.

Mr. LAMPSON: Do you not think it would increase the credit of that bank to have it reported that it was investigated and that the state certified to its soundness?

Mr. ANDERSON: I do not know whether the state would certify to its soundness or not. If that is true of a bank of this description it is doubly true of every other kind of bank.

Mr. LAMPSON: What authority has the state to be giving a certificate of soundness to a private banker unincorporated?

Mr. ANDERSON: What right had we to protect the people against buying worthless stock as we did in the blue-sky proposal?

Mr. LAMPSON: I say you increase the danger by giving a certificate of soundness to the kind of bank you are describing.

Mr. ANDERSON: The point I am making is this: that a place without inspection and without reasonable regulation and without laws passed by the legislature to protect depositors, has no right to use the word "bank." I apprehend that those people who deposit their money in a place of that kind will not know whether it has been inspected by the state or not, but will deposit because the word "bank" is on the window, and if the Convention has a right to prohibit such person from using that word, which means so much to the poor man, who has little money to deposit, the state ought certainly to do it.

Mr. LAMPSON: And then when you drive that sort of a concern out of business would not that very

kind of bank that you describe change to a trust company or something similar?

The PRESIDENT: The time of the member has expired.

Mr. MAUCK: I have a hundred and forty-three reasons for objecting to private individuals using the word "bank", having recently lost that many dollars in that sort of an institution. It doesn't satisfy me at all that I am assured by the member from Ashtabula that the proposed regulation of these private institutions infringes some of the rights of the operators. The restrictions proposed by all of these amendments are in my judgment entirely unconstitutional. I shall offer an amendment to insert a period after the word "state" in line 15 and strike out all the remaining portion of the paragraph and the proposal, so that no man or combination of men may use the word "bank" or "banker" in connection with their institution unless it be incorporated under the laws of this state or of the United States. The suggestion that some merchants out ten miles in a village accommodates his neighbors by doing a quasi banking business is scarcely in point, because those men do not trade upon the word "bank", "banker" or "banking". But when men hold themselves out as bankers, as operating a bank exempt from inspection, and as I have unhappily learned exempt from the operation of the criminal laws that prevent incorporated institutions from accepting deposits under penalty of the criminal statutes when the institution is known to be insolvent, it seems to me time that we should put in not only the restrictions suggested by the gentleman from Medina [Mr. Woods], but very much more drastic ones, such as the one I now send to the secretary's desk.

The amendment was read as follows:

Insert a period after the word "state" in line 15 and strike out all thereafter.

Mr. HARRIS, of Hamilton: It ought to be an axiom of public morality that the business of a private banker is a proper subject for public inspection. There ought not be any disagreement on the proposition. There is no intention here and should not be any to destroy the private banker who has his well recognized place among the banking institutions of the world. I think if the member from Ashtabula and the member from Gallia will withdraw their amendments I have an amendment which will probably cover the wishes of the private bankers throughout the state and meet their objections to this proposal and at the same time in no way cripple the proposal itself. The amendment I now offer to the original proposal is self-explanatory. In this connection I would add that the real objection of the private bankers to the proposal in its present form is that it would limit them in the amount of money they may be allowed to lend to any one individual firm or corporation.

Mr. ANDERSON: A national bank cannot lend any individual any more than ten per cent of its capital—

Mr. HARRIS, of Hamilton: And surplus.

Mr. ANDERSON: Is there anything to prevent the legislature from changing that?

Mr. HARRIS, of Hamilton: That is a federal statute referring only to national banks, but the law in Ohio limits the amount any incorporated bank may lend to

## Double Liability of Bank Stockholders and Inspection of Private Banks.

twenty per cent of the capital and surplus, and where the capital is small, say \$25,000, and the surplus say \$250,000, the bank could only at the present time lend to any borrower \$55,000 notwithstanding that the banker's deposits might be a million dollars and the borrower's credit and necessities justified a loan of \$100,000. I offer this amendment.

The amendment was read as follows:

Change the period at the end of line 17 to a comma and add: "save and except that the limitation of amount or amounts that may be loaned to any person, firm or corporation shall not apply."

Mr. HARTER, of Stark: It seems to be the opinion of the Convention that there are no good private bankers. Any bank is just as good as the people behind it and no better. It seems to me that this amendment is offered hastily and without understanding the functions of a private bank. Several gentlemen speaking here tonight have touched upon that matter and have covered it pretty well, but no one man completely. Now this is the situation: I do not want to name the town nor the people who make this objection to the amendment, but this is what it was. Down in the county that Mr. Elson is from there is a small bank with a capital of \$25,000. They started a national bank in that place and some of the stockholders of the national bank gave up their accounts with the private bank and commenced to do business with their own bank. They found they could not borrow more than \$2,500, whereas the other bank would lend them \$15,000 of \$20,000. The private bank had other funds besides its capital, which was \$25,000, and they would accommodate their customers, and the result was they got all of the good customers of the community; the national bank does not pay, while the other bank is a good paying institution and lends money to accommodate the customers. The consequence was that the stockholders of the national bank had to go back to the private bank to do business or else go out of the community to borrow the money. That is one of the functions of the private banker.

Mr. LAMPSON: Is not the largest bank in the state of Ohio a private bank?

Mr. HARTER, of Stark: If you refer to the Society for Savings I can hardly answer that question, and I do not think that affects the question. I think the majority of the private banks of Ohio will be satisfied with Mr. Miller's amendment and I think it makes them safer than the amendment that Mr. Woods offers.

Not long ago the state banking department of the state of Ohio received from the state of Wisconsin a report to the effect that private bankers ought not to be given the privilege of doing business within their state, that it would make them all go into the state banking business. Now I want to say that if you will listen you will see what a fine state of affairs they have in Wisconsin, where they argue to this Convention that because the state banking superintendent of Wisconsin is against private banks they ought not to exist in the state of Ohio. Here are the state banks in Wisconsin: Six of \$5,000; one of \$6,000; one of \$7,000; one of \$8,500; 265 of \$10,000; one of \$10,200; one of \$10,500;

eleven of \$12,000; two of \$12,500; one of \$13,000; seventy of \$15,000.

There is the condition of the state banks of the state of Wisconsin. They have not been in existence long enough to know whether they can stand a panic or not. Behind the private bank there is a matter of pride to keep them running. Suppose those small country private banks are made up simply of stockholders comprising good farmers and merchants and some working people, and all have a little stock. Say a panic comes along and the bank gets in deep water; the stockholders would make a sacrifice for it. I know that private bankers have gone into their pockets to keep up. I know that a great many banks in the state of Ohio and in a great many other states have done that. The Miller amendment makes these banks as good as the average bank in Wisconsin or Minnesota.

Mr. EARNHART: I fear gentlemen lose sight of the object of this proposal. The object of the proposal and the amendment to it is to protect the depositors. It seems to me if a banker intends to do a fair business he ought not to object to inspection. Any man engaged in any business, if he is doing a fair, square business, ought not to object to having his business regulated if the business is one in which other people's interests are vitally at stake. Private banks will not be subjected to any hardship whatever. They continue to do business just the same. It does not interfere with the business, but protects the man with money, so that he may know when he wants his money he can get it. I commend the judgment of the committee on Arrangement and Phraseology. I indorse the proposal as they have reported it here, and I hope the Convention will pass it without making any amendments to it whatever. It is good enough as it is and I therefore move the previous question.

Mr. ELSON: I have an amendment that I would like to offer.

The PRESIDENT: The question is, "Shall the debate now close?"

The motion to close debate was lost.

Mr. BROWN, of Highland: I am very much in hopes that this Convention may see its way clear to relieve private banks in this state from having to submit to the same regulation to which the national and state banks have to submit. That is all they are asking for. They do not ask for any exemption from regulation or inspection for soundness of their business, but the private banks of this state are on an average older and safer than any other banks in the state. I discovered when I went back to Highland county after inadvertently subscribing to the amendment of Mr. Woods to the Earnhart proposal, that our private banks in Highland county are decidedly stronger than the other banks and they have more behind them to make them stronger. The biggest bank in Highland county is the Greenfield bank. That has a capital of \$25,000 and on the day that I looked at its books the deposits amounted to \$873,000. This bank has behind it all the assets of the stockholders of the bank, which gives it a solidity equal to \$2,000,000 or \$3,000,000. They have a very large business in Greenfield and that business is conducted through its banks. It is absolutely necessary at times for some of the men who have large businesses in

## Double Liability of Bank Stockholders and Inspection of Private Banks.

Greenfield to borrow large amounts of money, and the way they do it is to take their collateral—municipal and national bonds—and go into this bank and deposit \$100,000 as collateral and borrow \$100,000 from this bank that has a capital of \$25,000. That bank fills a business necessity that cannot be met by a national or state bank which has not an enormous capital. A bank would have to have \$500,000 or \$1,000,000 of capital to run the business of Greenfield if the business men of Greenfield secured from them the necessary accommodations. They say that would absolutely ruin the business of Greenfield, and the same objection exists in Hillsboro and Lexington and two or three other places. There the banks have a capital of \$10,000—they do I know at Lexington—and they have behind that enough estates of stockholders to pay off a loss of \$200,000 or \$300,000, which no bank in the county under state or national regulation can do. Now I trust that this Convention will see this matter as I see it and take a reasonable view of it and protect those banks and will not alter their business methods to the extent of an entire revolution.

Mr. WOODS: Do you think it is safe to let a banker lend all of the money of the bank to one person? Is that taking a reasonable view of the matter?

Mr. BROWN, of Highland: It is if the ability and business of the man who owns the stock is sufficient to warrant it. These banks are not objecting to proper inspection as to soundness, but they do not want to be subjected to the narrow limits of national or state restrictions. I hope you will see it that way.

Mr. JONES: Gentlemen of the Convention: As you all remember, upon second reading an amendment was introduced by Mr. Woods, a motion was made for its adoption and it was agreed to here without any opportunity for argument or discussion. Now the effect of that amendment is much more far-reaching than has been understood by the members who have spoken on the subject. The effect of it is to destroy every private bank in Ohio, and here is the way it will be done. It provides that no person or persons or associations can use the word "bank" or "banker" unless they submit to inspection and regulation as now provided by the banking laws of Ohio or those that may be hereafter provided. The result will be, as already suggested by the gentleman from Highland, that no private bank can conduct its business under the regulations applicable to state banks. These private banks are organized to meet a peculiar condition. In our county we have only one national bank and one state bank and we have nine or ten private banks. In my own little village the bank, with less than \$10,000 of capital, has back of it fifteen or twenty farmers and there are more than half a million dollars behind every debt of that bank. Every bank in our county is similarly situated. They are organized in small villages where you could not have a bank of \$25,000 or \$50,000 capital, because the business would not enable the paying of dividends upon that amount of capital stock.

Mr. NYE: I want to ask you what you mean by saying that your bank has a capital of from \$6,000 to \$10,000. Is it a private bank or is it organized under the laws?

Mr. JONES: It is a private bank, with paid-in capital. There are a few private banks that have no paid-in capital, but there is not one in twenty that has not.

Mr. NYE: Is it a partnership?

Mr. JONES: Yes, sir; with paid-in capital, and in addition to that, with the individual responsibility of every member of the partnership back of it. Now what we have in our little county of Fayette exists in many other rural counties. We have more, as shown by the tax duplicate, behind the bank deposits in the private banks of Fayette county than there is in all the banks in Columbus and Franklin county, and that is due to the fact that all but two of our banks are private banks with the unlimited liability of the stockholders, making them so sound that no one can question them.

There has not been one dollar lost in private banks where there have been ten in state and national banks. There are a few instances like the one that the gentleman from Mahoning [Mr. ANDERSON] cited where there have been losses, and I concede that those cases ought to be provided for. Men who engage in the banking business should be required to make a showing that they have some capital behind their institution and some amount of assets in the way of property that will be liable for the debts of the bank. I submit that the Miller amendment thoroughly met that whole contention and objection made at the time, and this amendment if adopted will do all that can be reasonably asked. The ordinary private banker of Ohio has not inflicted any injury upon anybody. There have been practically no losses compared with the losses in the other institutions. Why can they not submit to this same regulation? First, they cannot because they have to lend more. In our community a man comes in and wants to borrow \$25,000. He puts up absolute security. He may go in and get it on ground, a security that he cannot use in a state or national bank. Many banks lend on mortgages, the safest form of all collateral, better than municipal bonds. There are other and many other reasons why a private bank cannot exist that has to be subject to these regulations. It has been suggested there is no objection from the private banker as to the examination for soundness. Suppose he has a certain amount of property behind it and he must submit for the purpose of ascertaining whether that statement is true. There cannot be any objection to that, but what the banks object to is that they shall be subjected to all the regulations and inspections that obtain as to state and national banks, for that would put them out of the banking business. It would destroy their opportunity to do what they do now in the way of making large loans.

Mr. KEHOE: The discussion here has been largely on the theory that all of the private banks are absolutely secure and that nothing can be better, and that there is absolute security for every dollar deposited. I think Mr. Jones' bank and Mr. Harter's bank may be banks of that character, but while that is true there are some banks that a puff of wind will blow over. That is the trouble. The good ones are above suspicion and they feel that they ought to be above examination, while the poorer ones would not stand an examination or inspection. On such an examination and inspection they would have to make good or get out of the business. There is absolutely nothing of substance in some of

## Double Liability of Bank Stockholders and Inspection of Private Banks.

them and they are not entitled to exist. There is the trouble. The two extremes are so widely apart.

Mr. ULMER: Do you not know that there are more private banks than any other kind of banks?

Mr. BROWN, of Highland: Don't you think that any private banker would object to working under the regulations of the national or state laws with reference to the percentages as to loans?

Mr. KEHOE: That is the thing that the most of the private bankers object to, being restricted in the amount of loans as the national and state banks are. That is the principal objection to the proposition and the thing they feel would hurt them most. If that objection could be removed in any way there would not be much trouble about it, but it is that feature of the banking laws of the state and nation that they do not like.

Mr. WOODS: Do you not understand that under my amendment neither the federal laws nor the state laws would obtain, but that the general assembly would have to pass laws to regulate the private banks?

Mr. KEHOE: I understand the general assembly would have it under their control to do as they wished. That is what the private banks do not like. They don't like to be restricted in that particular—that is, the big banks do not. I believe the amendment offered by Mr. Miller, of Crawford, would be a hardship on some of the little banks, but they would simply stiffen up beyond the limit of some of the small national banks. It would not hurt the large private banks, but it would force the small private banks to stiffen up.

Mr. FESS: I move the previous question on the pending amendment of Mr. Harris, of Hamilton.

The main question was ordered.

The PRESIDENT: The question is, Shall the amendment offered by the delegate from Hamilton [Mr. HARRIS] be agreed to?

Mr. ANDERSON: Are not there other amendments besides this one?

The PRESIDENT: Yes.

Mr. ANDERSON: Assuming that this carries what is the parliamentary situation?

The PRESIDENT: Debate is open on the rest of it.

Mr. ANDERSON: Then suppose the other amendment should carry?

The PRESIDENT: The last amendment carried would determine the matter. The previous question is upon this amendment.

The amendment offered by the delegate from Hamilton [Mr. HARRIS] was disagreed to.

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

Mr. MILLER, of Crawford: On that I call for the yeas and nays.

Mr. HOSKINS: What are the amendments?

The PRESIDENT: By the member from Gallia [Mr. MAUCK] and the member from Ashtabula [Mr. LAMPSON.]

Mr. HOSKINS: What became of the Miller amendment?

The PRESIDENT: That was tabled.

Mr. BROWN, of Highland: I ask for a division.

The PRESIDENT: Very well. The question is,

“Shall the amendment of the member from Gallia lie upon the table?”

The motion to table was carried.

The PRESIDENT: Now the question is, Shall the amendment of Mr. Lampson lie on the table?

The motion was carried.

Mr. BROWN, of Highland: I move that the proposal be laid on the table.

Mr. ELSON: I wish to offer an amendment. It is quite evident that neither of the two extremes can come together and that neither of the two extremes can carry a vote of the Convention. Therefore it seems to me a compromise is necessary, and I think the best thing we can do is to shift the responsibility on the legislature to make such laws—make it mandatory on the legislature to do it to get through with this debate.

The amendment offered by the delegate from Athens [Mr. ELSON] was read as follows:

Strike out all after “shares” in line 12 and insert “The general assembly shall pass laws to regulate private banks and trust companies.”

Mr. KNIGHT: In an effort to try to bring the two extremes a little nearer I want to offer an amendment and take a moment to explain it.

The amendment was read as follows:

In line 16 strike out the word “first”. In lines 16 and 17 strike out “is now or,”. In line 17 strike out the word “hereafter”.

Mr. KNIGHT: That amendment would make it read as follows, beginning at line 15: “may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may be provided by the laws of this state.”

Several gentlemen who have spoken this evening have spoken as if the regulation provided for in the proposal was the regulation now governing state banks. It is not. It does not so state. It says to be regulated by law, and in order to make it perfectly clear that it is not to be governed by the laws regulating state banks it puts it in the hands of the lawmaking power to make the kind of regulation for private banks distinct from that of state banks.

The amendment was agreed to.

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

Strike out of line 14 the word “or” where it first occurs, substitute therefor a comma, and insert after the word “banker” the words “or banking”.

The amendment was agreed to.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

After the word “banking” in line 14 insert “or words of similar meaning in any foreign language.”

Mr. FACKLER: That is to meet a situation that occurs in large cities where foreign banks are used.

The amendment was agreed to.

## Double Liability of Bank Stockholders and Inspection of Private Banks.

Mr. DOTY: I move that the amendment of the delegate from Athens be laid on the table.

The motion was carried.

Mr. KNIGHT: I move the previous question on the amendments and proposal.

The motion was lost.

Mr. COLTON: I offer an amendment.

The amendment was read as follows:

Insert the word "twice" before the last word "the" in line 10.

Mr. COLTON: If this amendment were adopted it would read "to the extent of twice the amount of their stock therein at the par value thereof."

Mr. DOTY: Does that not amount to triple liability?

Mr. COLTON: I think not.

Mr. HARRIS, of Hamilton: Are you aware that the language has been changed by the committee on Phraseology and that the liability now is copied word for word from the national liability for double liability? I would suggest that not a word shall be changed.

Mr. COLTON: In line 11, in adding to the amount invested in such shares, the question is whether they have bought the shares at fifty per cent of par value or whether the amount they actually paid might not be construed to be the amount invested.

Mr. DOTY: If a man subscribes for stock and pays half in he has to pay the other half. That is the situation now.

Mr. COLTON: I withdraw the amendment.

Mr. HOSKINS: Mr. President and Gentlemen of the Convention: Professor Knight and the president together shut me off a few minutes ago and did exactly what I wanted to do and a little bit more. I want to offer an amendment to restore what Professor Knight struck out and which I do not believe should be stricken out. It leaves doubt. I coincide with his amendment, but I want to insert in line 17 after the word "may" the word "hereafter" so that there can be no doubt of the proposition that the regulations applying to private banks are laws to be hereafter passed. The word "may" after taking out the word "hereafter," leaves that matter in doubt. I want the word "hereafter" in there.

The amendment was agreed to.

Mr. WINN: Gentlemen of the Convention: When this subject was under discussion perhaps two or three weeks ago I gave it as my opinion that the enactment of this amendment would not in any way affect existing state banks. It was then stated that this question had been left to a committee and that the committee had reported that the terms and provisions of the proposal would apply to all banking corporations in existence. That opinion was based upon section 2 of article XIII of the constitution, which provides that corporations may be formed under general laws, but all such laws may from time to time be altered or repealed. The committee must have assumed that we are engaged in repealing or amending laws instead of making a constitution. Anyhow their premises must have been wrong for their conclusion is just as wrong as it can be. I was astonished when I looked up the law on this subject. I was not only surprised to find that the weight of authority is

against the opinion of the committee, but I find that every single reported case is against it and that there are no cases recorded in favor of the report of the committee. I have prepared a brief upon the subject which I intended to inflict on you, but I spare you that this evening. I find that the decisions of the supreme court of Ohio are unanimous upon the question and that there are three or four decisions of the supreme court of the United States to the same effect, one of which went up from the state of Ohio, involving the state of Ohio as one of the parties to the controversy. There are two decisions from the state of Kentucky, and so far as I have been able to ascertain I find that no decision in any state under a similar provision of the constitution supports the opinion of the committee referred to, which is that the passage of this proposal now will bring within its provisions, if ratified at the polls, the existing banking corporations. I say now what I have said before, that this amendment will if ratified apply to banks hereafter incorporated, but has no application to existing state banks.

Mr. DWYER: This provides for a double liability in the interest of creditors of the corporation. That is the only way the courts have construed the double liability to affect the stockholders in the interest of creditors of the corporation. It is not a debt of the corporation, but it is to the interest of the creditors. Suppose a corporation becomes insolvent. The first inquiry is, Have the stockholders paid up the face value of their stock? That is the first thing. That is a debt of the corporation, and after that the creditors can go on and assess them at the face value of their stock a second time as security for the debts of the corporation. That is what we want it to be. Now that ought to be the law. Take that as the law and apply it to the language here. This language certainly needs to be amended. It says here that "Dues for private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable or otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares." Now the word "invested" there is an ambiguous word. In addition to the face value of their stock? Suppose the shares are \$100 each and a man has invested only \$50. Then there will be no provision to collect the other \$50 before they proceed to the double liability. And suppose he has invested \$105 a share, which is often done. Now he would not be required to pay another \$100, but he would simply be required to pay an amount over and above what he has paid, so as to make the stock equal twice its face value. Now the word "invested" there is not a proper word and should be omitted. I have an amendment that I desire to offer striking out "the amount invested in" and inserting "the full paid-up face value of," so that his liability will be equal to the full paid-up value of the stock. First, they must pay the full amount and then proceed to the double liability, and the word "invested" does not cover that. I offer this amendment

## Double Liability of Bank Stockholders and Inspection of Private Banks—Additional Pay for Official Reporter.

to cover that and make it plain what the provisions are, that is, that they will be liable for the stock fully paid.

The amendment was read as follows:

In lines 11 and 12 strike out "the amount invested in" and insert "the full paid-up face value of".

Mr. MOORE: I move the previous question on the amendment and the proposal.

The main question was ordered.

The amendment offered by the delegate from Montgomery [Mr. DWYER] was lost.

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

The yeas and nays were taken, and resulted — yeas 77, nays 27, as follows:

Those who voted in the affirmative are:

Anderson,	Harris, Hamilton,	Partington,
Antrim,	Harter, Huron,	Read,
Beatty, Morrow,	Hoffman,	Redington,
Beatty, Wood,	Holtz,	Riley,
Beyer,	Hoskins,	Roehm,
Campbell,	Hursh,	Rorick,
Colton,	Johnson, Williams,	Shaw,
Cordes,	Kehoe,	Smith, Geauga,
Crosser,	Kerr,	Smith, Hamilton,
Cunningham,	King,	Solether,
Davio,	Knight,	Stamm,
Donahey,	Kramer,	Stevens,
Doty,	Kunkel,	Stewart,
Earnhart,	Lambert,	Stilwell,
Elson,	Lampson,	Stokes,
Fackler,	Leete,	Tannehill,
Farnsworth,	Leslie,	Tetlow,
Farrell,	Ludey,	Thomas,
Fess,	Malin,	Ulmer,
FitzSimons,	Mauck,	Wagner,
Fluke,	McClelland,	Walker,
Fox,	Miller, Fairfield,	Watson,
Hahn,	Miller, Ottawa,	Wise,
Halenkamp,	Moore,	Woods,
Harbarger,	Nye,	Mr. President.
Harris, Ashtabula,	Okey,	

Those who voted in the negative are:

Baum,	Halfhill,	Miller, Crawford,
Brattain,	Harter, Stark,	Norris,
Brown, Highland,	Henderson,	Peck,
Brown, Pike,	Johnson, Madison,	Pierce,
Cassidy,	Jones,	Price,
Collett,	Keller,	Rockel,
Dunlap,	Longstreth,	Shaffer,
Dunn,	Marriott,	Taggart,
Dwyer,	Matthews,	Winn.

So the proposal passed as follows:

Proposal No. 93 — Mr. Earnhart. To submit an amendment to article XIII, section 3, of the constitution. — Double liability of bank stockholders and inspection of private banks.

*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 XIII.

SEC. 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stock-

holders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank", "banker" or "banking" or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state.

The proposal was referred to the committee on Arrangement and Phraseology.

By unanimous consent Resolution No. 129 by Mr. Lampson was taken up and was read as follows:

Resolution No. 129:

WHEREAS, The contract of the official reporter was not made with any idea of night sessions other than Monday nights, and

WHEREAS, The Convention has held and intends to hold other night sessions; therefore

*Be it resolved,* That the official reporter be and is hereby allowed the additional sum of thirty dollars for each night session, other than Monday nights.

Mr. LAMPSON: I am informed by the official stenographer that there have been six of these night sessions. I will read his letter:

The letter was read as follows:

COLUMBUS, Ohio, May 23, 1912.

To the Fourth Constitutional Convention of Ohio:

GENTLEMEN: When I was requested to bid on the reporting of this Convention I made particular inquiry as to night sessions. I was told by Prof. Knight, the chairman of the committee, that the rules provided only for night sessions on Monday. My bid was based on Monday night sessions and no night sessions other than that. I gave the Convention a bid \$20 per day lower than any other bid. I did this because having reported two constitutional conventions, and there never having been a man who reported more than that, I was anxious to hold the record by having reported three.

I knew when the days grew longer the sessions would correspondingly increase, but I did not contemplate a steady run of night sessions like we have been having.

All during the Convention my work has been up every Saturday morning until the rush of three weeks ago. So great was the mass of work piled on to me by the lengthened day sessions and the night sessions that although I worked night and day, including Sundays, it took the entire recess for me to catch up, and I only caught up on the



Additional Pay for Official Reporter.

21st of May after noon lunch. And I got no pay for those twelve days and was under just as heavy expense as at any other time.

In examining the journals and debates prior to the time of my election, I made the discovery that discussing the question whether there should be an official reporter has cost the Convention something like \$6,800, calculated on time consumed, while the reporter has received about \$3,600. So I hesitated to ask the introduction of any resolution, not wanting to increase the \$6,800 still further.

The union labor scale is double for night work and under that I could ask for \$60 per night, but I only request \$30 for each night session and do not ask anything for the extra sessions on Monday afternoons.

I respectfully ask that the roll be called on the resolution you have heard read.

Respectfully,  
CLARENCE E. WALKER."

Mr. LAMPSON: There have been six of these sessions and I call for a vote on the resolution.

Mr. WATSON: Before we vote on that let us have the contract under which the employment was had. The

contract is on file with the clerk of the committee on Claims. Let us have that and let us have all the light possible on the matter.

Mr. KNIGHT: I have no knowledge of the matter beyond the facts as stated here. I did make a statement in answer to the inquiry of the stenographer and I told him that the rules called for but one night session each week and that was on Monday. I have no knowledge as to what was put in the contract because the contract was drawn up and signed by others.

Mr. WINN: It seems to me that there have been many short sessions and it occurs to me that they would even matters up. I think we have had several short weeks in which the gentleman was paid his full weekly stipend for weeks that were short.

Mr. DUNN: I move that the matter be referred to the committee on Claims against the Convention and that that committee make a full report on it.

The motion was carried.

Mr. DOTY: I move that Resolution No. 127 be referred to the committee on Employees.

The motion was carried.

Leave of absence for the afternoon session was granted to Mr. Knight.

On motion of Mr. Watson the Convention adjourned until tomorrow morning at 9:30 o'clock.